

Submission to the CMA study into Care Homes

COSLA is the representative body for Local Authorities in Scotland. COSLA is currently comprised of 28 member councils and leads negotiations on the National Care Home Contract on behalf of our members, in partnership with Scottish Care and CCPS.

COSLA welcomes the CMA study and the focus on consumer protection however, it is important to be clear on the status of the study and any recommendations the CMA might make, given the devolved nature of this issue. This is particularly important given that we are in the process of a wide-ranging reform agenda (which includes the NCHC). This process is moving at a pace and in tandem with the CMA study. Ideally, the study can inform that process but clarity around the status of the recommendations made would be very helpful.

Theme 1

The National Care Home Contract was, in part, established over 10 years ago to provide a more transparent and consistent national contract and national fee for the commissioning and procurement of residential care for older people. This was necessary to address a complex variety of local charging and fee setting practices which included a number of top up fees for what councils felt should be core to the provision of a care home place. In turn it also provided councils and care homes with a degree of stability and certainty in terms of cost and income with which to inform local commissioning and procurement strategies.

However, individual councils still award the NCHC on a local basis and undertake local contract management and support the complaint and redress system for residents and their families. COSLA would be happy to facilitate a meeting between the CMA and a representative cohort of local authorities to discuss councils approach and experience in these roles.

Theme 2

As a part of the Statutory duties to assess people's needs and to support choice, Councils ensure people are able to make an informed choice about their care home and provide information on local care homes and their inspection reports. In the case of poorer performing care homes, councils will ensure that potential residents understand the Care Inspectorate's assessment of those homes, but cannot refuse to place people in those homes if families still wish to make that choice, unless a moratorium is in place.

Under the national care standards and inspection regimes, care home providers are required to provide personalised and responsive care and support. However; the way that care home services are currently structured mean that residential (or 'hotel') services and support services (such as personal care or social activities) are provided by the care home and purchased as a single package or placement. While personalised and responsive services can be and are delivered within this context, it necessarily limits the extent to which some self-directed support (SDS) options can be utilised to deliver greater choice

and control, as there is limited scope to use different providers for different elements of support. In addition, current SDS regulations prohibit the use of direct payments for residential care.

As part of the wider reform agenda described above, COSLA is working with key stakeholders to produce a cost of care calculator which would begin to disaggregate the different components of a care home placement and their associated costs. While the primary purpose of this is to support reform of the NCHC, it is envisioned that over time it could also be developed to support diversification of residential care packages and potentially support the use of SDS options for some elements of support within this setting.

Theme 3

As described above, local authorities apply the Scottish Government's Directions on Choice but have not extensively commissioned care home services other than for specific specialist purposes like rehabilitation or respite. As a result, there is significant competition with regards to quality but not in relation to price for people supported by Councils.

In terms of competition on price, Councils negotiate a national rate annually which takes account of provider's costs in order to maintain equity in charging for care home care across Scotland. However, private contracting for care by individuals, who may or may not apply for Free Personal and Nursing Care, has always been a matter between the care homes and these individuals. The current evidence suggests that the number of older people in need of care who either negotiate directly with providers as a self-funder, or who receive a financial assessment from the council and are identified as a self-funder is growing. Given that these rates tend to be higher than the nationally negotiated rate, and due to the spot purchased nature of the existing contract, in some local markets providers are able and increasingly do prioritise self-funders over publicly funded residents.

It should be noted that in Scotland the commissioning of care homes and the market shaping element of that, is now devolved from Local Authorities to Integration Authorities where the duty to develop Strategic Commissioning Plans and market facilitation plans exists in law. In this regard, Local Authorities no longer have an independent decision making role in relation to commissioning and market facilitation. However, while the responsibility to commission services sits within these new, legally constituted bodies, Local Government still has a significant role and locus on these matters as a parent body to the Integration Authorities, and as the body which retains the statutory duties relating to the provision of social care. The fact that Local Authorities agree and delegate funds to the Integration Authorities also means that the issue of cost – for example of the NCHC - is still within the auspices of the Council Leaders.

With regards to the National Care Home Contract, providers and commissioners have agreed that while the contract has offered many strengths to the Scottish Care Home context, in terms of transparency, stability, risk elevation and so on, it may no longer be fit for purpose in a post integration world and so COSLA, Providers, and IJBs, supported by Regulators, Scottish Government, Scotland Excel and national workforce representative and regulators have entered into a programme of reform work.

This work has included looking at finance through the cost of care work stream which is led by Scotland Excel; Nursing which is led by the IJBs and; Quality, Innovation and Regulation which is led by Scottish Care. All of this work is being progressed in partnership and over the next 18 months could have significant implications for the national contract and its ability to be varied locally within an agreed framework to meet local needs and support active local commissioning and market facilitation.

The cost of care work stream is intended to be the basis for any fee negotiations moving forward, offering increased cost transparency to that process. However, it is also intended to be the foundation for innovation to meet local needs and thereby, ensure the future sustainability of the sector while meeting our shared national objectives for integration.

The Quality, Innovation and Regulation work stream is focusing on how we continue to encourage quality and support continuous improvement in the quality of care. It is also however focusing on how we support innovation in care homes and the services they deliver to meet the emerging needs of IJBs Strategic Commissioning Plans. This has included extensive engagement with the Care Inspectorate who are offering strong support for this process. Finally, as part of the conversation about quality and innovation, we are considering our capacity to shape the NCHC of the future to have a greater focus on personal outcomes and personal choice.

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