

16 February 2018

Care homes consumer consultation team
7th Floor
Competition and Markets Authority (CMA)
Victoria House
37 Southampton Row
London WC1B 4AD

Dear colleague,

Competition and Markets Authority's consultation on draft consumer law advice for UK care home providers on the charging of fees after a resident's death.

The Local Government and Social Care Ombudsman (LGSCO) welcomes this opportunity to respond to the CMA's consultation on draft consumer law advice for UK care home providers on the charging of fees after a resident's death. The LGSCO is the social care ombudsman, providing a one-stop-shop for complaints about local authority actions in respect of adult social care, and the service provided by all registered social care providers and investigating complaints about both publicly and privately funded and arranged adult social care.

We can look at a range of complaints regarding adult social care, including the assessment process and care planning, fees and charging for care and support, residential and home care, safeguarding and a range of other areas.

We recognise the CMA's market study highlighted significant scope for clarifying care homes' responsibilities under consumer protection law in relation to fees charged after the death of a resident and therefore we welcome the decision to publish advice on this topic for the sector. We believe that the advice is very useful in setting out expectations for how care homes can ensure they take a consistent and lawful approach and will also help the Ombudsman in adjudicating on related complaints.

The main problems in many of the complaints we investigate arise from the lack of clarity about terms when the contract is entered into. Common problems we see are around contracts lacking clarity and detail to explain how care providers would treat funds to meet nursing care needs or how increases would be dealt with. We therefore support the CMA's call that information about fees including those arising following the death of a resident should be transparently set out in contracts.

On the issue of charging fees post-death specifically, we agree that in arriving at an appropriate length of time the CMA needs to strike a balance between the legitimate interests of the resident (or their family) and that of the care home. The draft advice provides welcome clarity for the duration for which charges can be applied following a resident's death which will help ensure care home residents and their families are treated fairly. We believe it is also helpful the advice covers the breadth of issues that can arise in this area, such as the unfair practice of charging fees to make up any shortfalls in FNC contributions or

in local authority funding which is stopped after the death of a resident. It would be welcome if as suggested, the final advice includes examples of terms the CMA considers less likely to be successfully challenged as unfair.

As mentioned above, we share the CMA's view that contracts need to set out clear and full information for prospective residents and their families about the terms that will apply in the event that the resident dies. While setting out a length of time after the death of a resident during which fees can continue to be charged will certainly help, it is important to also recognise that disputes can sometimes arise about the point when the resident's possessions have been cleared, especially in the absence of a proper inventory being done.

Case study

Mrs A's mother was a long-term resident at a care home and paid her own care fees in full. The contract Mrs A's mother signed with the care provider stated that in the event of a privately-funded resident's death, fees would be payable for the following four days. The care provider's discharge from care policy gave the period as three days. Mrs A complained that a care provider charged care fees for her late mother for eight days after she had died. This was on the grounds that there were items left in her room at the care home. However, Mrs A says she and other family members cleared all personal items from the room within three days as required. Mrs A's mother had already paid care fees in advance for the thirteen days following her death. The care provider agreed to refund fees for five days, but Mrs A argued the refund should be for ten days.

Mrs A and the care provider gave conflicting explanations about when her mother's room was cleared. Some items had been left behind but Mrs A says these were accepted as donations. The confusion was also partly as a result of the failure to take an inventory, despite this being specified in the contract. Our investigation found the care provider was at fault in its record-keeping. This casted doubt on when the room was cleared and whether it was justified to continue to charge fees. While both parties maintained their different accounts, the care provider agreed a compromise settlement and refund the fees for seven days which Mrs A accepted. We also recommended that the care provider should review its record-keeping to prevent similar problems in future and ensure all charges are transparent.

We believe there is merit in the advice being clear about the expectation of an inventory being carried out by the care provider, so that there are no possible disputes as to when possessions have been cleared and therefore when the care provider must stop charging fees.

We hope you find this response useful and would be happy to assist the CMA further if helpful in finalising its advice.

**Local Government and Social Care Ombudsman
February 2018**