



A recent study produced by the Information Centre suggests that the average cost of nursing home care is £499 per week, exclusive of any care contributions paid to assist with the provision of nursing care. The average cost of residential care in the independent sector is £564 per week. If a person is self-funding, or pays a proportion of their fees, then they are required to sign a Care Home Fees Contract which lays out the terms of occupation and services provided.

Despite the fact that the expenditure is substantial many people do not take legal advice as to the validity of the contract and the terms contained within it before signing. These types of contracts are often entered into in difficult circumstances and are signed quickly to ensure the security of a space in a home whose waiting lists can be lengthy.

Contracts can be signed by the person entering care if they are mentally capable or by an Attorney on their behalf (see our Guide to Lasting Powers of Attorney). If signed by a person who is not the resident, the agreement may place upon the signatory certain terms and conditions of which they are unaware.

National minimum standards for care homes for older persons were introduced by the Care Standards Act 2000. As a result, each care home must provide prescribed information about the home and supply an introductory booklet or service users guide to the home to each resident or prospective resident.

The care home is also required to provide the resident with a standard form contract for the provision of services and facilities. The English standard requires that the terms and conditions include:

- details of the room to be occupied
- information about overall care and services (including food) covered by the fee
- fees payable and by whom (service user, local or health authority, relative or another)

- details of additional services (including food and equipment) to be paid for over and above those included in the fees
- rights and obligations of the service user and registered provider (care home) and who is liable if there is a breach of contract
- terms and conditions of occupancy, including period of notice e.g. short/long term intermediate care/respite

In October 2003, the Office of Fair Trading (OFT) conducted a market study on care homes for older people and found that a number of care home contracts for self-funding residents were unfair or unclear.

The main areas of the study focused on:

- The lack of price transparency (the cost of care, what services the price includes, how often the price is reviewed)
- The need for better complaints procedures
- Complex or unfair terms that make it difficult to assess true rights and obligations of the resident and of the care home under the contract
- The procedure for termination of a contract
- The administering of medication

It is therefore important to look out for the following when considering whether or not to enter into the contract (these are examples and not a defined list)

- If the care home is excluded from liability from causing death or injury
- If the care home is permitted to make significant changes to what it supplies to the resident without consultation
- If the room can be changed without consultation
- If the terms are not clear about how long the fees are payable after death

The Care Quality Commission (CQC) is the independent regulator of all health and adult social care in England. From April 2010 all health and adult social care providers will be required by law

Guide to...

...Care Home Contracts

Wealth Management & Tax Planning Department

to be registered with CQC if they provide "regulated activities" (which include accommodation with nursing or personal care).

What can Hegarty LLP supply?

We are able to provide a review of a Care Home Contract quickly and efficiently. We will provide to you a report detailing the terms of the contract in simple terms whilst commenting on the fairness of the terms. We are happy to negotiate alternative terms and assist in the securing of such terms.

We are also able to review contracts which are already in place and provide guidance as to the existing terms and the fairness of such terms.

Why use Hegarty LLP?

For over 35 years Hegarty LLP Solicitors has provided high quality legal services to a wide range of businesses and individual clients. The firm has a strong regional presence as well as a growing national reputation in key areas of law. Solicitors who work in our Wealth & Tax Planning team are all experienced in this area.

They are experts in their field and pride themselves in providing a friendly, professional and an efficient service which will provide you with peace of mind knowing that you have sorted out your affairs to help your loved ones after your death.

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