



Lancashire Care Association Co. Ltd

Representing Providers of Quality Health and Social Care

CMA Market Study of Care Homes.

Statement of Scope – Lancashire Care Association comments

Theme 1: Consumer protection issues in the care homes sector

Theme 2: Older people's decision making on care homes

Theme 3: Regulation of care homes

Theme 4: Competition between care homes

LCA wishes herein to make a contribution to the CMA exploration of the care home market. Our focus relates in the main to our role as a provider voice and stakeholder which locates our emphasis in Theme 4 but it raises issues across the four themes.

Background

LCA Co Ltd is a not-for-profit company (est 1992, incorporated in 2001) which represents private and 3rd sector providers across the Lancashire County Council and adjoining areas. LCA jointly chairs the Health and Social Care Partnership Steering Group, a strategic forum for dialogue between independent sector providers, Lancs County Council's SMT, and colleagues from Mids and Lancs CSU, CCGs, and NHE England on commissioning and quality in care. LCA is also a partner on the Lancashire Safeguarding Adults Board and is a member of the Regulated Care Sector Board as part of the STP transformation agenda for Lancashire and South Cumbria.

LCA's Board of Directors is listed [here](#).

A recent analysis of the Lancashire care homes market is set out in Lancashire *Older People's Residential Care Market: Market Analysis* - April 2015 (V1.2), Crabtree, I. and Sleightholme, J., LCC.

This follows on from an earlier care homes and home care market review by the Institute of Public Care from Oxford Brookes University - *Older people's care market review*, August 2012.

LCA has made earlier representations to the Cooperation and Competition Panel on care markets in relation to CHC thresholds (see 2011 *Conduct Cases archive: North Lancashire Conduct Complaint*).

Lancashire County Council and LCA have worked jointly with LaingBuisson on a *Fair Price for Care Homes in Lancashire* (Mickelborough, 2004, updated 2006) and *Actual Cost of Residential Care in Lancashire* (Mickelborough, 2014).

LCA recently submitted information and evidence to the Communities and Local Government Committee investigation into the funding of adult care which can be read, and the panel evidence seen, on the CLG website [here](#).

Key points

- i. We recognise the CMA's focus is on care homes but we wish to stress the interconnectedness of the care system and to stress that care homes considered in isolation from home care and other care models - e.g., extra care - limits the coherence of the analysis.
- ii. It is also important, we argue, for independent sector costs to be examined with reference to an independent authoritative costing model, such as that of LaingBuisson, and we judge it of crucial importance to set those visible and actual costs against the visible and actual costs of public care.
- iii. There have been marked increases in the levels of need to be met in the residential setting over the last few years cf. The changing role of care homes; Lievesley, Crosby, and Bowman (CPA, 2011) with much higher levels of staffing and staff skills needed to meet higher levels of assessed needs coupled with shorter periods of stay.
- iv. A recent OPUS study that found the average care home earns just £11,000 in pre-tax profits per year and that one in four care homes is facing a financial crisis over the next three years. The report's author said "Every part of the UK adult care system is in crisis. Private sector operators are withdrawing from contracts for domiciliary care services. The NHS is facing an unprecedented bed-blocking issue because there is insufficient domiciliary and residential care capacity to deal with patients leaving hospital. Care home operators are refusing to accept local authority funded residents because the fees are well below the cost of providing care. Sooner or later, privately funded residents and their relatives will revolt against having to pay sky-high fees to cross-subsidise publicly funded residents." Source: FT, 29 November 2016.

- v. The LaingBuisson 2014 “Actual Costs..” report referred to above found that care homes reliant on public funding in Lancashire were hovering around a 0% return (with care with nursing below 0%). This is unsustainable and incompatible with quality and safety.
- vi. 2016 has seen the first notable increase in local authority fees since 2010 (there has been a 5-10% cut in fees since 2010) but set against other cost increases there is little or no real-terms increase.
- vii. We know that homes in Lancashire are de-registering as nursing and re-registering as residential because of the extra cost/ risks associated with delivering nursing care. Local figures show nursing bed losses over 2015-16 which if expressed as the closure of wards would attract headline attention.
- viii. Recent local Delayed Transfers of Care (DTC) figures have shown a marked increase in delays recorded as ‘due to social care’ (source: LCC business unit). Many of the blockages are around pathways through a system part of which is free at the point of delivery and part which isn’t.
- ix. As a provider body we are concerned about the impact of commissioning decisions which are subject to no form of independent scrutiny; a substantial flaw, we argue. Some 40% of beds in care homes are commissioned by the local authority (in the LCC area) and, we think, about 20% are commissioned by CCGs through CHC commissioning.
- x. We argue, re CHC funded residents and for local authority funded residents, for auditable standards for commissioning and for commissioners to have to ‘pay due regard’ to the ‘actual costs’ of care, as the courts have indicated in recent Judicial Reviews.
- xi. Privately funded residents should be fully informed about the costs of their care and there should be no hidden costs. Where third party contributions are relevant (either at first admission or later, when, funds may have fallen below the local authority support threshold) residents and their family should be fully informed and involved.
- xii. In the Lancashire area, we know from our dialogue with providers that 3rd party contributions, even if they are necessary, are things providers would prefer not to have to ask for but in the face of structural underfunding and the regulator’s requirement on businesses to be financially viable there is no way of avoiding the issue at a systems level.
- xiii. LCA have worked with LCC on protocols around ‘top-ups’ aka ‘third party contributions’ with the emphasis on fairness and clarity. Fairness to residents and to providers, given that such contributions are a necessary part of the viability of care homes who are structurally underfunded.

- xiv. Just as there should be standards for commissioners we argue that inspection and other monitoring (e.g., contract and quality monitoring, safeguarding) have an impact on the fragility of the market and there should be standards that can protect providers.
- xv. We are concerned that the CQC regulation model is based on negative-only reporting, rather than balanced reporting, and we call for 'appreciative enquiry' techniques to inform the inspected-inspector dynamic which we think is too punitive and is destabilising the sector which is already under profound pressure from all sides.
- xvi. We have a long-established partnership forum in the LCC area which links the county council, health colleagues and providers in developing a strategic overview of the market. This infrastructure is central to the quality of dialogue between commissioners and providers at a strategic level and important for effective market management.
- xvii. One of the issues it is currently addressing is one which we know from research is a national problem: Late Payments. This is a major issue for the small business sector and specifically for the care homes sector with local authorities and CCGs having payment processes in place which result in cash-flow problems for care homes, and we know that cash-flow issues are one of the major causes of business failure. We have raised this issue with the relevant Ministers.
- xviii. The biggest challenge facing providers is workforce. This affects the nursing workforce (with a European-wide shortage of nurses), Registered Care Managers (30% of whom are over 55 compared with 13% in the NHS).
- xix. We are hopeful that the 'Workforce' workstream in the Regulated Care Sector Board (under the STP Programme Board for Lancashire and South Cumbria) may address some of the issues around recruitment and retention in the 'social care' sector and the critical narrative around care that makes it feel so unrewarding for many, but are concerned over how the crisis here and now will be addressed while we contemplate the bigger picture.
- xx. The Health and Social Care Partnership is beginning an exploration of how we can bring a more positive narrative about care to schools to help motivate tomorrow's carers and challenge the perception that NHS is best and the 'social care' sector is second best.
- xxi. Open processes and a supportive culture. In the Lancashire area we represent and facilitate two networks: a proprietor and senior manager network through the LCA Board and the Registered Care Manager Network and we also work in partnership with the Health and Social Care Partnership and the Safeguarding Adults Board. These processes and relationships help create an infrastructure for better communication and dialogue and

which helps address the understanding of the care market(s) in face of the current funding crisis.

- xxii. In considering the role of the market in relation to care, there are a number of tensions which remain live but unresolved. Should there be a market at all or should we have a National Health and Social Care service free at the point of delivery? If we have a mixed economy of care and a market mechanism what do we want the market dynamic to deliver? Our concern is that, too often, in the context of a monopsony market, or a market where public authorities are 'super-customers', the dynamic acts to deliver lower cost and quality.
- xxiii. We are concerned that while skewing of the market by monopolistic practices is subject to scrutiny and penalty its converse, monopsony, which is equally a skewing of the market but by commissioners is subject to no oversight, standards or appeal.
- xxiv. We have sought to work with academic colleagues (e.g., the "Inventing the Future" seminars series, 2010) to review and scope the care market. One of the challenges arising was that to work across organisational and cultural fault lines between health and social services and the independent sector
- xxv. We need further work to help build a shared understanding of the role of competition and cooperation in the delivery of care and support, the continued utility, if any, of the purchaser-provider split, the role of commissioning in a market-place, the nature of the market-place with ever-greater numbers of customers and budget holders and the development of a minimum dataset to help plan and respond to changes in the market.
- xxvi. We stress the importance of a constructive provider voice and a coherent provider-commissioner dialogue at a strategic level. In Lancashire we refer you to the work of the Lancashire Care Association and - with provider association colleagues and local authority and health colleagues - the work of the Health and Social Care Partnership.

16/1/17

Paul Simic

CEO

Lancashire Care Association