Robert Blackwell

Market Study of Care Homes by CMA December 2016

Comments on Statement of Requirements

16th January 2017

By: Member of the Public from a Point of View as

- LPA for Heath & Welfare and Finance & Property
- Family member of someone in a Care Home/Near relative
- RPR

Section 1 – Summary

1.2 - We endorse fully and agree that areas of concern still remain

1.3 - We endorse fully and agree that areas of concern still remain

1.4 - We agree with principles area of concern but feel the scope needs definitions within section 5 themes

1.6 - We understand and agree with the 4 broad themes however we are concerned that the interdependencies between some of these themes and sub areas within them must not be missed or left out of the review itself. Principally a fifth theme could consider;

The role and interdependencies of other care providers to Care Homes namely all the support services that the Care Home relies upon e.g. GP, NHS, Adult Social Services, CMHT etc. and the respective duty of care obligations between them. Specifically, to look at what impacts or conflicts of care provision occur which we believe exist in some circumstances and where Care Homes can be seen to take no active role to respond to issues, but rather wait in a hope that the 'problem' goes away over time. Therefore, working and making decisions and responding to issues in a timely manner is essential, especially in end of life scenario or for dementia sufferers. What are the respective roles of each of the providers and which policy or framework takes greater precedence in these situations? Some providers seem conflicted between the 'bill payer' and the needs of person in care. How are the individual's right and wishes best balanced and evaluated vs care and medical priorities and what is the care homes Duty of Care to resolve issues and ensure that the right decisions and care is being offered at all times? Particular during any interregnum type period before assessments or best interest reviews can be completed (see general comment in section 5)

1.7 – we would be happy to provide input and case specific information to this review if required. At a professional level I have been involved with delivering such reviews of complex scenario and balancing the many challenges of legal, professional, governance etc. in to one set of requirements. Critically the spirit and intent of the review must not get lost in such analysis which can mask the real need and extent of changes needed to build sustainable impact. To date this has not been achieved by past frameworks. I also have two relatives currently in care so have first-hand

experience of differing care standards and issues with the care provided as well as concerns over restrictive practices. One of which required independent legal counsel to resolve so the availability of qualified documentation of the issues can be provided under confidentiality.

Section 3 summary

3.2 ('d' added)

Identify any weaknesses in the regulatory framework of other providers of key services to the care home sector, recommend any necessary changes to such framework and if necessary propose additional guidance on the interdependent roles across the sector for improved protection for care home residents and the families who represent them.

3.3 - We do not see that changes to consumer law will result in a significant change or help residents or families to better manage or understand their rights in the Care Home market as these rights in general are poorly understood by most. The breakdown here is the finger pointing, it's their responsibility … not us, we are just the care home. A clear code of practice on their responsibilities and duty of care, in plain English, would be a positive output from this review.

3.4 – we will consider how best to use the reporting page/process.

Section 4 summary

4.6, 4.10 & 4.11 – The Care Act has caused confusion and across the Care Home and Care professionals, including GP's, the Act is poorly understood in general which can cause unintended consequences from well-intended interventions. **Issues and case studies as a consequence of the Care Act and resulting behaviours need to be specifically reviewed as part of this scope**. i.e. is the need for compliance with the Care Act as it's understood now by the market, taking priority over the actual quality of care being provided.

4.29 – Red tape is a burden but equally this is being used by care homes to bamboozle residents and families and to hide behind it. Evidence of the duty of candour being provided needs to sit alongside this review of process and frameworks (both soft and hard measures).

Section 5 in general

We endorse all the main points of review in the scope of work however alongside greater responsibility, there must also follow greater duty of care principles/accountabilities such they are an integral part of the delivery of quality of life outcomes. Under the interdependency theme the question is, is the care model / structure right? Who has what accountability for what?

The view I offer is that the care homes have to become the centre or hub to all other interested parties for the delivery of care excellence; the NHS, SS, family and friends being the spokes. This is particularly important where mental health and dementia issues are involved and consensus is a key requirement of the current frameworks. The GP should not be the decision maker on overall 'wellbeing' needs and should only be responsible for providing medical advice (snapshot assessments do not work. The care home has a 24/7 point of view). The care home must take

overall responsibility for wellbeing (the sense of) which is just not happening in the present structure. Retained contracts with GP practices can also restrict choice and can result in a conflict of interest between GPs and care homes. Should a GP or others feel that there is a vulnerability concern or safeguarding issue then this should be raised with the home directly with the executive leadership of that home being liable and accountable to resolve any issues quickly in the best interest of the person in their care. Presently, no one body takes overall responsibility for conflicts of views or opinions. Conflict situations stagnate with increasing miss-understanding and disconnected actions following, leading to great stress for carers, families and all involved.

In scope should be to consider this hub accountability for overall wellbeing of the individual in care which would need to demonstrate as being delivered again a new framework model. It would also need to show that it encourages support to be delivered in a balanced manner and not just on hard health issues but to include measures for the wishes and sense of wellness of the individual and not just physical measures of health i.e. medication has been taken etc. As part of this (and as covered in the scope proposed) Care Homes must then be monitored to shape the market such that they drive appropriate behaviours across the whole sector. Equally care must be seen to not be disproportionate in its response to 'bits' of various frameworks and the Care Act as is currently happening due to the disconnected thinking that currently exists (there needs to be a hierarchy of needs structured in to the framework). Care Homes are already, in effect, in a monopoly position – once an elderly, frail person is in and settled in a care home, even one selected in haste, it is very difficult to near impossible to move them. As such, Care Homes are in a position of significant power – residents don't wish to complain (for fear of repercussions on their care), families complain but are not the 'customer' so they are ignored and there is no right of appeal if they feel there is any unfair treatment. The consumer act in this scenario becomes irrelevant as it cannot be enforced or levered to the benefit of the person in care. This sense of loss of control is again the impact of this disconnected state as everyone points at the other person to answer your question. The effect is that care homes can do what they like – increase their fees as they like and are in control of most of the information relating to the individuals care and who sees what. The happier and more settled the person in care, the more power the home has.

In scope must be tests for the lack of transparency, in the care sector that in general hides behind process doctrine so as to block information with many care professionals claiming information is privileged and not allowed to be shared. This makes the role of Attorney as a decision maker on behalf of someone else near impossible. If the care home won't provide the paperwork and be transparent with information, then working and planning for any future needs, with any certainty, is near impossible. The duty of care placed on an Attorney is thus compromised from the outset. For example, process is used to deflect responsibilities. Care notes often state 'family/NOK has been consulted' when they have not, and unless you can gain access to these files the Attorney or family are blissfully unaware of what is really going on. Any new framework must test its practicality to be enforced, so in this example they must be able to show that documents and information has been 'actively' shared and in a timely manner with all parties, such as funding (affordability) test, proposed fee increases or DNAR reviews etc.

In scope should be new performance measures that the general public can understand, benchmarking of some kind. Care homes should have to publish financial performance figures/ indicators e.g. sustainability of the business and average income per bed, patient-carer ratios, number of staff sick days and turnover of key staff against national best practice.

In scope should be direct guidance for Attorney Responsibilities as this role is becoming untenable with many family members being unwilling to take on the role and risk being criticised and left exposed by the professional care community which blocks information to any person that is not a trained care worker or who might challenge any decisions being made. The review should establish the ease or difficulty that exists for Attorney's to make informed decisions. For those residents in care and subject to DOLs legislation, the appointment of RPRs is equally challenging with many family members or friends not willing or able to take the role of RPR. Paid for advocates are the 'natural' alternative option but do not really know the person or their likes and dislikes. **The role and accountability of the RPR in law and frameworks needs to be in scoped as part of this review**, including responsibilities for reporting/keeping the family informed but specifically any appointed LPAs.

In scope should also be accountability for supporting the families of a person in care such that they can afford the care on offer in the long term. The care home should also be tasked with ensuring that all benefits that are applicable are applied for in an appropriate and timely way.

Lastly the scope should also look at a benefits framework as approaches to performance management and decision making in providing care i.e. who benefits the most and why so that the transparency of policies etc. can be tracked.