

businesscompanion

trading standards law explained

Trading fairly: other fee changes

In this section

[Consultation and notice periods](#)

[Unforeseeable decline in a resident's health](#)

More frequent changes in a resident's fees (that is, those not linked to an index) are less likely to be open to objections from the CMA in the following situations.

- **you provide a resident with an optional enhanced service or better room in response to their request.** If an existing resident and their representatives request and receive an enhanced service or a better room, you can increase their fees to reflect this without the need to link the increase to an index, provided that:
 - what makes it an enhanced service is clearly defined
 - the enhanced service is demonstrably different from the service already covered within the standard weekly residential fees
 - the resident or their representatives retain 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
- **there are changes in a resident's care needs:** this could occur if they require increased levels of care, which means you incur additional costs in meeting their needs. In these situations, you should:
 - only increase the resident's fees where there is a significant and demonstrable change in the resident's care needs to justify a price increase
 - where changes are assessed by reference to care 'bands', these should be limited and clearly defined according to significant steps in increasing care needs
 - give residents a reduction in fees if their care needs reduce

To ensure that you are more likely to comply with the law, you should be able to evidence and justify the decision to increase the resident's fees due to a change in their care needs (for example, through the use of recognised accredited dependency tools), and any increase must also be reasonable and proportionate to the resident's needs. In England, for example, the Care Quality Commission's guidance on the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, says that decisions relating to designing, delivering and reviewing care needs should be based on nationally recognised evidence-based guidance.

Consultation and notice periods

Where you anticipate or assess that a resident's needs have changed (for example, through informal or responsive monitoring) you should engage in meaningful and transparent consultation with the resident and their representatives and give them advance written notice (for example, 28 days) before changing the resident's fees (including the reasons) so they can challenge the increase or avoid it if they don't want to pay it.

Where there are disputes, or you anticipate a dispute, you should liaise with relevant independent professionals, such as a multidisciplinary team, to support your decision. Any change in a resident's fees should not take effect until the consultation process and notice period have ended; the new fee rate should not be backdated.

To achieve fairness, the CMA considers that you should pause the notice period if a resident or their representatives have raised a dispute, and start time running again only when the relevant independent professional has given their view of the appropriate level of care and fees. This will ensure that a resident and their representatives still have time to make alternative arrangements for their care, if the revised price is too high for them.

Unforeseeable decline in a resident's health

Where a resident suffers an unforeseeable decline in health that requires significant extra care to be given at short notice, you are more likely to comply with the law where you give reasonable notice of the price increase (for example, seven days' notice) so that residents and their representatives have sufficient time to consider their position. You should provide them with the opportunity to have your assessment reviewed by relevant independent professionals. You should also offer the resident the opportunity to leave your home without penalty before the increase takes effect, if they or their representatives feel the increased level of care is unaffordable.

Where a resident requires additional care immediately and it would be harmful to the resident not to provide it, it is clearly in the resident's interests for the additional care to be given straight away. You should give immediate notice of any fee increase related to the additional care required, and where residents or their representatives dispute your decision, you should liaise with relevant independent professionals to support it. The resident should also be given the opportunity to leave without penalty when the fee increase takes effect. You should not increase the resident's fees until any dispute has been resolved.

The CMA has issued specific guidance covering fees charged after the death of a resident and how their possessions should be treated. This can be found in [UK Care Home Providers for Older People - Advice on Consumer Law, which is available on the CMA's website](#).

The CMA says...

Where you need to provide additional care immediately, you should not apply a fee increase until any dispute is resolved, but where your decision is supported by an independent assessment and the resident does not decide to leave the home, we would be unlikely to prioritise enforcement action where the increased fees were backdated to the date on which you began providing the extra care.

The CMA says...

Meaningful and transparent consultation could involve having a conversation with the resident and their representatives (which may include a statutory advocate appointed to act on the resident's behalf) about their changing needs, how this will affect the type of care they are likely to require in future (by referring to an accredited dependency tool) and how this is likely to affect their fees.

Any increase in fees caused by a change in care needs must be reasonable and proportionate. The CRA says that, where a price has not been paid for a service and a price is not expressly fixed by the contract, the consumer must pay a 'reasonable price' for the service, and no more.

[**< Trading fairly: changing your fees for residents who fund their own care**](#)

[**> Trading fairly: other unfair terms**](#)

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