



# **CMA Market Study of Care Homes**

## **Response to Statement of Scope**

**Bupa UK**

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# TABLE OF CONTENTS

Main sections	Page
1 Introduction	2
2 Responses to questions on Theme 1: Consumer protection issues in the care homes sector	3
3 Responses to questions on Theme 2: Older people's decision making on care homes	5
4 Responses to questions on Theme 3: Regulation of care homes	6
5 Responses to questions on Theme 4: Competition between care homes	8

# 1. INTRODUCTION

- 1.1 Bupa UK (“Bupa”) welcomes the opportunity to engage with the Competition and Markets Authority (“CMA”) Market Study of Care Homes. This paper responds to the Market Study of Care Homes – Statement of Scope (“Statement of Scope”) published on the CMA’s website on 2 December 2016. [§<].
- 1.2 Bupa’s purpose is helping people live longer, healthier, happier lives. Our status as ‘a company limited by guarantee’ means we have no shareholders and enables us to make our customers – including our care home residents – our absolute focus, reinvesting our profits to provide more and better healthcare for current and future customers.
- 1.3 We are one of the largest residential, nursing and dementia care providers in the UK, and operate a large network of care homes and care villages primarily in England, but also in Scotland and Wales. We are a major employer in the care sector and members of Care England and Scottish Care, the sector trade associations. We are also a significant care home and retirement village operator in other countries, namely Spain, Australia and New Zealand.
- 1.4 A strong, functioning care home sector is vital if the UK is to meet the growing needs of its ageing population and Bupa is proud of the care that our people provide for our residents. Bupa is committed to supporting this market study and welcomes the CMA’s focus on improving transparency in the market. We will submit additional information and evidence as required and we would value a meeting with the CMA staff team, if that would be helpful, to discuss the market and its complexities.
- 1.5 In this response, we have restricted our comments to where we wish to emphasise points within the four broad themes set out in the Statement of Scope which would benefit from detailed study, or where we have a particular perspective. We have not commented on every market issue or theme referred to within the Statement of Scope.
- 1.6 Bupa emphasises the following points in relation to the four broad themes of this market study:
- i. **Consumer protection issues in the care home sector:** as a service organisation operating in a highly personalised market, consumer protection is critically important to us, alongside the high levels of service and care that we strive to achieve. We are committed to ensuring that our residents and other customers experience the highest standards of care and service. We welcome customer feedback and see it as an opportunity to improve our care and services and we aim to resolve any concern or complaint quickly and easily. We strive to maximise customer satisfaction and drive continuous improvement in how we care for our residents.
  - ii. **Choosing care homes:** our experience suggests that there is limited awareness among the general public about not only the breadth and variety of care home services (whether residential, domiciliary or nursing care) but also how these costs are calculated, how the care system works, and what individuals are expected to pay for themselves as a result. Bupa has specifically invested in, and promotes, tools and resources to help customers and their families make informed decisions about the care which is right for them. We have highlighted in this response some of these resources and tools. In addition, local authorities’ denial of third party top-ups, or their failure to provide useful information about them, can limit choice in the market.
  - iii. **Regulation of care homes:** we see a number of challenges in how the market currently operates. Local authorities are inconsistently interpreting their market shaping roles under the Care Act 2014, and many local authorities do not fully engage with the market to seek the information they require. In terms of commissioning, local public sector commissioners can appear to disregard information from providers about the true costs of delivering care to people, which results in unrealistic fee proposals.
  - iv. **Competition between care homes:** our comments focus on some specific areas within this broad theme which are referred to in the Statement of Scope, namely barriers to

entry and expansion and pressures on long-term sustainability of the market. In terms of sustainability of the market, the aged care sector has operated for many years in an environment where fees paid by the majority of local public sector commissioners are well below the true cost of providing care. This is despite: recent public policy changes being introduced, such as the social care precept on council tax in England; and the new duties of the Care Act 2014 for local authorities to, among others, ensure sustainability of local markets.

## **2. Responses to questions on Theme 1: Consumer protection issues in the care homes sector**

**What are the main consumer protection issues in the care home sector? How widespread are these issues and what harm do they cause to residents and their families?**

- 2.1 In our view, the main consumer protection issues relate to clarity of costs and service provision. It is also important to highlight that care home stays average 12-18 months (and are frequently now even shorter) and, primarily, are for end of life care only. This is due to residents considering residential care at a later stage and when their needs are more advanced.
- 2.2 These concerns within care homes arise primarily from the time and manner in which a care home is found. Often, a care home placement is made urgently, and by residents and families with no prior knowledge of care homes or funding. Quite rightly, their primary concern is to find a care home which provides the level of support required, and this leads to placements being made without particular attention being paid by anyone involved to the terms and conditions. This issue is compounded when funding is, at the time of placement, coming from a public body. In such cases, in particular, charges for additional services are often not clarified and no consideration is given to what terms apply in the event that funding is withdrawn.
- 2.3 The funding system in England is complicated, and some care home providers often may expect relatives to understand the complexities without offering sufficient guidance. Bupa provides an online tool for people to check what funding from local authorities or the NHS they might be eligible for<sup>1</sup>.
- 2.4 We try very hard to ensure that our customers and their families understand the cost of our care homes in advance, including the services which are to be paid for separately. Our Elderly Care Support Line has been established specifically to assist and guide families through this difficult, and often stressful, time (see 3.2 for more detail).
- 2.5 Our terms and conditions are provided to all residents and their representatives at the outset, regardless of the method of funding. The terms explain which services are excluded from the fees, and what will happen if funding is withdrawn. We encourage residents and their relatives to review the terms and raise any questions, but, as with most other organisations, will not vary our terms for individual residents. [X]. It is important to note that a particular characteristic of the sector, which makes it to some extent unusual, is that often the person who is receiving the service is unable to contract directly due to incapacity.

**To what extent are care homes complying with consumer law, in particular in relation to the fairness of their contracts and their behaviour towards residents and their families?**

- 2.6 As a larger organisation, we have the benefit of terms and conditions which have been reviewed by external lawyers to assure compliance with consumer protection legislation and with the OFT's guidance on unfair terms in care home contracts. We keep our terms and conditions under review

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<sup>1</sup> [www.bupa.co.uk/funding-indicator](http://www.bupa.co.uk/funding-indicator)

for fairness and for compliance with changing consumer protection legislation and update them accordingly. However, the majority of care home operators are small providers without access to such advice and, as such; their terms are unlikely to be as comprehensive. In addition, we strive to ensure that our terms and conditions are accessible in terms of clarity of language and easy to read.

2.7 Care home providers have to ensure that their fees will be paid, and this can be very difficult where the person responsible for paying fees (the resident) is unable to sign a contract and there is no power of attorney in place. It is important to highlight the risk that providers often take when customers' funds are not liquid. We strive to be flexible in order to support families when funding to pay for care is not instantly accessible, which puts the financial risk on the provider.

2.8 It is important to us to be clear with our customers, and we will always do our best to support new residents when they are considering placements. Our Elderly Care Support Line assists and guides families through this process (see 3.2 for more detail on the support line).

**Are the current protections offered by consumer law and other measures (such as sector regulations) sufficient to address these issues?**

2.9 As set out above, entering into a care home contract is a decision unlike almost any other. The service is provided to a person who may not be able to contract for it, there is not always someone who can legally contract on their behalf and yet the service is needed urgently so care home providers have to find a way to contract. Although existing consumer legislation has increased in volume over recent years, it does not envisage such a situation arising.

2.10 In addition, while we strive to ensure clarity for customers in our terms and conditions (see 2.6), the whole sector would benefit from guidelines on how to create fairer, clearer terms.

**Are there barriers to residents and their families raising complaints when something goes wrong, and how effective are current complaint and redress systems for care home residents?**

2.11 We work very hard to ensure that our residents and families are able to access a robust customer complaint and feedback policy which is clear and which inspires confidence. Our policy is based on the Parliamentary and Health Ombudsman's six Principles of Good Complaint Handling<sup>2</sup>.

2.12 We seek to make it as easy as possible for residents to share concerns and to raise complaints when something goes wrong. We provide details on how to raise a complaint and our processes for responding to complaints in a leaflet provided to all residents and their relatives, which is available in all of our homes.

2.13 If a resident did not wish, for any reason, to talk to our staff in their care home, or they had done so already and the problem remains, they can contact the local Bupa regional office. Contact details are on display in each care home. Residents are also signposted to contact our head office, by telephone, by emailing [feedback@bupa.com](mailto:feedback@bupa.com) or registering their complaint through our website at [www.bupa.co.uk/care-homes](http://www.bupa.co.uk/care-homes). Contact details of the regulatory and ombudsman bodies in each devolved nation of the UK are also included.

2.14 We currently have a two stage process for handling complaints.

- i. At stage 1 we seek to resolve the complaint at a local level with the Home Manager responsible for receiving, acknowledging, recording, investigating and responding to all stage 1 complaints. We aim to acknowledge receipt of all complaints within three working days. The Home Manager will then conduct a full investigation and will aim to provide a full response within 21 days. On the rare occasions when this is not

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<sup>2</sup> Good complaint handling means: 1. Getting it right; 2. Being customer focused; 3. Being open and accountable; 4. Acting fairly and proportionately; 5. Putting things right; and 6. Seeking continuous improvement  
<http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full>

possible, we provide the complainant with an update on progress made and an explanation for the delay.

- ii. The Home Manager is responsible for taking action in response to a stage 1 complaint and for addressing lessons that arise from the complaint. The Home Manager is also responsible for sharing this learning with their more senior Regional Director where it may benefit the wider organisation.
- iii. At stage 2 we escalate the complaint to a regional level. We take this step if the complainant is not satisfied with the response they receive from the Home Manager at stage 1. When a stage 2 complaint is received, it will be acknowledged by a member of the senior regional management team within three working days. The regional management team will review the handling of the stage 1 complaint and conduct further investigations as necessary and will contact the complainant within 21 days to let them know the outcome of that review.

2.15 If a resident or relative is still not satisfied at the completion of stage 2 of our complaint process we advise them to contact the relevant independent ombudsman. Contact details for the ombudsman are provided on our complaints leaflet and also included within stage 2 response letters.

2.16 We keep our complaints process under regular review to ensure: it is working effectively; that residents and their relatives can easily make complaints; and that our processes for redressing any complaints are both effective and transparent.

2.17 As part of our regular process of review, we update our complaints processes to improve compliance with our process timescales. [3<].

2.18 We encourage our residents to share feedback about services or make suggestions for ways in which a service could be improved. Recording, analysing and acting upon feedback, whether positive or negative, enables us to improve our services to our residents.

2.19 We take our obligations to our residents very seriously and would take disciplinary action and/or deliver enhanced training and guidance to address any failings by our staff.

### **3. Responses to questions on Theme 2: Older people's decision making on care homes**

**What information and advice is available for older people and their representatives when deciding about entering or moving between care homes? Is it easy to access and understand this information?**

3.1 Clear and detailed advice and information for older people and their families is extremely important. Care is often a purchase made when people are at the point of need. As a result, people have little knowledge of the costs involved in advance and so they have not planned for these costs. This is further complicated by a lack of understanding about the balance between the state and the individual in meeting the costs of aged care. A common misunderstanding is about:

- i. what the NHS will provide free at the point of need;
- ii. what care the state will pay for on a means-tested basis; and
- iii. what individuals and/or their families may choose to, or need to, pay.

Therefore, even when individuals have planned for future care costs, it is not always sufficient.

3.2 To help address the information and advice issues outlined above, we have set up an Elderly Care Support Line (ECSL)<sup>3</sup> to support with questions that individuals and their relatives may have

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<sup>3</sup> See: <http://www.bupa.co.uk/care-services/elderly-care-support-line>

about elderly care and care homes. We have a team [30] all of whom are trained in providing elderly care advice across a range of areas. It is a free telephone service operating Mon-Fri, 8am-8pm and Sat-Sun, 9am-5pm. The line is open to everyone, not only Bupa customers. The team offer advice on types of care and care homes available locally (including competitors' homes, if we cannot help), cost of care, care cost contributions, moving into a care home and many other subjects. The team receives around [30] calls weekly, many from people searching for care for themselves or for a relative. Depending on customer need, the ECSL team will direct people to multiple other sources of information including local government websites, our own website or our 'Trusted Advice' guides (see 3.4).

3.3 Through our experience of running the ECSL, we have found that customers are frequently unprepared and surprised by the cost of purchasing care for themselves or for placing a relative in a care home. Furthermore, there is misunderstanding about the care system and length of stay. This information gap highlights that there is a real need for more accurate and timely information and tools to support customers and their families to calculate and plan for the true cost of care. This is why meeting these needs is such a priority for us.

3.4 In addition to the support we provide through the ECSL, we also produce a series of 'Trusted Advice' guides to aid decision making. These are typically passed to customers at the point of enquiry, either in-home, downloaded from our website or from telephone enquiries into our ECSL. Guide topics include; 'Moving into a care home', 'Paying for a care home', 'Respite and Short Stays', 'Caring for someone with dementia' and a comparison guide called 'Choosing a care home checklist'. All of these information leaflets are available to anyone, free of charge, and can be downloaded directly from our website. The information they contain is not specific to Bupa care homes. We are very happy to provide copies of these to the CMA to illustrate the type of information we provide.

#### **How can existing information/advice be improved? What further information would be useful?**

3.5 We are currently working with our print partner to be able to supply these guides in formats suitable for people with disabilities such as brail, large print, audio, etc. One improvement we are currently considering is to offer guides for non-English speaking customers. We currently do not produce a guide on moving between care homes but will be considering this as part of our regular review process.

3.6 Another area for potential improvement is the provision of advice and information on alternatives to care homes such as domiciliary care, home adaptations, carer support, and financial advice. On this last point, we would recommend that the CMA looks at the work being carried out by the Financial Conduct Authority under its policy workstream *Ageing population and financial services*<sup>4</sup>.

#### **What other factors may impede older people in choosing a care home initially or subsequently in moving between care homes (if appropriate)?**

3.7 The main factors that may impede people in choosing a care home initially or in subsequently moving between care homes are: location; the care types available; bed availability; and cost.

3.8 It is important to remember that each person's care and social needs make for a unique set of requirements on the care home for each resident. These requirements cannot always be met within the care home of the person's choice.

3.9 It can be very difficult, practically, for someone to move between care homes. Contractual positions, which in Bupa's case simply require the provision of one month's notice at any time, are not usually a barrier to changing homes, but the health of a resident can be.

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<sup>4</sup> See: <https://www.fca.org.uk/publications/discussion-papers/ageing-population-financial-services>

3.10 The amount commissioners are willing to pay for care placements can restrict choice for consumers as this removes certain homes from the options available to them. We also see that some commissioners actively discourage third party top up payments, which also serves to restrict choice. As a market issue, inconsistencies in local commissioner treatment of top ups cuts across a number of the themes in the CMA's study. In terms of Theme 2, when commissioners deny, or do not provide adequate information about third party top-ups, they are restricting the consumer's ability to choose a home that best suits their individual needs and preferences.

## 4. Responses to questions on Theme 3: Regulation of care homes

### **What impact do regulations have on competition in this sector, particularly on price and quality?**

4.1 Although the CQC is the overall care quality regulator in England, its national standards are not always seen as sufficient by local commissioners and additional quality and contract monitoring requirements are often overlaid onto national standards in local contracts. This is a point we have made to the government in previous discussions about regulatory overlap<sup>5</sup> and is an important market dynamic which the CMA should consider.

4.2 This regulatory duplication creates additional and unnecessary regulatory burdens for homes and their staff. Care staff and management staff have to devote significant amounts of time to ensuring compliance with the various overlapping local and national regulatory requirements and in reporting data back to the various bodies involved. This complexity and duplication in regulating the sector diverts significant care resources in some areas. Where additional staff are needed to manage the regulatory compliance and reporting process, this also adds additional costs on to the running of a home.

4.3 In practice, we would like to see local authorities (both as commissioners and in their safeguarding role), NHS Clinical Commissioning Groups and the CQC align their work much better for the benefit of residents and families. In some instances, the actions of multiple agencies with differing interpretations of regulations and procedures and their responsibilities leads to duplication and resource challenges for individual care homes to manage.

### **How do local authorities' commissioning and procurement practices affect competition in the sector?**

4.4 Many local authorities seek to have one rate for all providers for set care types when commissioning care services. This fails to take into account the fact that no two care homes' costs are identical, and in practice creates a 'race to the bottom' with providers having to either compete for rates that do not reflect the true cost of providing care or, pull out of the local market altogether.

4.5 Local authorities are increasingly asking for more detailed information from providers on the costs of providing care as part of their commissioning and procurement processes. However, in practice, when setting fee rates, local authorities often appear to disregard information from providers about the component and total costs of delivering care and instead work from their own set of assumptions about the cost of care. This leads to fee rates being set that do not accurately reflect the true cost of care (i.e. the total for all of the component parts of the costs of care delivery, which are all subject to different inflationary pressures). This, in turn, has a severe impact on the long-term sustainability of local care markets.

4.6 We observe that commissioners can be inflexible in recognising how the costs of providing care change as care needs change which can happen very quickly with some residents' health

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<sup>5</sup> In July 2016, the Department of Health organised a sector discussion about 'reducing red tape' in the care sector, which Bupa participated in. We also previously submitted evidence to the Department for Business, Innovation and Skills' (BIS) review on regulatory reform in the adult care homes sector in September 2015.



conditions. As an example, a resident may require one-to-one care to maintain their safety, or that of others, but the commissioner may refuse to pay for that level of care, leaving the financial burden and risk on the provider.

### **To what extent is local authorities' 'market shaping' role affecting competition in the care homes sector?**

4.7 The market shaping role of local authorities under the Care Act 2014 remains relatively new, and local authorities are inconsistent in interpreting these responsibilities. Many local authorities do not fully engage with the market to seek the information they require. There often appears to be an assumption on the part of local authorities that if they are currently able to place residents at their preferred rate, their local market must be sustainable. This ignores the reality that providers often admit residents at rates that are below their cost of care in order to keep beds occupied. This is unsustainable and longer term, many providers are having to shift from publicly-funded to self-funded beds to remain viable.

4.8 It is very rare for providers to be invited to market shaping forums. Often a questionnaire or template is provided to complete and return only. Local authorities will usually create their own assumptions around ROI, profit, overhead, ratios etc. rather than seek detailed information from providers in order to get to the desired number within their affordability threshold.

## **5. Responses to questions on Theme 4: Competition between care homes**

### **How well does competition work between care homes?**

5.1 When researching care options, like-for-like price comparison can be difficult as indicative costs would only be given at enquiry stage. To get a full understanding of costs, the potential resident would need to undertake a care need assessment which could prove too time-consuming if looking at several care homes.

5.2 Bupa offers a 'Choosing a care home checklist' Trusted Advice guide which allows potential residents and their families to compare up to three care homes through a simple scoring system across 10 key areas; Location, First Impressions, Care, Communal Areas, Bedrooms, Meals, Activities, Staff, Visitors and General points. This guide aids research and promotes competition comparisons for our customers.

5.3 Private broker involvement is now present in the everyday requirement on us to find a suitable care home placement. Typically, the brokers will be looking to all providers to 'compete' for the placement for their resident and we therefore endeavour to respond to requests within one hour.

5.4 The introduction and growth of public sector placements via online portals means we have a similar process for some public sector placements as that for private brokers.

5.5 In some instances, choice can be impaired when there is a social worker intervention. We find that residents will call our helpline for advice and they will have been given a 'restricted' care home list – exact reasons are invalidated but our experience leads us to suspect it is funding-related

### **What are the key pressures for care home providers that are affecting their long-term sustainability?**

5.6 We note the CMA's comments on page 27 of the scope document<sup>6</sup> but the points we make in the following paragraphs are about how the market works within the *current* overall funding levels and arrangements and should be considered within the scope of this study. The pressures are often caused by how some, but not all, local authorities choose to make care purchasing decisions for

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<sup>6</sup> Para 6.9(a) Statement of Scope, December 2016

care placements within the existing national funding environment. Such inconsistencies also include how top up payments are allowed by local authorities (see 3.10).

- 5.7 The aged care sector has operated for many years in an environment where fees paid by many local public sector commissioners have been well below the true cost of providing care. Once the full range of factors that contribute to the cost of care are accounted for, the fees paid by local commissioners can, in our experience, be significantly below the true cost of delivering the service. This underfunding is having a serious impact on the long-term sustainability of many homes in the sector.
- 5.8 A number of factors have combined to put significant pressure on local authority adult social care budgets in recent years including cuts to public spending, the requirements of the Care Act 2014, above inflation increases in the National Minimum Wage, introduction of a National Living Wage and population change.
- 5.9 The announcements made in the 2015 Spending Review settlement and the introduction of the social care precept are starting to address these pressures but funding is not always being passed through the system from local authorities. The decision in the 2016 Local Government Finance Settlement to allow local authorities to raise the precept by 3% rather than 2%, and the £240m adult social care grant announced alongside it, are both welcome changes if local authorities pass through the funding to providers to deliver care. There is no central oversight by government or the market at present, however, to track the flow of such funding through to paying for the delivery of care services.
- 5.10 In addition to the funding pressures providers face, recruitment of staff is also a significant pressure on long-term sustainability. The ability of the sector to recruit both carers and nursing staff has been difficult for a number of years and potentially faces further pressure in the wake of the UK's vote to leave the European Union. Access to international staff, both from the EU/EEA and elsewhere, will remain a key local and national concern for providers over the coming years.

**What, if any, barriers exist to care home providers entering the market and/or expanding their activities? Is there a lack of capacity in some geographical areas?**

- 5.11 The biggest barrier to new entrants, and to existing providers expanding, is the continued payment by many local authorities of fees that are below the true cost of providing care.