

CMA Guidance **Deposits**



How This Document is Formatted

The model clauses must be individualised by the provider before they are put into use as follows:

1. Model clause

The text to be inserted into your contract is bordered by a `straight, black line`. The text sitting without of that box is explanatory guidance to determine how to choose once Example clause over another or how to edit text which needs to be amended.

2. Text which needs to be amended

Where the provider needs to insert or amend the text, or choose from two or more options, the appropriate text is enclosed `within square brackets, and highlighted yellow`. The square brackets and highlighting should be removed before the model clause is put into use.

3. Optional and alternative clauses

Where a clause is optional, or where different versions of the same clause need to be selected, the clauses are titled “Example 1”, “Example “2” and so on. These are accompanied by explanatory guidance.

The model clauses are applicable regardless of the example clauses you have selected.

Introduction

Care Homes are familiar with the risk that a prospective resident wants to reserve the room whilst they make the necessary arrangements to move into the home, during which time you are likely to be turning away other residents and incurring the costs of an empty room whilst running the risk that the prospective resident later chooses not to move in. Similarly, after a resident has moved in they can miss payments or cause damage to the room which you may not be able to recover.

One solution is to charge a deposit in advance of the resident moving in. This is not the same as asking for a payment in advance, an 'upfront' fee or 'community fee' because a deposit is intended to be refundable if certain events occur. There are two types of situations in which you need to have explained how you will handle the deposit:

- where the resident does move in after reserving the room (a **reservation deposit**)
- where the resident moves out or passes away without having caused any damage to their room or with any arrears to their fees (a **security deposit**).

The following clauses and explanatory notes are based on the Competition and Market Authority's "Guidance for care homes: consumer law advice for providers". The full guidance is available here <https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers> and the relevant section is "terms requiring deposits" on **page 55** onwards. Care providers should be aware that the CMA position on charging upfront fees or a community fee is that these are not legitimate business practices.

Where you are charging a deposit in either scenario, it is important you are clear as to:

- why you are charging the deposit;
- when the resident is entitled to receive some or all of it back;
- why you might keep some of the funds; and who they can turn to if they disagree with your reasons for keeping the money.

Previously:

sums were charged explaining why or when they would be refunded, and sums charged to residents would be disproportionate to the risk to the provider. You should remove or update terms such as:

- "We shall be entitled to apply the deposit, at our absolute discretion, at any time during or after the resident's stay, towards satisfying any outstanding balance or any outstanding breach of these terms and conditions."
- "We will keep 100% of the deposit if you do not move into the home, for any reason."
- "We require six months fees in advance, payable as a non-refundable deposit."

Now:

you must explain the risks you are trying to protect against by charging a deposit, make sure the deposit no more than needed to protect against that risk, you must identify when and why the deposit will be refunded.

Below are example clauses which are compliant with consumer law and the Competition and Market Authority's Guidance in relation to residential care homes.

Example 1 - No Deposit

We do not require you to pay any deposit in advance of moving into the home.

If you do not charge a deposit it is worth considering how you will use other methods to protect against the risk that a resident fails to pay the fees in full or on time. One alternative is to charge the fees in advance. If you charge fees in advance, you should not charge a security deposit.

Example 2 Reservation Deposit

Our residents normally move in within [4] weeks. You will pay [£1,500][an amount equivalent to [2] weeks Fees] as a refundable deposit to reserve the room ahead of your arrival. During this time, we will not allocate the room to any other existing or prospective residents. This deposit protects us from the risk that we keep the room available exclusively for you and you later decide not to move in. We will [refund this sum to you] [credit this sum against your fees] as soon as possible once you move to the home.

If you choose not to move into the home, we will keep that part of the deposit (calculated on a daily basis [at a reduced rate of [80]%) which equates to the number of days from your reservation of the room to the date you advise us that you no longer wish to move in. We will return any remaining part of the deposit to you as soon as possible.

Example 2 is appropriate where you have a waiting list and are at risk of turning away potential residents who would otherwise be able to move in. You should not allow residents to reserve a room for a long period of time (no more than 2 weeks) as they do not receive the full benefit of the care and accommodation if they are yet to move in.

In all circumstances, you must not be able to achieve 'double-recovery' where two residents are paying for the same room (i.e. where one resident has reserved the room, but another resident is occupying the same room). The amount you charge should be limited to the days when the room was held exclusively for the resident's use.

The amount you charge should be low enough that a resident will still be able to cancel their reservation without feeling that they cannot change their mind because they cannot afford to lose the money. It should also be proportionate to the costs you incur in holding the vacant room for them. The most common method is to charge a reduced fee such as **80%** (on a daily basis) for the length of the reservation, but to include a back-stop of **14-28** days to avoid the amount being disproportionate.

The reservation deposit should be refunded as soon as possible after the resident has moved in or confirmed to you that they no longer wish to move in (normally within 7 days).

Example 3 - Security Deposit

You will pay £[1,500] as a refundable deposit before you arrive at the home. This deposit protects us from the risk that you do not pay our fees in full or on time, or if you or your visitors cause damage our property (beyond reasonable wear and tear).

We will use the deposit to:

- settle any outstanding (and undisputed) sums payable by you; and/or
- pay the reasonable costs of repair to your room or the home (caused by you or your visitors).

When your stay at the home has come to an end, we will calculate the sums due and return the remainder to you as soon as possible. If you choose not to move into the home, we will refund this deposit in full as soon as possible after we have been notified of your decision.

Example 3 is appropriate where you to protect your cashflow against residents failing to pay their fees on time or in full, or where significant damage is caused to the room and you struggle to recover fees after the resident has moved out or passed away. Any fees which are paid in advance, should be treated in the same manner as a security deposit.

The amount you charge as a deposit should help you to bridge the gap between receiving the most recent payment, noticing that the next payment has not been made and the end of your notice to terminate the placement if payment is not received. For example, if your fees are due in advance on the 1st of every month and you are required to give 1 month notice to terminate:

- 1st January most recent payment made; and
- 1st February payment is missed; then
- 1st March is the earliest termination date.

You have already received payment in advance

for services provided between 1st January

and 1st February. The security deposit should cover the cost of providing services between 1st February and 1st March.

If you charge fees in arrears, you will have already incurred 1 month's fees (between 1st January and 1st February) before being alerted to a missed payment (on 1st February) and it is likely that a 2 month security deposit is required to bridge the gap between the most recent payment and the termination date (between 1st January and 1st March).

The reservation deposit should be refunded as soon as possible after the resident has passed away or confirmed to you that they no longer wish to move in (normally, within 28 days).

Where you Charge a Reservation and Security Deposit

If you charge a deposit to protect you against both risks:

- that the resident does not move in; and
- that they cause damage to the room or your home, or fail to pay the fees (once they have moved in); then

you should include both Examples 2 and 3 in your contract. This is to ensure that the resident can understand exactly how to comply with your terms and (as a result), when they can expect to receive a refund of their deposit.

Where you are charging fees in advance, as well as a combined deposit you should take care that the sums are not so significant that they remove the resident's ability to change their mind and either cancel their room reservation. Similarly, you will need to benchmark such fees against your competitors to remain attractive to prospective residents.

Model Clause - Applicable to all Types of Deposit

All deposit sums are identified separately within our accounts and we do not use the deposits to pay our business costs day-to-day. All deposits are held by us on trust for the residents who provided them until we are entitled to retain any amounts in accordance with our terms.

We will clearly explain in our invoices the amount of deposit we hold on your behalf and provide a breakdown of any sums retained by us. We will not keep your deposit for reasons other than those set out in our agreement and we will never keep your deposit in response to a complaint.

If you have any questions about why we have kept part of your deposit, please contact [TITLE] who can provide you with further information. If we are unable to satisfy your query, you can always refer to our complaints policy and the Local Government and Social Care Ombudsman at <https://www.lgo.org.uk/>.

If you are regularly receiving complaints about how you handle deposits, this would suggest that you need to provide more detailed information to potential residents about what the payments are for and when they will be refunded.

It is important to clearly identify deposit sums in your accounts so that they are not spent as part of your day-to-day business. Where possible, you should put them in a designated account so that they are protected from the risk of your insolvency and easily transferred to any purchaser if you sell the home. You should also take care to identify and refund deposit sums as soon as possible in the event a resident passes away at the home: no more than 28 days after the resident has left or died, other than in exceptional circumstances, such as where there is a need to obtain probate or identify the executor of an estate. Please refer to the accompanying note CMA Guidance – Fees after death for more information on how to handle payments and possessions when a resident passes away.

Where possible, you should have separate processes and different staff handling deposits and complaints so that it does not appear you are withholding the resident's deposit in response to concerns they have raised about their care or accommodation.

Your complaints policy should clearly explain how you will resolve disputes regarding deposits and you should sign-post residents to independent advocates such as the Citizens Advice Bureau or other forms of alternative dispute resolution as well as the Local Government & Social Care Ombudsman.