

CPA Guidance
Fees After Death



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

Even for those individuals who live a long and healthy life, it is inevitable that residents will pass away during their stay at a home. It can be difficult to balance the sensitivity needed at their passing with the need for efficiency in the home. This area was the key focus of the Competition and Market Authority's ("CMA") market review where it found that practices varied significantly between care homes and it was not always clear why residents were being charged for services they were unable to receive because they had passed away.

The following clauses and explanatory notes are based on the CMA's "Final advice on the charging of fees after a resident's death". The full guidance is available here https://assets.publishing.service.gov.uk/media/5b0fe9f7ed915d2cddac8268/death_fees_advice.pdf

It is unreasonable and therefore unenforceable to charge an individual if they did not receive any benefit from a service. This is particularly true where such circumstances are outside of their control and if the service comes to an end on the date of death, it is easy to see why the fees should also stop. Nevertheless, the CMA has recognised there may be valid reasons for charging fees after death where the care home incurs legitimate costs, and these include:

- charging for the time required to prepare the room for the next resident (clearing and redecoration);
- charging the time it takes to re-let the room to another resident (an empty room will not contribute to your overall running costs);
- avoiding the risk that grieving relatives are put under pressure to clear the room within a short timescale so that a new resident can move in.

Previously:

Care homes' contracts would enable the home to charge for indefinite periods after death or fixed periods often up to 28 days after death. You should remove or update terms such as:

- "we will charge 100% of the fees until the room is cleared (calculated on a daily rate)";
- "if the Local Authority stops paying the fees, you will be responsible for 100% of the fees and must pay for any shortfall in funding until the room is cleared"; or
- "we may (in our absolute discretion) dispose of or sell any personal possessions which remain at the home".

Now:

You can charge a flat rate for 3 days or a flexible amount for a period of up to 10 days, until the room is cleared.

Below are example clauses which are designed to help you demonstrate compliance with consumer law and the Competition and Market Authority's Guidance in relation to residential care homes.

When considering which option to implement, you will want to review the average turn-around time for re-letting a room in the home and how comfortable your staff are with making decisions on a case by case basis.

Example 1 - Not Charging Fees After Death

In the event of your death this agreement will end, and payment of fees will cease on the date of death.

You may decide that you do not need or wish to charge any fees from the date of death. This **Example 1** is particularly appropriate where you have long waiting lists and can prepare and re-let a room in a short period of time so that the costs associated with an empty room are minimised.

Example 2 - Flat Rate Of 3 Days

In the event of your death this agreement will end, and we will charge the fees (calculated on a daily basis) for 3 days after your death. The amount due will be reduced if another resident moves into the room before the end of the 3-day period.

Example 2 enables you to apply consistency with all your residents and gives you certainty about the fee income. For example, if a room is cleared on the 2nd day after death and no other resident moves in until the 5th day after death, you will receive the 3-days payment. To make sure that you receive the full benefit of this term, it is important to ensure the room is cleared by the end of the 3rd day, either by liaising with relatives or by removing and storing any remaining possessions yourself.

Example 3 - Flexible Rate To Clear The Room Within 10 Days

In the event of your death this agreement will end, and we will charge the fees (calculated on a daily basis) until your room is cleared, for up to a maximum of 10 days. We will not charge you for any days where another resident has moved into the room.

If your friends or relatives need longer than 10 days to make arrangements, they can discuss this with the manager and agree an extension (in writing).

Example 3 gives you and the resident's relatives some flexibility so that they can make the necessary arrangements to arrive at the home and co-ordinate the removal of personal possessions from the room. This ensures that the fees are directly linked to the costs incurred by you (it is calculated by reference to those days when the room cannot be reoccupied) and enables you to extend the period if required. If you do extend the 10-day period, this should be agreed in writing and reviewed regularly so that it does not run indefinitely.

Example 4 - Flexible Rate To Clear The Room With 3 Day Minimum Charge

In the event of your death this agreement will end, and we will charge the fees (calculated on a daily basis) for a minimum of 3 days and until your room is cleared (up to a maximum 10 days). We will not charge you for any days where another resident has moved into the room.

If your friends or relatives need longer than 10 days to make arrangements, they can discuss this with the Manager and agree an extension (in writing).

Example 4 gives the benefit of a minimum 3 days paid (unless the room is re-let earlier) with the combined flexibility of potentially charging up to 10 days if it takes longer to clear the room.

Model Clause - Applicable To All Circumstances, Setting Out How Property Is Handled

In all circumstances, you will need to clarify how you will clear the room and deal with the resident's personal possessions if you cannot contact their friends, family or executors. Similarly, if they are unable to clear the room within your 3 days or 10-day period, you will need to make arrangements so that the room can be cleared and re-let without delay. You can choose to make no charge for storage but, if you do charge, the amount you charge for storing the items must reflect the actual costs of storage you incur, not an arbitrary amount.

If your family and friends are not able to collect your personal belongings within [3][10] days, we can store small items for a period of up to 28 days [at no additional cost], so that they can be collected at a more convenient time. [We will not charge for storing the goods.][We will charge an amount which reflects the actual costs of storage we incur (and this is calculated on the basis of a rate of £ for [each day]) where we store your items waiting for collection.] We will confirm to your representatives (in writing) the date for collection within 28 days.

If we are unable to contact the people responsible for handling your estate or if they are unwilling to collect your belongings within the 28 days (from our written notice), we will send a written reminder before we [sell or] donate the items giving your estate reasonable notice of our intention. Any costs associated with the disposal will be charged to your estate. [We will pass any proceeds of sale on to your estate after we have settled any outstanding sums owed to us].

Model Clause - Applicable To All Fees Paid In Advance

Many residents will pay fees in advance which means that you will be holding more money than is required to cover the 3 or 10 days fees following death. These payments should be repaid swiftly once the appropriate deductions have been made and any deductions should be detailed on your final invoice. You should refer to the accompanying note, CMA Guidance – Deposits for more information about how deposits can be charged, why they can be retained and when they should be returned.

If you have paid:

- fees in advance;
- **deposit**;
- any overpayments;

and/or if we have been holding money on your behalf for any other reason; then we will settle any outstanding sums owed to us and refund the balance to your estate within 28 days of your death.