Competition and Markets Authority

Care Homes Market Study

Written submission from:

The Association of Directors of Adult Social Services (ADASS)
The Local Government Association (LGA)

March 2017

About ADASS

1. ADASS is a charity. Our objectives include:

    a. Furthering comprehensive, equitable, social policies and plans which reflect and shape the economic and social environment of the time.
    b. Furthering the interests of those who need social care services regardless of their backgrounds and status.
    c. Promoting high standards of social care services.

2. Our members are current and former directors of adult care or social services and their senior staff.

About the LGA

3. The LGA is the national voice of local government, working with councils to support, promote and improve local government.

4. The LGA is a politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

Legislative context

5. The provision of residential care services in England has a legal basis in the Care Act 2014. The legislation covers a range of relevant issues, including:

    a. A requirement for councils to “promote the efficient and effective operation of a market” in which there are a variety of providers, offering high quality services, backed up with sufficient information to help individuals make informed decisions about how best to meet their needs.
    b. A requirement for councils to meet the needs of people in cases of provider failure.
    c. The Care Quality Commission’s market oversight regime.

6. The legislation's accompanying statutory guidance expands on these duties further. It sets out the principles which should underpin market-shaping and commissioning activity:

    a. focusing on outcomes and wellbeing
    b. promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support
    c. supporting sustainability
    d. ensuring choice
    e. co-production with partners

7. The statutory guidance also sets out the steps which local authorities should take to develop and implement local approaches to market-shaping and commissioning:

    a. designing strategies that meet local needs
    b. engaging with providers and local communities
    c. understanding the market
    d. facilitating the development of the market
    e. integrating their approach with local partners
    f. securing supply in the market and assuring its quality through contracting

8. The Care Act also sets out important duties on safeguarding. These apply in relation to adults who:

    a. Have care and support needs (irrespective of whether the council is meeting those needs)
    b. Are experiencing, or are at risk of experiencing, abuse or neglect
    c. As a result of their care and support needs, are unable to protect themselves from abuse or neglect or the risk thereof.

9. 'Abuse or neglect' covers a broad range of issues including: physical abuse, domestic violence, sexual abuse, psychological abuse, financial or material abuse, discriminatory abuse, and organisational abuse.

10. Under the legislation councils must:

    a. Make enquiries (or cause others to do so) if they believe an adult is experiencing, or is at risk of experiencing, abuse or neglect. Such enquiries should establish whether action needs to be taken and, if so, by who.
    b. Establish a Safeguarding Adults Board.
    c. Arrange, where appropriate, an independent advocate to represent and support an adult, who is the subject of a safeguarding enquiry or Safeguarding Adult Review, where the adult has 'substantial difficulty' in being involved in the process.
    d. Cooperate with each of its relevant partners

11. All of the duties outlined above are important and councils take them all extremely seriously as part of their overall duty under the Care Act to promote people's wellbeing. The combination of the wellbeing principle, other relevant sections of the Act (such as duties on councils to "establish and maintain" the provision of information and advice) and specific legislative requirements in relation to care homes frames the CMA's market study, whether that be consumer protection issues, the process of choosing a care home, regulation, or competition.

Financial context

12. Both ADASS and the LGA fully support the Care Act, having championed each stage of its development including, for instance, the Law Commission's review of adult social care law and the subsequent draft care and support bill. However, the legislation cannot be divorced from the environment in which it is being implemented, funding being the most critical. The combination of current pressures, rising demand, increased costs including the National Living Wage and funding reductions is inevitably impacting on councils' ability to deliver the kind of care and support system articulated in the Care Act – both in letter and in spirit.

13. The state of adult social care funding is a consequence of the state of local government funding overall. Over the course of the last Parliament central government funding to councils reduced by 40 per cent in real terms.

14. Adult social care could never be immune to the impact of reductions on this scale given the service typically accounts – at a minimum – for around 30-35 per cent of a council's budget (for councils with social care responsibilities). Therefore, as the 2016 ADASS Budget Survey report shows, the service has had to manage funding reductions totaling £4.6 billion over the last five years, with a further £941 million savings planned for 2016/17 (or 7 per cent of net budgets). Put bluntly, it is simply impossible to make savings and reductions on this scale and not see any consequences. These include:

    a. A degree of forced short-termism: pressures on funding are exposing a tension between prioritising statutory duties for those with high level needs and pursuing activity that aims to prevent and reduce future demand. This is not a position councils want to be in; indeed as the ADASS budget survey shows, directors see prevention as the most important mechanism for achieving savings. However, while spend on prevention has increased this year as a proportion of total budget, actual spend is down 4 per cent in cash terms.
    b. Growing unmet need: as Vicky McDermott, chair of the Care and Support Alliance has said, "An estimated one million older people have unmet needs for care and support in England and research on disabled adults suggests that at least two in five are not having their basic needs met.

c. Strain on carers: as unmet need grows so too does the number of informal carers, yet their experience of the system designed to support them is not always positive. A Carers Trust survey as part of its commission on 'the Care Act: one year on' shows that 65 per cent of carers had not had an assessment and those that did had to wait, on average, 8 weeks.
d. An overstretched workforce: recruitment and retention remains an issue amongst the adult social care workforce and the overall turnover rate of 25.4 per cent is only likely to worsen if funding pressures are left unchecked and continue to impact on pay, learning and development and clear pathways for progression. The need to fill an extra 275,000 posts in adult social care over the next decade simply will not happen if the status quo is maintained.
e. Continued pressure on the NHS: the importance of social care and support in helping to alleviate demand pressures on the NHS is well accepted amongst senior figures from across the care and health sector. Almost nine in ten GPs believe reductions in social care contribute to the pressures faced in their surgeries and 99 per cent of NHS leaders believe that cuts in social care funding are putting increasing pressure on the NHS as a whole. Latest data on delayed transfers of care (DTOC, November 2016) shows that just under 35 per cent of delays are attributable to social care, up from just over 31 per cent in November 2015. This increase may well continue if the question of social care funding remains unanswered.

15. Of particular concern is the consequences of underfunding within adult social care on the provider market. UK Homecare Association research for 2014/15 shows that 50 per cent of providers who were aware of council tender opportunities decided not to bid on the basis of price. This reflects an inevitable squeeze on fee levels in recent years as councils have had to use what limited levers they have for managing cost in the face of unprecedented cuts to funding.

16. Councils are decreasingly able to facilitate development and secure supply in the market and increasingly about managing a market that is incrementally failing in terms of availability, choice and quality. It is not just an issue of providers declining to bid. An ADASS snap survey of directors in October 2016 revealed that:

a. 96 councils (74% of the sample) have an in-year overspend on their adult social care budgets.
b. The combined overspend for those 96 councils is £295 million.
c. 93 councils (72%) predict an overspend for the year ended 31 March 2017.
d. Combined projected overspend for 93 councils is £384 million.
e. 54 councils (42%) have experienced the closure of one or more home care provider in their area in the last six months. The figure rises to 80 councils (62%) for residential and nursing home closures. If this happens in an unplanned way it has impacts on wellbeing and mortality

f. In addition, 74 councils (57%) have had home care providers hand back contracts and 27 (21%) have had residential and/or nursing care providers hand back contracts.
g. The closure of services and hand back of contracts has affected an estimated 10,820 people using council funded care services in 129 councils.
h. A large proportion of councils have quality concerns with one or more home care providers (79% reported this) and/or residential and nursing care providers (84%).

17. LGA analysis of providers' own 'fair price of care' calculations suggests that at least £1.3 billion could be needed immediately to stabilise the provider market and put it on a sustainable footing. This is a minimum figure and a cost that is difficult to quantify accurately.

18. Looking forward the LGA previously (pre-2017 Spring Budget) estimated that adult social care inflation, demography and National Living Wage pressures create a funding gap of £1.3 billion by 2019/20 (separate and in addition to the £1.3 billion gap between what providers say they need and what councils currently pay in fees) as part of local government's overall projected funding gap of £5.8 billion by the end of the decade.

19. The Government's solutions to the question of adult social care funding ahead of the 2017 Spring Budget were insufficient. The Adult Social Care Support Grant of £240 million is for 2017/18 only and is simply a reallocation of existing monies earmarked for local government (New Homes Bonus funding).

20. Additional flexibility with the social care council tax precept offers some additional funds in the short-term but overall councils will be no better off in terms of annual income by 2019/20. And, of course, the Government's estimate of the precept is based on the assumption that all councils will use it in full in each year of the Spending Review period. It is impossible to predict how the precept will be used in future years.

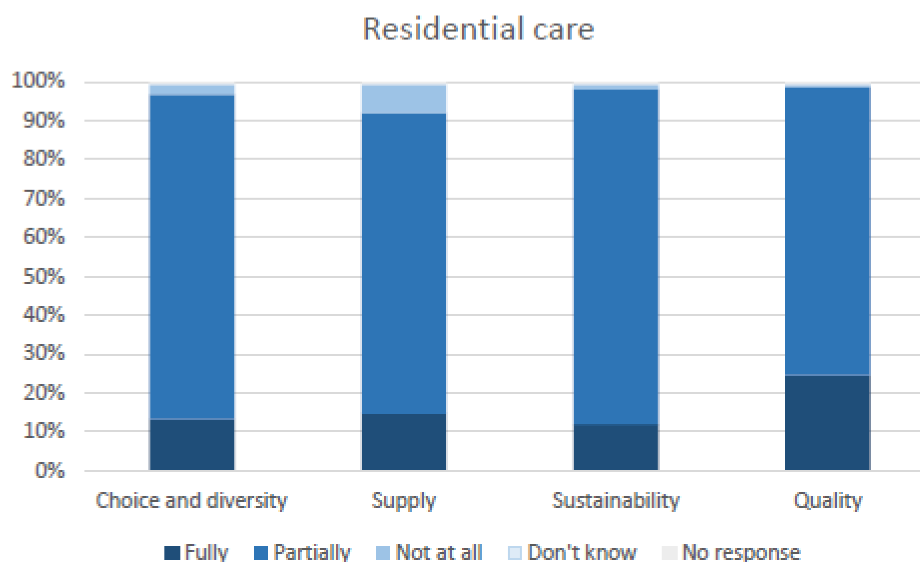
21. The 2017 Spring Budget announcement of an additional £2 billion for adult social care over the next three years, including just over £1 billion in 2017/18, is welcome. This will go some way to helping councils protect services for older and disabled people.

22. However, short-term pressures remain and the challenge of finding a long-term solution to the social care crisis is far from over. To close the funding gap facing social care additional funding needs to be recurrent and put into local government baselines.

Care Act implementation

23. It is in the context outlined above that councils continue to implement the Care Act and take forward their responsibilities under the legislation. And in this context, the joint LGA, ADASS, Department of Health 'stocktake' of progress with implementation, provides some interesting findings. The latest stocktake from June 2016 (one year on from implementation) shows that:

    a. Councils report low levels of confidence that there is sufficient money in the adult social care system to meet their statutory duties.
    b. 38 per cent of councils say they are not very or not at all confident in the budget for implementation in 2016/17.
    c. 73 per cent of councils say they are not confident beyond 2016/17.
    d. Councils overall report high levels of confidence in their arrangements to provide a comprehensive advice and information service to their whole population.
    e. 86 per cent of councils say that they are confident that they are actively shaping a diverse and sustainable market providing quality services that meet the care and support needs of the local population in 2016/17.
    f. This figures increases to 89 per cent for beyond 2016/17.



Quality, the regulator and safeguarding

24. We support opportunities to draw together a fuller picture from all the sources of data and information available to assist providers, regulators, commissioners and the public understand the quality of care provision. We are aware that many local areas and regions already have mechanisms for sharing data and intelligence. There is a need to identify and build on existing good practice of this collaborative work at local, regional and national level.

25. Providers have a key responsibility in relation to the quality of the care and support they deliver - but we are very conscious that providers, commissioners and regulators are completely interdependent in relation to ensuring quality, particularly in a very challenging financial environment. From previous experience, it is only when the Care Quality Commission (CQC), providers and commissioners work together, with a shared view of quality, that service failures, pressures on capacity and improvements can be addressed effectively.

26. The importance of good commissioning cannot be overstated. Increasingly, councils are developing innovative programmes of pro-active support for care providers, in order to ensure a diverse and sustainable supply in fragile markets, informed by intelligence, which goes beyond simple contract monitoring and looks at the multiple characteristics of each business. The LGA's Care and Health Improvement Programme is building on the existing route map and peer challenge on commissioning for better outcomes, as developed jointly with providers and people that use services. The ADASS Commissioning network is engaged in a raft of activity both regionally and with national partners including CQC and NHS England to support the sustainability of the market, enhance quality of provision and plan for the event of provider failure.

27. The information CQC holds can also play a very useful role in safeguarding arrangements. We welcome ongoing work with CQC, the NHS and providers to address the overlap between poor care and abuse and neglect. We are keen to understand how contract failures, safeguarding concerns and complaints to councils can be assimilated into the findings from CQC regulatory activity. The rising number of safeguarding incidents may in some part be a reflection of concerns over poor quality of care as well as abuse and neglect, and financial failure is in many instances preceded by a decline in quality.

28. Overall, the data presents an encouraging picture. As set out in the CQC's 'state of care' report for 2015/16:

    a. 72 per cent of all regulated adult social care services were rated 'good' or 'outstanding' as at July 2016, compared with 60 per cent the previous year.
    b. 92 per cent of services were rated 'good' or 'outstanding' at being 'caring'.

29. Additionally, latest Adult Social Care Outcomes Framework data for 2015/16 shows that 85.4 per cent of service users in England report that services they receive help make them feel safe and secure. This is a statistically significant increase compared to the 84.5 per cent report in 2014/15.

30. However, there is no room for complacency, particularly given the CQC's finding that 'safe' services were rated as 'good' or 'outstanding' in only 68 per cent of cases.

Regional variation

31. Clearly there is variation in the care home market, not least in terms of the number of self-funders in different parts of the country. In 2014 the percentage of self-funders was as follows, as per Laing and Buisson's 'Care of Older People: UK Market Report:

	Self-pay %
North East	18%
North West	36%
Yorkshire and the Humber	42%
East Midlands	43%
West Midlands	39%
East of England	45%
Greater London	30%
South East	54%
South West	49%
Wales	24%
Scotland	30%
Northern Ireland & Isle of Man	16%
United Kingdom	41%

32. In their most recent research Laing and Buisson estimate that the average fee level paid by councils for residential care for older people is £486 per week in 2016/17, against a Laing and Buisson required 'floor' level of fees of £590 per week. They conclude that self-funders are therefore cross-subsidising the care home sector by £1.3 billion a year.

33. Within this average floor level there is further variation as the following table of average weekly care home fees illustrates (again from the aforementioned Laing and Buisson report).

Region/Cost per week	Care home	Care home with nursing
East Midlands	£525	£681
East of England	£659	£813
London	£628	£889
North East	£522	£631
North West	£471	£678
Northern Ireland	£483	£624
Scotland	£534	£704
South East	£669	£920
South West	£578	£844
Wales	£517	£676
West Midlands	£529	£731
Yorkshire and the Humber	£513	£683

34. Although not comparing like with like (the floor price at paragraph 30 is for 2016/17 yet the regional average weekly fee in the table above is for 2014/15) this demonstrates the geographical variation in the cost of residential care, which will inevitably impact on choice and price.