

**UK care home providers for the elderly – draft consumer law advice on  
the charging of fees after death  
CMA consultation  
Scottish Care response – February 2018**

**About Scottish Care**

Scottish Care is the representative body for independent social care services in Scotland. This encompasses private and voluntary sector providers of care home, care at home and housing support services across the country. Scottish Care counts over 400 organisations as members, which totals over 830 individual services. Scottish Care is committed to supporting a quality orientated, independent sector that offers real choice and value for money. Our aim is to create an environment in which care providers can continue to deliver and develop the high quality care that communities require and deserve.

In relation to older people's care, this sector provides 89% of the care home places in Scotland. There are more older people in care homes any night of the week than in hospitals - as at 31st March 2016 there were 873 care homes for older people providing support to 33,301 residents any night of the year, with 89% of these residents located within the independent sector.

The independent sector, which Scottish Care represents, employs over 100,000 professional paid staff which constitutes the largest health and care workforce in Scotland next to the NHS and around half of the total social services workforce.

**Questions for consideration**

**4.1 Does this draft advice cover all the relevant practices related to the charging of fees and handling of possessions after a resident has died? If not, what else should this advice include?**

We believe that the draft advice covers the key areas of concern.

**4.2 At paragraphs 2.5 to 2.14, in the context of determining the length of the period (if any) that fees can fairly be sought after the resident's death, we describe the legitimate interests of the resident/their representatives (e.g. a reasonable time for the resident's family to clear the resident's room) as well as those of the care home (e.g. including terms in the residential care agreement which ensure swift recovery of the room). In this context:**

**(a) Do you agree that the draft advice has taken into account considerations which are relevant? If you think that some or all of the considerations taken into account are not relevant, please explain your reasoning, with any supporting evidence.**

We believe that the draft advice accurately describes the important balance which needs to be gained between transparent and declared contractual agreements which would enable both the families of a deceased resident to have access to a room and remove property on the one hand and for the care home provider to undertake the necessary arrangements required in making the room available to another. We would agree that the draft advice accurately describes the rights of all parties involved in this situation and clearly stipulates the importance of transparency in contractual terms and conditions. In this regard we agree with clause 2.10.

The time period stipulated within the National Care Home Contract (NCHC) in Scotland is three days and in general terms this has found to be workable and acceptable. However, difficulties may arise where a family, for whatever reasons, is

unable to or decides not to remove possessions within this period. We therefore think it important that contracts are enabled to have the flexibility outlined in clause 2.13.

**(b) Are there other considerations, which you consider are relevant, which we have not taken into account (either explicitly – see for instance paragraph 2.7- or by omission)? If you consider there are further relevant considerations, please provide details, with any supporting evidence.**

We would make a general comment that the experience of other residents within the care home following the death of a resident is often not considered within discussions on these issues. A care home is an individual's home first and foremost but it is also a place and space which is shared with others. The death of an individual, who may have been a long-term resident and friend to others, impacts upon the wellbeing of other residents. It is therefore important that this is recognised and understood. We are not, however, stating that families should be expected to pay for longer periods of time to enable this to be recognised.

It is also important that 'three days' is defined and understood clearly by all parties. Our experience in Scotland is that this should be three full days following the day of a resident's death. Clarity on this helps to remove unnecessary confusion at what can already be a distressing time for all involved.

**4.3 In relation to the proposed three days' period for which payment of fees may be fairly permitted following the resident's death and therefore, during which, the resident's family will have continuing access to the resident's room, (see paragraph 2.9 onwards):**

**(a) Do you agree that three days is likely to usually be a reasonable period for the resident's family to have access to the resident's room following their death, given for example their difficult circumstances and the need to remove possessions from the resident's room?**

We agree.

**(b) If you consider the three days' period is too short or too long for the resident's representatives to pay fees and/or have access to the resident's room following the resident's death, please explain why and put forward your suggestion for what period would be more appropriate for the sector along with the supporting evidence for your suggestion;**

See above.

**(c) Please also set out at what rate you consider it would be reasonable for the resident's estate to continue paying for this period of ongoing access to the room, with supporting reasons and information.**

We recognise that the delivery of direct care is not being undertaken during the period after death. Providers under the NCHC in Scotland are paid the same rate for the three days after death.

**4.4 Of the three example terms, as set out in the table in paragraph 2.32:**

**(a) Are there any which you consider would not be workable based on your experience? Please give your reasons and any supporting information.**



Example (a).

**(b) Please provide us with any concerns or comments that you have on these illustrative terms.**

As the narrative of the report itself states, providers are required to enable families to have sensitive access to a room to remove possessions and to prepare the room for the next resident. We think it entirely reasonable that there be a stipulated period of three days, as under the NCHC. We therefore would not find Example (a) to be acceptable. We would consider that Example (c) is most acceptable stating as it does the possibility of flexibility beyond the three days.

**4.5 As referred to at paragraph 2.14, a further approach which may also be acceptable could be for fees to be payable for the shorter of the following two periods: a) until possessions have been taken out of the room by the resident's representatives or b) a period (a "stop date") which could be 7 or 10 days after death.**

**(a) Would this type of obligation be workable in practice based on your experience? Please give your reasons and any supporting information.**

We believe this puts undue burden on both the provider and family of the deceased. A degree of definition in the contract is important especially at a stressful time with so many other competing priorities and demands upon a family. The three-day period is a sensitive time-frame. It is equally important that the provider is able to plan for new residency on a reasonably predictable basis. We do, however, acknowledge that some providers believe that a 7-10 day stop period is helpful.

**(b) What would be a reasonable "stop date" period in these circumstances? Please give your reasons and any supporting information.**

As stated above, were a stop period to be developed up to 10 days would appear to be reasonable. However, we would prefer there to be flexibility and models noted above enable that for the benefit of both parties.

**4.6 Are there any circumstances in which it would be impossible or disproportionate for the home to store or attempt to sell items that have not been cleared?**

We would want there to be a degree of flexibility recognising that there are many homes which do not have the physical capacity to store items. Many residents bring furniture with them and these can be bulky and outside items. We do not believe that a £20 per day storage cost reflects many of the costs of storage across the country.

**4.7 Do you have any other comments about this draft advice or the supporting Appendix B attached to this consultation document?**

No.

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