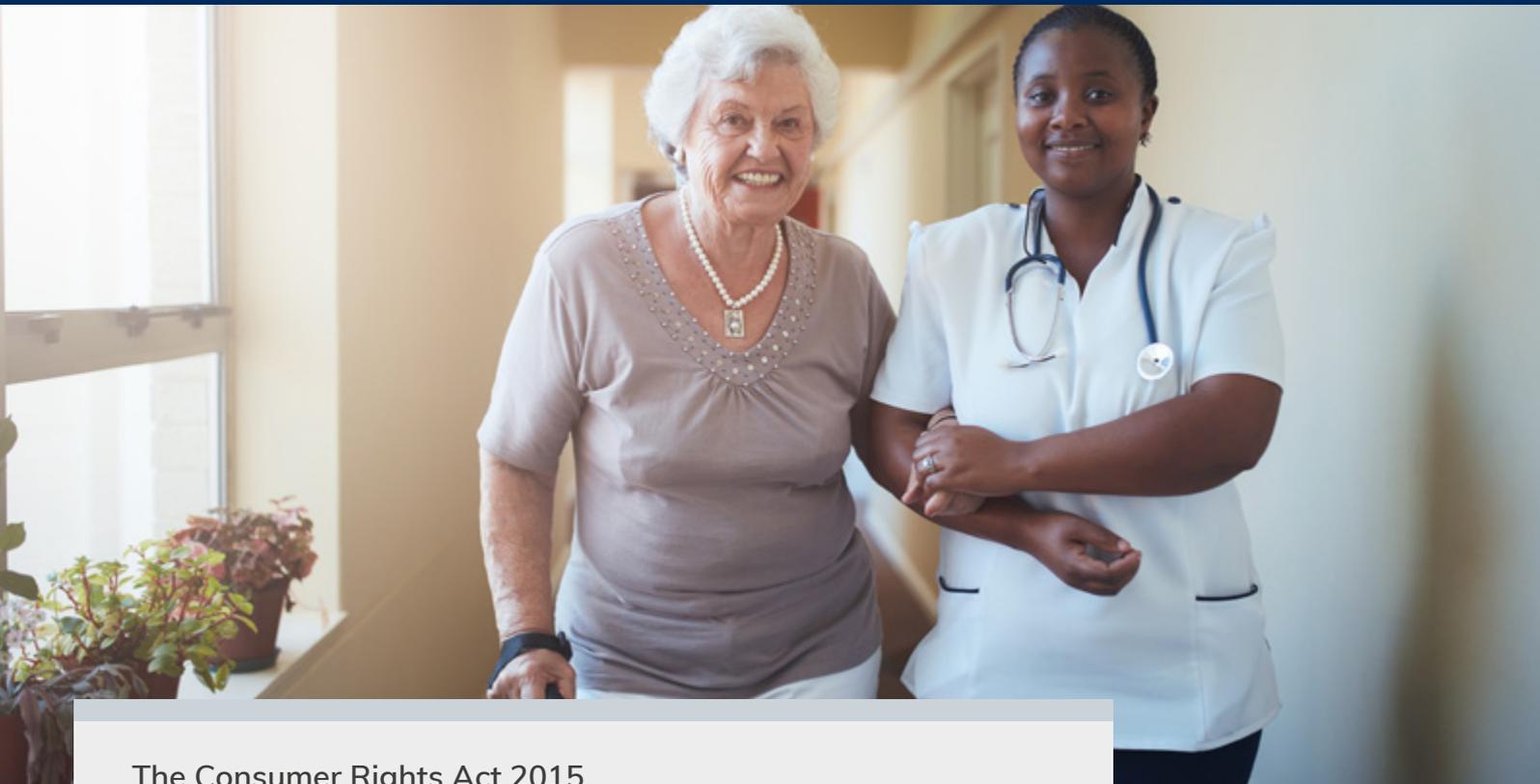


# Care Provider Alliance

Resources to help care providers comply with consumer law and Competition and Markets Authority guidance.





## The Consumer Rights Act 2015

The Consumer Rights Act 2015 became law on 1 October 2015, replacing three major pieces of consumer legislation - the Sale of Goods Act, Unfair Terms in Consumer Contracts Regulations, and the Supply of Goods and Services Act. It was introduced to simplify, strengthen and modernise the law, giving the public clearer rights when purchasing goods and services.

The Consumer Rights Act 2015 affects the Care Home sector in the same way that it affects the purchase of any other good or service.

The Competition and Markets Authority (CMA) investigations have taken place over several years, starting in December 2016, and there are different publications which have commented and recommended different issues during that period.

The CMA published the results of some consumer research about how people navigate the care system on 24.8.2017; this report is available at <https://assets.publishing.service.gov.uk/media/599d9563e5274a28b5790976/ipsos-mori-care-homes-consumer-research.pdf>

The financial analysis working paper (published on 11 September 2017) is available at [https://assets.publishing.service.gov.uk/media/59b2bb0ae5274a5cfcda2d18/financial\\_analysis\\_working\\_paper.pdf](https://assets.publishing.service.gov.uk/media/59b2bb0ae5274a5cfcda2d18/financial_analysis_working_paper.pdf)

The final report was published on 30 November 2017 and is available at <https://www.gov.uk/government/publications/care-homes-market-study-summary-of-final-report>

The CMA investigation and subsequent guidance highlights how care providers can effectively comply with this law. This CMA report, published in November 2018 is available for download here: <https://www.gov.uk/cma-cases/care-homes-market-study>



## Competition and Markets Authority Compliance for Care Homes

### How to use this document

This document has been designed to be used by care home owners and managers. It should be used to ensure that you comply with consumer law.

To achieve compliance it is necessary to review

- the resident contract
- the promotional and marketing information which you provide to residents and potential residents
- when you provide such information.

Historically a Care Home may have

- a brochure
- a website
- a form of contract
- a residents' handbook
- a service user guide
- a statement of terms and conditions
- a statement of purpose
- a range of other documents which you use to inform residents and potential residents about your service.

You will need to review all of these documents to ensure that they comply with consumer law and ensure that all your staff who receive enquiries from the general public know what they need to address whilst handling these enquiries.

Historically you will have spoken to potential residents or their relatives and talked them through any questions they had about your service and the home. You still need to do this. However, in general most homes have not been specific about many aspects of the service provided, or have only supplied the detailed information contained in a residents' handbook after admission.

Now, to evidence that you comply with consumer law you must ensure that you make available this information at specific points in time.

The CMA guidance defines two specific points of time to provide information:

- "key information" - must be provided on first contact
- "important additional information" - must be provided in good time before you make an offer of a place.

The aim of the CMA guidance is for greater transparency for those we support.

This guidance from the CPA uses these terms and addresses the issues raised in the CMA report under these headings and in the order they are considered within the CMA final report.

The aim/objective is for you to be able to work through each of the required changes and determine where and how you will provide key information and important additional information. This guidance will cover information on your website, within your marketing materials, and what you discuss during telephone enquiries.

# Overall Policies in Developing this Material

In developing this material we have taken the view that providers should not duplicate other information sources which are already available, and that providers will want to minimise the risk of them not complying with consumer law by adopting the terms and conditions recommended by the CMA as closely as possible.

**1.** We encourage all providers to guide potential residents and their relatives to use national websites to gain an understanding of the state benefits available, e.g. Age UK (<https://www.ageuk.org.uk/information-advice/care/paying-for-care/paying-for-a-care-home/>). We recommend that individual care providers do not attempt to duplicate this information.

**2.** Providers should simply say that state benefits may be available. Otherwise this guidance will, over time, become out of date.

**3.** We will ensure that material is written to address the person seeking care, but in the full knowledge that it is usually another relative/appointed person who may act on the person's behalf.

**4.** The points of information will have been the subject of questions from residents and relatives over the years which you will have answered verbally many times. What you are required to do now is to write down those answers and make sure that they are available at first point of contact, for key information and before you ask to undertake an assessment for the important additional information. Remember that this may be outside of office hours.

You must ensure that the information is correct for most cases and that you have identified any occasions when there may be exceptions.

**5.** You should be aware that the interpretation of this consumer legislation is subject to case law; remember Cheshire West! In any case we will continue to review/update the guidance in the future to ensure it reflects the current interpretation of the legislation.

In the event that you wish to deviate from the guidance then you will need to assure yourselves that you are compliant with the legislation. You can do this in a number of ways including requesting an opinion from your local Trading Standards, commissioning Hampshire Trading Standards (who are familiar with the guidance) or requesting an opinion from a solicitor or barrister. Any of these will be at your cost.

In the event that you consider your deviation from the guidance to be compliant and in common use then we will be pleased to consider incorporating such an amended wording within any updated guidance, at no cost to you. Please submit such amended wording to our central email address, [info@carehomescma.org.uk](mailto:info@carehomescma.org.uk).

**6.** CPA have not reproduced all the guidance provided by the CMA in this document. However in order to minimise the risk of not being compliant we have used identical wording to the CMA suggested text and resisted any minor wording changes. We remind providers that references to the CMA report are references to their final report dated November 2018.

All the required points of information are now considered with suggestions of where or how you can answer them.

<sup>1</sup> State benefits will be used as a catchall term for benefits available to individuals over 65 in care homes in England. This includes NHS Funded Nursing Care, NHS Continuing Healthcare, Attendance Allowance and any new state funding which is made available.

# Providing Key Information on First Contact

There is specific information you must provide when a resident or their relative first contacts you.

This is detailed guidance on Page 28 onwards of the CMA report dated November 2018: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/759257/Care\\_homes\\_full\\_guidance\\_for\\_providers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759257/Care_homes_full_guidance_for_providers.pdf)



## When

Key information to provide when people first contact you



## What

### Funding arrangements

- Whether you accept self-funded and State-funded residents

### Key features of your service

- The care needs you cater for
- Overview of the rooms, facilities and services residents can expect
- Size of the home (eg number of beds)
- Brief description of staffing arrangements

### Latest inspection rating/grades

Surprising or important terms and conditions.

For example

- Any minimum period that a resident must self-fund for
- How self-funded residents' fees may change during their stay
- Any requirement for a guarantor

### Fees and charges

- Indication of the total weekly fee rates you charge self funded residents (full range) for each type of care service
- What services are included in the weekly fees
- Additional services which may need to be paid for separately, including any significant, additional charges that some residents might need to pay, such as for being taken to medical appointments
- Details of any upfront payments required, such as a deposit, including the amount, what it covers and how it is refunded, and any weekly fees payable in advance of moving in



## How

### Key information should be:

- Prominently highlighted on your website (no more than one click away)
- Drawn to people's attention and explained on first contact by phone or online – offer to send further written material as appropriate (eg 'key facts' sheet), or a website address if they prefer, with staff who are able to answer people's questions
- Explained upfront when people visit your home for the first time, with information to take away (eg 'key facts' sheet)
- Provided in different formats and, where necessary, different languages

# Providing Key Information on First Contact

This key information consists of 5 parts:

## Funding arrangements

You must tell people if you accept self-funded and state-funded residents.

As part of this you must consider whether you wish to make an unconditional statement, either Yes or No, or whether you wish to make a conditional statement.

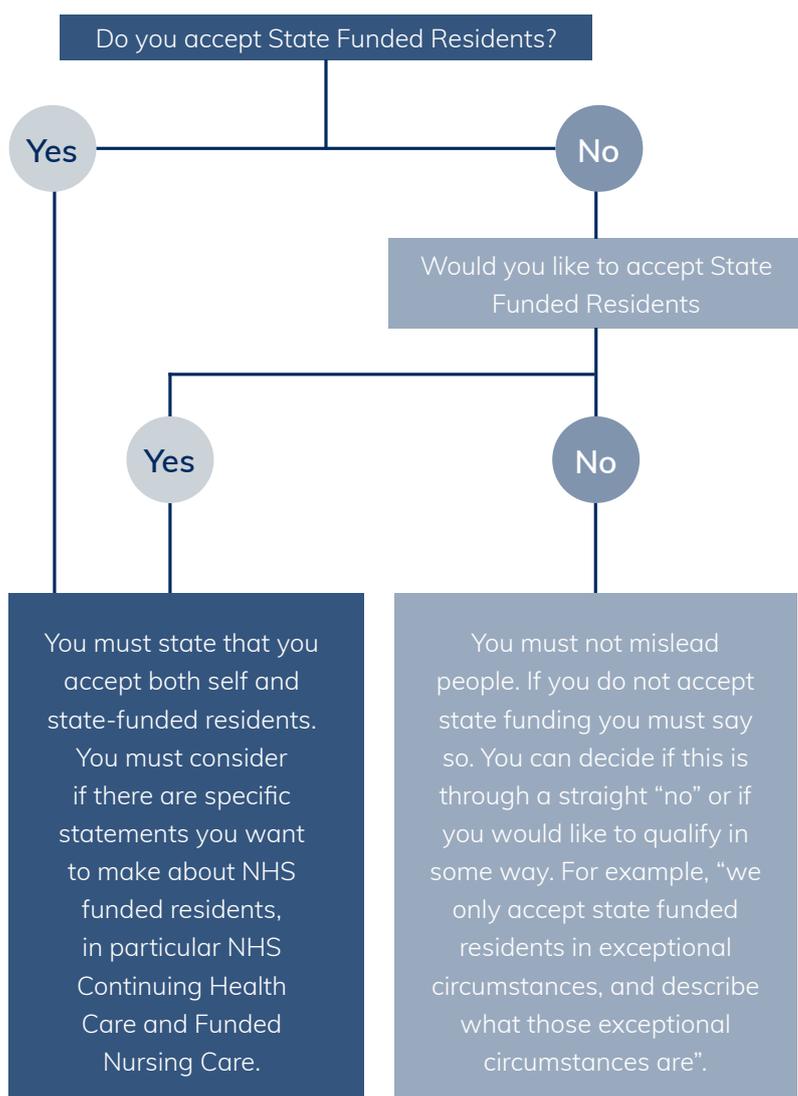
Conditional statements may be of the form:

You limit the number of state funded residents to a specific number,

You limit the number of state funded residents to specific accommodation within the service,

You limit the number of state funded residents by some other measurable and transparent method,

You accept residents from all funding sources, provided that the total fee payable meets the fee for the assessed need of the resident.



Note: Later In this section you are only required to state what your prices are for self-funded residents, and do not need to state what state-funded prices are available in your area.

# Providing Key Information on First Contact

## Key features of your service

You need to tell people the details of your service. This must include:

### THE CARE NEEDS YOU CATER FOR

At a minimum this will include the categories of care you are registered for with CQC. This should be complemented with statements about whether your service can cater for those people needing nursing care, at end of life, or people who are living with dementia.

Additional statements may be made about whether you provide respite, short stay, or rehabilitation services.

**A**

### THE SIZE OF THE HOME

I.e. how many beds you have. This should be taken from your registration certificate. You can complement this information with a statement about the use or description of how those rooms are organised.

**D**

### DETAILS OF THE ACCOMMODATION YOU PROVIDE

For example, are rooms en suite, single, shared, furnished or unfurnished? Do rooms contain a television, telephone and internet connections?

**B**

### THE FACILITIES AND SERVICES RESIDENTS CAN EXPECT

This must include:

- i. Details of activities and entertainment

This might also include:

- ii. how you allow special diets or a choice of diets
- iii. whether relatives have facilities to make drinks when they visit,
- iii. any special facilities available in your overall accommodation eg the number of lounge or sitting areas, quiet rooms, cinemas or assessment rooms.
- iv. facilities for relatives who wish to stay overnight when a resident is towards the end of life.

**C**

### BRIEF DESCRIPTION OF STAFFING ARRANGEMENTS

This includes how you assess needs and assure appropriate care. It is likely that this information is similar to the information you provide to CQC as part of your Provider Information Return (PIR). You could include:

- i. Number of staff and their qualifications (e.g. qualified nurses and care assistants)
- ii. The planned number of staff on duty – note any differences between day, night and weekends.
- iii. Where you have more than one floor or unit, how staff are deployed across the home
- iv. The use of any technology which supplements staffing when ensuring residents' needs are met e.g. automatic monitoring

**E**

You should make it clear that the level of care each resident receives will depend on an assessment of their individual care needs.

# Providing Key Information on First Contact

Example of staffing statement where no formal assessment system is used.

“The staffing levels that we deploy within our home are linked to the combined total of the needs of all those choosing to live within Care Home XXX.

The volume of staffing within the building at any given time will fluctuate both in line with the needs of the individuals who we are supporting and the time of day/night that is being considered.

We draw upon the skills and experience of a number of differing teams including, our qualified nurses/senior carers, care and engagement team, housekeeping team, maintenance and administration, all of whom are supported by our in house management team who in turn are supported by our central group functions.

Our teams are further supported by our 24 hour call bell system and associated assisted technology that is in place throughout the home.”

## LATEST INSPECTION RATING

**F**

You must include the rating and information on where to find the inspection report. If you are providing this information from your website then you can use the CQC widget to provide this. Details are at <https://www.cqc.org.uk/about-us/our-policies/cqc-widget-%E2%80%93-help-frequently-asked-questions>

## Example of how to provide information about staffing arrangements

Our residential floors have capacity for a maximum of 15 residents each, and usually our staffing levels consist of three experienced carers, who all have achieved an NVQ in health and social care, on each floor during the day and two experienced carers at night time.

Our dementia nursing floor caters to a total of 10 residents and is staffed solely by three registered nurses during the day and two registered nurses at night time.

All floors are managed by a registered nurse, who assesses when extra carers may be needed if your care needs change.

In addition, we have a 24-hour nurse call system installed in all our residents' rooms. We also make use of automated monitoring technology to check residents' breathing and movements while asleep, which alerts nursing staff at a central monitoring location to any possible issues or concerns which could require staff to intervene.

We have a dedicated activities co-ordinator who organises internal and external activities for all residents to enjoy.

Please note that the actual level of care that each resident will receive in our home will depend on their individual care needs.

## SURPRISING OR IMPORTANT TERMS AND CONDITIONS

**G**

“Surprising” is a broad term which covers anything which the potential resident or relative may be unaware of or know to look for when they are looking at prospective care homes.

This might include:

- i. Do you require prospective self-funders to undergo a financial assessment or otherwise demonstrate that they are able to pay fees for a minimum period?
  - a. Yes
  - b. No
- ii. If a prospective resident cannot satisfy your minimum funding criteria do you
  - a. Always refuse admission?
  - b. Require a guarantor?
  - c. Make a decision at the discretion of the care home manager?
- iii. If the prospective resident becomes eligible for state funding during your minimum period what are the implications?
  - a. Do you ask them to move to a less expensive room?
  - b. Terminate their contract if the Local Authority fee rate is not sufficient or a top-up payment cannot be arranged?
  - c. Other?

# Providing Key Information on First Contact

## PRICE CHANGES

iv. You need to clearly explain how a self-funded resident's fees may change once they have moved into your service and how you calculate this change. Fee reviews should take place at most once per year.

In general, in order to be fair, fee increases need to be tied to a specific and measurable figure which allows residents the opportunity to anticipate increases.

We therefore recommend that care providers adopt the system where you state the proportion of your costs which are wages costs and adjust these costs in line with the rate of inflation of wages costs in the sector and inflate the remainder of your costs by the Consumer Prices Index including housing costs (CPIH). This is the method used in the model contract at section 1.5 which accompanies this guidance.

However there are alternative methods which could be adopted, some of which are described on page 8.

Likely Fair Terms	Likely Unfair Terms
Fee increases will be X% above the Consumer Prices Index including housing costs (CPIH) over the previous year, where X is a defined number.	Fees will increase because of 'increased costs', 'local market conditions' or 'the wider national economic picture'
Fee increases will be X% above the average of the percentage increase in the CPIH over the previous year, where X is a defined number.	Fee increases will be 'cost reflective' or 'reasonable' or limited to 'unexpected changes'
Fee increases will be the same as the percentage increase in the National Living Wage (NLW) rate compared to the previous year.	Terms which impose a 'cap' or 'floor' on fee increases. This is because any cap or floor is likely to be arbitrary and therefore not reflective of your genuine costs increases.
A weighted average - presented and explained in a way that prospective residents and their representatives are likely to understand. For example, where 65% of the cost of a resident's care is attributable to staff costs and 35% is attributable to non-staff costs, 65% of the resident's overall fees could be increased by reference to NLW, or staffing costs and the remaining 35% by reference to CPIH.	

Whichever terms you use, you should have a worked example for prospective residents, i.e. they must be able to see transparently what your fees are likely to be over the coming three years.

## EXCEPTION PRICE INCREASES:

If there are major changes to legislation or regulation which increases your costs in providing care, you can increase your fees in line with this during your annual fee review.

If the price index you are using to calculate fee increases has already accounted for these increases, you must not add further increases at this time.

Remember that when you increase costs you must send your residents and their representatives written notice of the increase, and give them the agreed notice period before implementing the change, usually 28 days.

## INCREASES DUE TO RECEIVING ENHANCED SERVICES:

If a resident requests and receives an enhanced service or a better room you can increase their fees accordingly as long as:

- what makes it an enhanced service is clearly defined
- it is demonstrably different from the service already covered within the standard weekly residential fees
- the resident retains the choice as to whether they want to pay – for example, if someone no longer wishes (or cannot afford) to pay for a better room they should be able to move back to a standard room, when one becomes available

# Providing Key Information on First Contact

## Changes due to increased or decreased care needs:

If a resident's care needs increase and so you are subject to higher costs then you can increase their fees accordingly. There must be a significant and demonstrable change in care needs to increase prices for this reason.

If a resident's care needs reduce you should decrease their fees accordingly.

If you increase fees due to changes in care needs you must engage in meaningful and transparent consultation with residents and their representatives. You must give them advance written notice (e.g. 28 days, since any lesser period than 28 days is likely to be considered unfair)

In case of disputes: Engage with relevant independent professionals to support your decision. Fee changes should not take effect until the consultation and notice period are over. If there is a dispute, you should pause the notice period until a relevant independent professional has given their opinion on care and fees.

In case of rapid, unforeseeable decline in health: If a resident requires significant extra care at short notice, you should provide reasonable notice of price increases (e.g. 7 days). As the increase in cost could be substantial, you should offer the resident the opportunity to leave your home without penalty before the price increase occurs.

In cases where not providing additional care immediately would be harmful: You should give immediate notice of the fee increase to the resident and their representatives. Liaise with relevant independent professionals to support it. The resident should have the opportunity to leave without penalty when the fee increase takes effect. You should not apply the fee increase until any dispute is resolved, but where your decision is supported by independent assessment and the resident does not decide to leave the home it is possible to backdate increased fees to the date on which you began providing the extra care.

- v. Do you require prospective residents to have a guarantor? You must clearly explain
  - a. the circumstances in which a guarantor will or may be required
  - b. the guarantor's role and responsibilities and when they may be liable
  - c. what fees/charges they may be liable for and the potential extent of their liability

# Providing Key Information on First Contact

## FEES AND CHARGES

You must publish the total weekly fee rates you charge self-funded residents for each type of care your service provides. You should include a list of which services are mandatory to pay for as part of your weekly fees.

Where applicable, you should make clear that the quoted fees are indicative and for guidance only. Fees are subject to an individual care needs assessment and the room type/services chosen.

## CHARGES FOR ADDITIONAL SERVICES

The context here is that you have defined the list of services which are included in the weekly fee in the section above and this list can be included in the resident agreement. Anything which is not listed at section 1.2 will incur additional charges and you must provide costs for these optional services you provide. These must be genuine options. If a resident doesn't have a choice on paying for these services they should be included in the breakdown for your weekly fees.

### Additional services might include:

- Professional hairdressing
- Aromatherapy massage and reflexology
- Personal copies of newspapers or magazines
- Personal purchases such as stationery, confectionery, alcoholic beverages, particular snacks, soaps and toiletries
- Clothing, shoes and slippers
- Dry cleaning
- Installation of private telephone line, internet or cable TV connections

## NHS SERVICES AND ADDITIONAL MEDICAL NEEDS:

You must provide information about services that the resident may be able to receive for free from the NHS (if eligible). You should make clear what services may be charged for, depending on whether the resident is entitled to free NHS provision.

## Illustrative example of how to provide indicative fee information Indicative prices/weekly fees guide for self-funded residents Residential care:

Single room: The weekly fee charged for self-funding residents is currently from £800 ranging to £900 per week.

Single room with en-suite: The weekly fee charged for self-funding residents is currently from £900 ranging to £1,000 per week.

Shared room (per person): The weekly fee charged for self-funding residents is currently from £600 ranging to £700 per week.

Prices quoted are for guidance only. All prices are subject to an individual care needs assessment and the type of room and services chosen.

# Providing Key Information on First Contact

## ACCOMPANYING RESIDENTS TO APPOINTMENTS:

If your staff are available to accompany residents to appointments, you must include the rate which it will cost residents or their representatives to have a member of staff escort them.

## DETAILS OF UPFRONT PAYMENTS:

Details of any upfront payments required. In the event that you charge fees from the day of admission then you can simply state that fact.

## IF YOU ASK FOR FEES PAYABLE IN ADVANCE OF A RESIDENT MOVING IN YOU MUST:

- State the amount required prior to moving in (e.g. 4 weeks residential fees)
- State what these fees cover
- State how fees are refunded should the resident decide to not move in

## IF YOU REQUIRE A DEPOSIT BEFORE A RESIDENT MOVES IN YOU MUST:

- State the deposit amount
- Provide an explanation of the purpose of the deposit and the risk that it is intended to protect against
- Provide details of how you protect their deposit, e.g. is it ring-fenced or protected by insurance?
- Provide details of where the deposit is held and by whom
- Provide details of how the deposit will be refunded if the resident leaves or dies.

## IF YOU REQUIRE A DEPOSIT TO SECURE A RESERVATION YOU MUST:

- State the deposit amount
- Provide an explanation of the purpose of the deposit and the risk that it is intended to protect against
- Confirm whether it gives the potential resident an exclusive option on the room until they move in
- Confirm that the deposit will be credited against a resident's fees if they move in
- Provide details of when the deposit (or any part of it) will or will not be refunded.

## Illustrative example of how to provide information about what services are and are not included in your weekly fees

The following items and services are included in and covered by your weekly fees:

- The costs of your personal care
- Accommodation
- Electricity (eg heat and light)
- Food and drink, including snacks
- Housekeeping and laundry undertaken on the premises (excepting articles requiring dry cleaning)
- Television licence, inclusive for personal use
- Occupational therapy

The following extra items and services are not covered by the weekly fees, but we can arrange for them to be provided to you at a cost. You shall be responsible for payment for extra items and services and we shall advise you of their cost beforehand. Our latest price guide is set out on our website, here [\[weblink to prices\]](#), in your service user guide and available at reception in your care home.

- Professional hairdressing
- Aromatherapy massage and reflexology
- Personal copies of newspapers or magazines
- Personal purchases such as stationery, confectionery, alcoholic beverages, particular snacks, soaps and toiletries
- Clothing, shoes and slippers
- Dry cleaning
- Installation of private telephone line, internet or cable TV connections

In the absence of free provision by the NHS, the following may also be provided, but shall be charged in addition to the weekly fees:

- Chiropody
- Opticians
- Dentistry
- Physiotherapy
- Other privately arranged healthcare

In the event that NHS staff, your representatives or relatives are unable to provide you with an escort to hospital appointments, we will apply a charge of £15 per hour for a member of staff to accompany you.

# Important Additional Information

There is important additional information which you must provide in good time before you make an offer of a place. At the latest, you must provide this information by the time that the resident or their representative agree to have a care needs assessment.

These elements of information are summarised on Page 43 of the CMA Final report dated November 2018 and considered in more detail on pages 44 to 51.



## When

Important additional information to provide in good time before you make an offer of a place (ie at the latest, by the time people agree to have a care needs assessment)



## What

### Includes:

- Details of any trial period (including length)
- Detailed information about what happens if residents' funding arrangements change while in the home
- Complaints handling procedure
- Reasons for ending the contract and any conditions (including notice)
- Trading name and contact details
- Information about how the home is regulated and by which regulator
- Details of who is registered as running the home and whether there is a registered manager in post (and, if not, the alternative arrangements in place)
- Latest food hygiene rating
- Information about contents insurance
- Whether residents can bring pets, choose male/female carers and whether you can meet dietary or religious requirements
- Where to find copy of your standard T&Cs for self-funders
- Information specifically required by sector regulations
- Any other information required under the CCRs



## How

Take active steps to provide the important additional information and do so in sufficient time for people to be able to consider it before they agree to have a care needs assessment. It should be:

- Clearly signposted on your website (easy to find and access)
- Provided to people where they contact you by telephone or online to follow up on their initial interest, by telling them where they can find it on your website or offering to send it to them if they prefer (eg in an information pack), with staff who are able to answer people's questions about it
- Explained, upfront, when people visit your home again following preliminary enquiries, with further written material to take away (eg in an information pack)
- Provided where people contact you for the first time and want to know more about the home at that point

# Important Additional Information

This includes:

## **a. DETAILS OF ANY TRIAL PERIOD**

This should include:

- i.** Length of trial period
- ii.** the circumstances in which the trial period can be ended prematurely by you or the resident
- iii.** notice requirements
- iv.** arrangements for refunding pre-payments and any deposits

Note: that it is unlikely to be fair under consumer law for you to terminate a contract without notice even during the trial period.

The same rules apply where you offer places on a short-term basis.

## **b. DETAILED INFORMATION ABOUT WHAT HAPPENS IF RESIDENTS' FUNDING ARRANGEMENTS CHANGE**

The major issues here are:

- i.** Becoming eligible for attendance allowance
- ii.** Becoming eligible for Funded Nursing Care
- iii.** Becoming eligible for NHS Continuing Care
- iv.** Becoming ineligible for attendance allowance
- v.** Becoming ineligible for Funded Nursing Care
- vi.** Becoming ineligible for NHS Continuing Care
- vii.** A reduction in capital to near the capital limit (In England, below say £30,000)

You should make available information when you would not take any action, ie the first, second, fourth and fifth options above are likely be entirely at the risk of the resident.

You should state what action you would intend to take in the cases of the third, sixth and seventh options. This would normally include an initial discussion about the situation with the resident and their relatives / advocate, determining what the effective fee options are, (ie what fee rates are available within the home at the time), and hence whether either party wishes to give notice to the other whilst continuing discussions about the options available continues.

## **Example of a term that is more likely to be fair**

'The first four weeks following admission to the home are treated as a trial period. During this period, either of us may terminate the agreement by giving the other seven days' notice in writing. We may terminate the agreement during this period if it becomes clear that we cannot provide you with the level of care that your needs require.'

Any fees that you have paid for any period beyond the expiry of the notice period (or the date of your departure, if later) will be refunded to you. Where you leave the home before the end of the notice period and we are able to re-allocate your room to someone else before that period expires, we will refund any payments that you have made for the period following re-allocation'

# Important Additional Information

## Example of a term that is more likely to be fair

'Your fees will be reviewed on an annual basis (on 1 January each year) in line with changes in the Consumer Prices Index including housing costs (CPIH). We will consult with you and your representatives before implementing a change in your fees for this reason and provide you with at least 28 days' notice in writing (including the amount of any increase). The increase will take effect on the date notified unless, before that date, you give us 28 days' notice to end this agreement. For example, where your weekly fee rate is £1,000 and the CPIH 12-month inflation rate for January is 2%, your new fee rate will be £1,020 a week. In order of most recent, our annual fee increases for the last three years have been 2.6%, 1.0% and 0.4%, respectively.

Your fees may increase or decrease at other times where there has been a significant change in your care needs, as assessed by qualified staff. We will consult with you and your representatives and involve you in any decision to provide additional care. Following this consultation, we will give you 28 days' notice in writing before implementing a change in your fees for this reason, unless your care needs have increased significantly and unexpectedly. Where your care needs increase significantly and unexpectedly, meaning that we need to provide you with additional care or facilities at short notice, we will consult with you and provide you with at least 7 days' notice in writing of any increase.

Where we give you notice to increase your fees for this reason you may either:

- Do nothing, in which case the fee increase will take effect on the date notified; or
- Give us notice that you wish to leave. In this case you will have 28 days (or 7 days where we have given you 7 days' notice of a fee increase) from the date you notify us, to move out before the fee increase applies; or
- Ask for an independent review of our assessment of your care needs, revised fee level, or both. In this case, we will suspend our notice period until the independent review is completed. If you are unhappy with the outcome of the review, you can still tell us you wish to leave, as above.

You will be entitled to see the details of the assessments we have relied upon as part of the consultation and decision process.

Your fees may also change if, at your request, you move to a different room for which different fees are payable. Details of our current room rates can be found on our website at [weblink] and are also available at the reception desk in the home'

## c. COMPLAINTS HANDLING PROCEDURE

The consumer rights reinforce the work we have done on complaints procedures over the recent past. Hence the principles of making sure that complaints procedures are easy to find, easy to understand and use, effective and fair, as well as being applied consistently, are not new.

An obligation that again isn't new is ensuring that information is included about how external bodies, (the Ombudsman, or local authority can be involved and the fact the in England, the regulator CQC will not accept complaints, but will accept comments through its website) can be asked to investigate. Further the likely involvement of the local safeguarding team should be acknowledged in the event that the local authority is involved.

## d. REASONS FOR ENDING THE CONTRACT AND ANY CONDITIONS (including notice)

We need to be very clear and transparent about our ability to terminate the contract. Such occasions can be summarised as:

- i. The service is no longer able to provide appropriate care for the individual,
- ii. The service and the resident or their representative cannot agree a price for the appropriate care where circumstances have changed on either side,
- iii. The resident has, and continues to, exhibit behaviour which is outside the rules of the Care Home which protect the legitimate interests of the residents. These should be defined in the resident contract.
- iv. The resident gives notice to leave.

In general the service needs to adopt the principle that it will provide a notice period of 28 days for all price increases. During that notice period the price charged will remain at the previous rate unless accepted by the resident. During that period the resident is entitled to give notice to leave or to ask for an independent review of the price increase when the period of notice is suspended until the review is completed.

# Important Additional Information

Where you are considering item iii) above then the issues could be defined as abusing another resident or staff member, physical assault, threatening assault of abuse of staff, other residents or visitors.

## Example of a term that is more likely to be fair

'You must observe the resident rules and regulations, which shall be made available for you to inspect in the home.

We shall be entitled to make modifications to the resident rules and regulations to reflect new health and safety laws or sector regulations, or to improve the service that we provide to you. In all cases, we will consult with you and your representatives about proposed changes and provide you with six weeks' notice before any modification takes effect. If you object to any modifications you have the right to terminate this agreement without penalty'

## e. TRADING NAME AND CONTACT DETAILS INCLUDING TELEPHONE NUMBER AND EMAIL ADDRESS

The trading name of the company as well as the name of the care home should be clearly explained. If any other name might appear on any documentation then the legal status of that name should be explained. It is recommended that the legal entity that the person is contracting with is made clear, particularly if this is different to the trading name.

The contact details should normally be of the Registered Manager or other person of sufficient seniority to answer any questions.

In the event that named contacts can be provided for specific topics then this should be included in the statement, e.g. detailed financial information, person responsible for the provision of food and drinks.

## Example of how to provide information about contents insurance

Our insurance policy provides cover for the resident's personal belongings up to a maximum value of £1,000 at any time, with the exception of cash. The policy carries a £50 excess payable by the resident for each claim made under the policy. If personal belongings, such as furniture and items eg cash, credit cards, deeds, documents or personal effects of greater value are kept in the home, they should be covered by the resident's own insurance. Further details of our insurance cover are included in the service user's guide.

# Important Additional Information

## f. INFORMATION ABOUT HOW YOUR CARE HOME IS REGULATED

In England all Care Homes are regulated by the Care Quality Commission who can be contacted online at [www.cqc.org.uk](http://www.cqc.org.uk).

The Care Quality Commission register all Care Homes and their details can be found on the CQC website. Inspection reports, both current and some historic, can be found for each Care Home service on this website.

## g. DETAILS OF THE REGISTERED MANAGER CURRENTLY IN POST, AND IF THERE IS NO RM IN POST THEN DETAILS OF THE ALTERNATIVE MANAGEMENT ARRANGEMENTS

Where the Registered Manager has achieved CQC registration then the information is straight forward, providing an email and telephone number of the individual with their name.

In the event that the Registered Manager has been appointed but not yet registered with CQC then a statement to that effect should be provided explaining when the registered manager took up the post and any dates of application to CQC for registration.

In the event that a Registered Manager has not been appointed then the date that the previous registered manager left the position should be specified along with the process being undertaken to appoint a new registered manager, with dates. In this case then the contact details and name of the person taking responsibility for the service in the interim, along with their contact details should be provided.

## h. LATEST FOOD HYGIENE RATING

A copy of the latest foods hygiene rating should be included.

## i. INFORMATION ABOUT CONTENTS INSURANCE

Note this is a new requirement not normally displayed with the overall insurance liability certificate which has always been required to be displayed in the Home.

A useful example is provided at Page 47 of the CMA guidance, which is replicated here

## j. WHETHER RESIDENTS CAN EXERCISE CHOICE

Ask yourself what you would describe to CQC in this area and consider expanding the following

- a. their own pets being accommodated in the home,
- b. whether they can specify the gender of staff providing care,
- c. dietary requirements which can be accommodated and
- d. which religious beliefs can be accommodated?

There are many other areas which you may wish to describe where potential residents can exercise choice such as what flexibility there is over taking meals, the time of rising in a morning or returning to bed at the end of the day.

You need to consider whether any of these choices would constitute grounds for termination by either party, and also what the default position is from the start of these choices, and hence what documentation you need to provide.

In cases where you allow certain choices to be made then it may be appropriate to state the conditions which come with these choices. In the case of accommodating pets within the home it may be that your documentation includes the following condition, "You may, at the absolute discretion of the care home manager, bring a small domestic pet into the care home provided that you agree this with the care home manager in advance. If this is agreed by the manager, you must accept the following conditions: You accept full responsibility for the care, feeding and exercise of the pet. We do not accept any liability for veterinary bills, foodstuffs and/or other costs associated with the pet: and we shall require that the pet is removed if it persistently enters the catering or clinical areas of the care home or if it represents a health hazard or inconvenience to other residents."

A photograph of a spiral-bound notebook with a black metal spiral binding on the left side. The pages are white with horizontal lines. A black pencil lies horizontally across the top right of the notebook. The background is a solid dark blue color.

## Important Additional Information

### k. WHERE TO FIND A COPY OF YOUR STANDARD TERMS AND CONDITIONS FOR SELF-FUNDERS

This will normally be via the Care Home website as well as contained within any information pack that you produce. Note that you are required to ensure this document is accessible and hence you may need to have the document in alternative languages or formats.

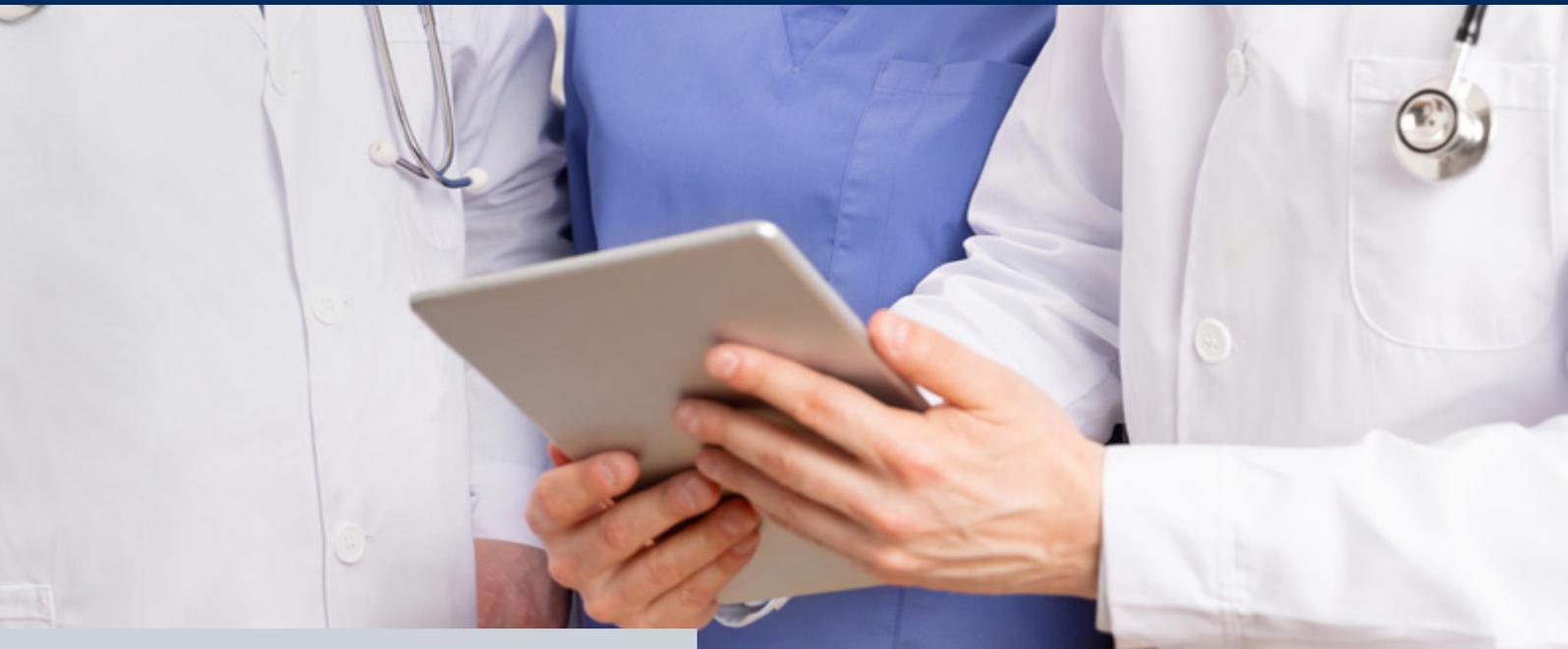
Also note the requirement to keep this document up to date with your current practices.

### l. ANY OTHER INFORMATION REQUIRED BY SECTOR SPECIFIC REGULATIONS

In England the Care Quality Commission inspects to the standards set by the Fundamental Standards. These can be found at <https://www.cqc.org.uk/guidance-providers/adult-social-care>

### m. ANY OTHER INFORMATION REQUIRED UNDER THE CONSUMER CREDIT REGULATIONS

Where the contract for care is signed away from the Care Home there is a right under consumer law to cancel the contract within 14 days of signature. A form for use by a resident who wishes to cancel their contract under this legislation is included within the standard contract designed for use with this guidance.



## Other Issues to Consider from the CMA Guidance

### 1. CHARGING OF FEES AFTER DEATH

This topic was the subject of a supplementary report which was published on 31 May 2018 and included as Appendix C in their final report dated November 2018.

In essence, in order to be compliant with consumer law, fees charged after death should be restricted to the following:

- a. For no more than a reasonable short and fixed period of up to three days following the resident's death, provided that provision is made for fees to stop being charged if a new resident occupies the room within this period)
- b. Until possessions are cleared from the residents' room by their representatives, provided that a reasonable backstop period of no more than ten days is included in the contract term for fees to cease from that point.

In addition good practice would suggest that allowance in the contract is made for possessions to be cleared from the room outside these periods, with the costs of clearance, costs of storage, and timetable for the ultimate disposal of the possessions all defined.

### 2. PERFORM YOUR SERVICE WITH REASONABLE CARE AND SKILLS

You have an obligation under consumer law to ensure that the service you provide to residents is performed with reasonable care and skill.

In parallel, in England, providers operate to the sector regulations set out in the Fundamental Standards which establish a baseline below which care must not fall.

If a provider fails to provide the service with reasonable care and skill then it will be acting in breach of contract and the resident may be entitled to seek compensation from that provider.

## We now consider how this material is to be made available?

Different services may wish to provide the materials in different ways. The essential is that the material must be freely available to all who enquire, at the right time, as described above, and in a format and language which is understood by the individual.

The expectation is that most homes will make the material available on their website, and in this case it must not be hidden but clearly signposted from the home page of the website in a similar manner to the CQC widget which describes the rating of the Care Home.

This same material must also be available in printed form, in different formats such as large print, as well as different languages if needed.

Much of this material must be made available when you first receive an enquiry. This may be outside of normal office hours. For this reason, you must ensure that your staff are aware of this material and that they can provide it at any time.

## Who to make this material available to?

This material must be made available to all people who enquire about possibly using the Care Home services.

In the absence of this information being available on a website for the Care Home concerned then it is vital that staff have access to information within and outside of office hours, recognising that many enquiries take place of an evening and at weekends.

## Where do I source a resident contract /agreement which is compliant with the CMA final report?

The Care Provider Alliance maintains a list of solicitors who can assist you by supplying and tailoring a resident contract / agreement which complies with this CMA guidance. This list can be found on the website <https://www.careprovideralliance.org.uk>.

There will be other solicitors who can provide equivalent advice and may wish to join the list. In the event of such a query then please contact our coordinator for this area of work at the email address [info@carehomescma.org.uk](mailto:info@carehomescma.org.uk).

The CPA has also commissioned clauses to be drafted which cover some of the difficult areas of such a contract / agreement, and these can also be found on the website <https://www.careprovideralliance.org.uk>. These clauses cover annual fee increases, fee increases on the change of circumstances, fees after death and deposits. These clauses are the intellectual property of the Care Providers Alliance and hence can be used without cost by any Care Home.

