

General

1. Do you agree with our analysis of the issues affecting the care homes market? Please provide evidence in support of your views.

In general we agree with many of your conclusions and indeed our current practice is in line with what you seem to be suggesting. We know that many people find it challenging to make decisions about care under the stressful and time pressured circumstances which often (but not generally) apply. We are committed to making the pre-admission and admission process as reassuring and comfortable as possible, and have documentation and processes in place to ensure that residents and relatives can make informed choices.

However there are a number of areas where we are not sure of the evidence on which you have reached your conclusions (unwillingness of residents to seek information, inability of residents to choose between homes, lack of price transparency by providers) and indeed some areas where we have evidence that is contrary to your initial findings (returns are sufficient to cover current operating costs). Our view is that both self-funded and publicly funded residents can only really understand the price-quality relationship in terms of care when they have visited the home and have had time to discuss in depth with our home manager or nurses the needs of the resident and the offering of the home in terms of facilities and services. This face to face engagement often provides a safe and secure setting to discuss any concerns or areas where residents or their relatives feel uncertain. We seek to partner people in their choices, specifically with regard to pricing (be it self-funders or top ups) discussions will be dependent on an assessment of individual care needs and room choice. The personal nature of the service being purchased means that detailed face to face discussions are an essential part of the care purchase and care home selection process.

We do not believe that returns from publically funded residents are sufficient to meet current operating and prospective operating costs in our homes.

We would encourage the CMA to look at the opportunity to recommend an independent body with real teeth to establish a "fair cost of care" for publicly funded residents. Absent such a recommendation we believe that the sector may pass the tipping point identified by the CQC and that significant current capacity could be lost.

2. Do you have any comments on our proposed next steps and remedial action, including any suggestions for other remedial action?

We would want to make sure that any steps to improve price transparency are well informed and appropriate in order to actually help prospective residents. We don't recognise a demand from prospective residents for there to be a publicly available price list.

Equally any independent body on fees must have real teeth to intervene with local authorities in order to enforce a fair cost of care in the same way that HMRC enforces the national living wage or the NHS implemented the Funded Nursing Contribution via the Mazars study.

We look forward to identifying with the CMA best practice in terms of the admission process in general and specifically a new and consistently applied set of contractual terms.

Choosing care homes

3. What could be done to make information about care homes more useful and easily accessible so people can see which care homes have availability and compare factors such as fee rates, quality ratings and contractual terms or whatever other information they may find useful and can engage with?

Our view is that most of this information can best be communicated as part of a face to face discussion with the Home Manager. We believe we have comprehensive materials available for prospective residents to view but it needs human interaction from a well experienced partner to really help in the admissions process. It is important to recognise that home choice ('the sale') is a personal decision based on a variety of factors most of which relate to service ('the provision of care') and not the asset itself. Simplistic price comparison runs the risk of de humanising what is a complex and sophisticated decision making process. It is critical that the CMA considers the subtle differences between purchasing a white good for example and a personally delivered, often very specialised care service.

4. How could people be encouraged to consider, and plan ahead, for care needs away from an immediate crisis or circumstances arising that trigger a decision to move into a care home at short notice?

Raising awareness of the need to plan for later life care costs could be considered in the same way that broader long term financial planning (pensions & ISAs) is encouraged.

5. Do people need greater support in considering the care options available to them and in choosing a home, and if so what are the best ways to ensure this is delivered effectively, eg giving greater personalised assistance through 'care navigators' and other advocacy services?

Care home choice is highly personal and multi factorial. A number of advocacy services already exist although most of these are informal. Furthermore, comparison information is readily available through services such as carehome.co.uk and Care England. The risk of focusing on further advocacy services is that proliferation of information leads to confusion – too many information sources does not always provide greater clarity.

Complaints and redress

6. How can people be helped so that they feel more comfortable in making a complaint about a care home, e.g. through advocacy or support services?

Within brighterkind we believe that we have a very robust complaints process. Residents & relatives are encouraged to voice concerns and raise any issues, either directly with the Home Manager or another member of the brighterkind team. All formal complaints are dealt with as part of a 28 day process and complaints (and compliments) are recorded on our incident reporting system. Complaints are tracked monthly and status reports discussed as required at leadership level. Face to face resolution is encouraged wherever possible. External support services already exist such as the

respective regulators, Ombudsman, Citizens Advice, the Information Commissioner and Local Authorities. We believe that the focus should be on promoting transparency within providers rather than creating additional external support structures or bureaucracy.

7. Would it be helpful to introduce a model complaints process specifically designed for care homes in each of the four nations?

We do not believe that this would be necessary however we would support any model for complaint handling. We would be willing to share our current processes with the CMA if this would be helpful.

8. To what extent would better signposting and access to the ombudsman improve the complaints processes?

We do not believe that it would. The essence of an effective complaint handling process is improving customer service within providers. Encouraging complaints to go directly to an Ombudsman risks unnecessary escalation and is likely to make dispute resolution more formal and difficult. We believe that the CMA would be better served promoting transparency within providers and encouraging providers to take real responsibility for addressing complaints using internal processes.

9. What role should regulators play in relation to complaints systems and complaints from individuals?

The regulator already plays a role in the complaints process. Individuals can contact regulators directly and / or involve them in a complaint process. We do not believe that it is necessary to expand this role.

Consumer protection

10. Are there any other consumer protection concerns in relation to care homes that we have missed and which we should be looking at?

No

11. Would it be helpful to produce further guidance for care home providers on their obligations under consumer law and, if so, what should it cover?

N/A

12. Could self-regulation play a greater role in this sector to drive good practice e.g. through the development of voluntary consumer-facing codes of practice?

We believe that to the extent possible a single regulator in each territory should help drive good practice.

13. What role might sector regulators play in helping to further 'embed' compliance with consumer law and best practice across the sector?

We believe that to the extent possible a single regulator in each territory should help drive good practice.

14. Are there any areas where additional consumer protections may be necessary beyond those provided by consumer law, existing sector legislation and national care home standards, e.g. in relation to ensuring clear, timely and comprehensive information for people when choosing care homes and to safeguard residents' deposits in full?

No

State procurement

15. Are there any areas in relation to the procurement of places in care homes where more sharing of good practice amongst public bodies would be useful, e.g. in relation to offering choice to people and facilitating top-up payments?

We believe that top ups are crucial in offering residents choice and driving investment in the sector. In many areas regulators or commissioners seek to make top ups more difficult to achieve and this should be changed. There needs to be a mindset shift from how can we get the cheapest possible care for as many people as possible to one where a range of different services are offered by the market and the resident exercises choice. Higher fees should not immediately be seen as a bad thing. They encourage the market to offer higher quality, increased investment and greater capacity. It is important for the long term health of the sector that operators are encouraged to invest, develop and innovate.

16. What factors should we take into account in our further work exploring price differentiation between publicly funded care home residents and self-funders?

In our view the price differential is accounted for by the different price level required to encourage investment in quality and greater capacity (self funder price) and the minimum cost to keep existing capacity open. We believe that the CMA should be clear on this and can easily model the economics of a typical home in each market to demonstrate this e.g. a new build "private" home operating at an AWF of £1000 and an EBITDARM >£15k/bed versus a "public" 90s purpose build home with AWF of £600 and a EBITDARM/bed of £7k. Typically where the self funder market operates above these levels capacity will be added whilst where public funding is below these levels capacity will increasingly fall out. In our view the CMA has an opportunity to highlight the risks to the publicly funded sector where fee rates are such that there is no incentive for investment.

Investment in future capacity

17. What are the barriers to providers responding to future needs for care home beds and how are these best addressed?

Levels of public funding is the principal issue.

18. Can local authorities and other commissioning bodies effectively 'shape' how local care home markets develop and, if so, what are the indicators that this is working well?

Shaping should occur with the level of public funding. LAs should not offer specific rates for a home other than for quality.

19. What is the potential to promote long-term considerations through better sharing between local authorities and other commissioning bodies of good practice on care home ‘market shaping’ and planning and procurement?

We are sceptical here but will await CMA views.

20. What is the scope to establish an independent body or bodies with a duty to provide support and guidance to local authorities and other commissioning bodies in relation to long-run planning and facilitating development of care home capacity?

We believe that any independent body should assess and set the public rate for different levels of care (nursing versus residential, dementia, higher care needs) in the same way that the Mazars report did so for NHS in England deliberating on the FNC increase. This can be regionally based but any body must have real powers and regulatory teeth to enforce a fair cost of care. Why should we not enforce a fair cost of good care in the same way we enforce a national living wage? The recent council tax precept increases, have in many cases, not been passed onto operators, rather they have been used to plug ‘existing budget gaps’ – in other words reduce local council deficits. There is currently no body that is able to enforce against Local Authorities and ensure that this additional income (which the taxpayer believes is being passed on) is passed on to care home operators.

Funding and staff challenges

21. Would there be merit in establishing an independent body (or bodies) to develop a framework to estimate reasonable fee rates, which will take account of the full cost of care, to advise local authorities and other commissioning bodies, and to adjudicate on disputes between local authorities and providers?

We believe that an independent body should assess and set the public rate for different levels of care (nursing versus residential, dementia, higher care needs) in the same way that the Mazars report did so for NHS in England deliberating on the FNC increase. This can be regionally based but any body must have real powers and regulatory teeth to enforce a fair cost of care. Why should we not enforce a fair cost of good care in the same way we enforce a national living wage? There is little point creating more ‘bodies’ if they do not have the ability to enforce and ensure that fee income is passed to providers (see answer to the previous question).

22. Would there be merit in local authorities being required to be more transparent in relation to the fee rates they pay for care home places and how these fees are determined?

The key issue for us is that Local Authorities pay a fair and sustainable cost of care. There is considerable market evidence to support such calculations but in many parts of the country there is a deficit to widely accepted figures, sometimes by as much as £200 per resident per week.

23. How should the challenges of recruitment and retention of care home staff be addressed, including by local authorities, in particular are there any regulatory barriers to the labour market?

We have identified one main regulatory barrier operating in the labour market. The new assessment of English language for overseas nurses which in our mind is too cumbersome and set at too high a level. Any overseas recruitment process takes 12-18 months from start to finish. The language

requirement for overseas nurses is the same as for Oxbridge university entry. This is an anti-immigrant policy in all but name. Nurse shortages remain and are likely to remain as the key labour challenge in the market for the foreseeable future. Ensuring that nurses remain on a protected skills list as part of any wider immigration policy is essential for the long term health of the care sector.

A challenge that the wider sector faces is a reduced sense of worth that those who pursue a career in care feel which is leading to many people choosing to leave the sector. Care work is hard both physically and emotionally and historically the sector has been very poor at supporting team members. External agencies such as Government (national & local), regulators and the media have conspired to create a blame culture, with fear at its heart that is making it far less attractive to commit to a career in care than it was. Whilst it is not a regulatory hurdle, changing the external perception of care through promoting a sense of aspiration and self worth is a key part of addressing the recruitment challenge. Local Authorities and regulators have a critical part to play in helping to address the pervading culture of fear. More supportive regulation and safeguarding interventions (carrot not stick) is key. It is only when external agencies and care providers start to work together that a career in care will start to become more rather than less appealing.