

The Priory Group

Response to the Competition & Markets Authority: Market Study of Care Homes Statement of Scope

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About The Priory Group

The Priory Group ("Priory") is the leading provider of behavioural care in the United Kingdom, focusing on the provision of acute psychiatry, secure and rehabilitation services, specialist education and care and support for older people and adults with learning disabilities. Our purpose is to make a real and lasting difference for everyone we support. The Priory Group consists of four divisions – Priory Healthcare, Priory Education, Craegmoor and Amore Care – which together support the needs of more than 30,000 people per year, including providing residential and nursing care services to more than 2,000 older people.

Introduction

Priory Group welcomes the opportunity to respond to the CMA's invitation for comments on the Statement of Scope for its forthcoming review of the older people's care home market in the U.K.

We are aware that Care England, the largest national representative body for independent community care providers has submitted a response. As a member of Care England we fully support the representation that it has made on our behalf. In our own submission, we have responded to the consultation questions to provide additional and / or complementary points to those raised by Care England.

Scope of the Review

We welcome the CMA's confirmation that its market study will cover all older people in care homes regardless of their funding arrangements. However, we believe that as currently drafted, the Statement of Scope pays insufficient attention to the level of influence that local authority commissioners have over the care home market, including over the self-fund market. Whilst the Statement of Scope makes several references to care home providers' consumer law obligations, the same level of attention must also be paid to local authorities' consumer law obligations.

Local authority contracts for care home placements

Local authority contracts covering placements of self-funding residents or involving third party top up contributions are consumer contracts; this was confirmed by the Office of Fair Trading ("OFT") in Paragraph 6.49 of its 2005 Market Study Report. In this report, the OFT also confirmed its understanding of the Statutory Choice of Accommodation Guidance whereby the local authority is contractually responsible for the full cost of an individual's residential accommodation (including any third party top up contributions).

The CMA's review must therefore extend to considering whether older people and / or their representatives are being disadvantaged by unfair local authority commissioning practices, including whether local authorities are:

- routinely requiring residents and their families to pay top ups as a result of commissioning failures
- providing residents and their families with full, clear and accurate information regarding the choices of residential accommodation available to them, including an explanation of their statutory rights
- including within their care home contracts terms and conditions that are unfair to the consumer
- behaving anti-competitively in respect of the self-fund market
- including unfair terms in their contracts for care home placements

Third Party Top Up Contributions

With regard to third party top-up contributions, whilst local authorities must determine the prices that they would usually expect to pay ("usual costs"), the prices charged by a particular care home are a business decision made by the management of that care home. This was recognised by the OFT in Paragraph 6.34 of its 2005 Market Study Report.

In circumstances where a care home's fees were higher than the usual cost paid by the local authority, the OFT suggested two possible outcomes; residents receiving local authority funding would either:

- 1) have to look elsewhere or;
- 2) find a third party contribution to meet the difference between the local authority's usual cost and the fee charged by the care home.

The OFT omitted to mention a third possible outcome i.e. in circumstances where a resident's placement was made out of necessity rather than express choice (e.g. if no suitable alternative accommodation was available at the local authority's usual cost), Statutory Guidance would require the local authority to pay the additional top up itself.

Within Paragraph 4.5 of its Statement of Scope, the CMA suggests that top up fees are paid for additional services (e.g. a larger than average room). This is fundamentally incorrect; as detailed above (and as acknowledged by the OFT in 2005), a top up fee is simply the difference between the care home's fee and the local authority's usual cost. The Statutory Guidance's reference to more expensive accommodation does not necessarily mean that additional services are provided; more expensive simply means "more expensive" (i.e. costing more).

Funding for the care home sector

We note that the CMA intends to exclude from the scope of the study the matter of funding for the care home sector, focusing on issues that may stop the market from working well within the current overall funding levels and arrangements.

Given how the general under-funding of the care home sector can be such a significant obstacle to the market working well (for example, in areas where low local authority fee rates mean that residents and their families are routinely required to pay top-up contributions to subsidise the shortfall in local authority funding), the issue of funding cannot and must not be excluded from the review.

Summary

In summary, given that one possible outcome of the market study could be enforcement action using either the CMA's consumer or competition powers, it is essential that the study is effective in identifying those parties against whom enforcement action may be required to be taken.

Thus the information provided must be sufficient to help the CMA to assess whether both care home providers and local authority commissioners are complying with the relevant consumer and competition law, along with other associated statutory obligations. In view of this, we believe that the Statement of Scope should be redrafted accordingly.

We shall be pleased to provide the CMA with our views, data and information throughout the course of this review and we look forward to receiving further details from the CMA about the next steps in the review process.