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Dear Stephanie

Care Homes – consultation on charging fees after death.

Thank you for the opportunity to respond to this consultation. SCOTSS also contributed to the earlier consultation on the market study into the care home sector. We plan to carry out a project in 2018/19 which will, amongst other things, examine the contract terms of Scottish providers.

We would make the following comments on the specific questions in this consultation:

4.1 Yes, we believe that it does.

4.2 (a) Yes, as far as we can see, paragraphs 2.5 to 2.14 cover all relevant considerations.

4.2 (b) No.

4.3 (a) Yes. The key word is "usually" and this takes account of the fact that some cases and circumstances will be different such as for instance if the family live abroad or are on holiday at the time of a death. Example (c) 1.2 in Table 1 (page 18) provides for this sort of circumstance whereas examples (a) and (b) do not.

4.3(b) N/A

4.3(c) We believe that the equivalent daily rate under the individual's contract would be fair and reasonable. On the one hand, clearly in this period there are no meals or

personal care being provided but this is unlikely to impact significantly on the overall overheads and costs to the business. We would certainly see no justification for the cost being any higher than the applicable daily rate.

4.4 (a) and (b) Whereas it may be unlikely that any of the terms would be challenged as unfair, for the reasons given in the response to 4.3(a) above, we believe that example(c), with the additional clause 1.2 would be "best practice" and should be encouraged.

4.5 (a) Our response is based on our knowledge and understanding of contract law and fair trading practices and not direct experience or involvement with the care homes sector, but we see no reason why such an obligation would not be workable in practice.

4.5 (b) 7 days seems about right but other respondents are likely to be better qualified on this.

4.6 Again, other respondents with direct experience will provide better informed responses. However, where items are damaged or soiled, or present a health hazard there should be scope for the home to make a reasonable decision as to whether they should be disposed of rather than stored or sold. Furniture, particularly if bulky, could present a storage problem and, again, if in poor condition and low value, it might be fair to make a decision not to store or try to sell. Of course, in all of these decisions the home would have to take account of potential sentimental value regardless of condition or sale value.

4.7 Appendix B.46 refers to the Torts (Interference with Goods) Act 1977 which does not apply in Scotland. Also, there are several references to NHS FNC but the equivalent in Scotland (free personal and nursing care) is not covered.

Overall, we find this a very comprehensive document which sets out the issues under consideration and provides clear and practical suggestions as to how these can be addressed. If you have any queries in regard to our response please do not hesitate to contact me.

Yours sincerely

Peter Adamson
Chairman SCOTSS

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