

Writing a fee variation clause

This practical guide contains an example from the Competition and Markets Authority's guidance showing how you could write a fee variation term in a way that is more likely to be considered fair under consumer law. It is for guidance only, as linking annual increases in your existing residents' fees to a relevant, objective and verifiable published price index is not the only way to comply with consumer law. You should always seek your own independent legal advice to ensure your terms are more likely to comply with consumer and sector-specific laws.



Getting it right

The following is an example of a fee variation clause that is more likely to be considered 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 per cent, 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 per cent, 1.0 per cent and 0.4 per cent, 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 seven 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*



“Write a fee variation term in a way that is more likely to be considered fair under consumer law.”

- Give us notice that you wish to leave. In this case you will have 28 days (or seven days where we have given you seven 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.



To find out more about how to write fee variation terms, see pages 19-27 of the *Fair trading for care homes* booklet on the Business Companion website [www.businesscompanion.info/focus/care-homes-fair-trading] or, for more detailed guidance, see UK care home providers for older people – advice on consumer law, which is published on the CMA’s website [www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers].