CMA Market Study of Care Homes

Response to Update Paper

Bupa UK

July 2017

This note sets out Bupa UK's response to the questions raised by the CMA in their Update Paper. We have not provided responses to all questions, only those where Bupa has particular comments.

General (Q1 and Q2)

- We generally support the CMA's analysis and welcome a number of the suggestions for next steps and potential remedial action.

- We would strongly support the CMA's suggestion of specific recommendations to local authorities requiring them to follow a transparent and predictable mechanism to determine fee levels, to include consideration of key costs including operating costs and the cost of capital.

- In addition to specific recommendations for local authorities, we would support the establishment of an independent body to develop a framework to estimate reasonable fee rates, taking account of the full cost of care, including a reasonable return on investment for an average industry provider. Any independent body would need to be given the scope to build a model which accounts for sector variables such as new homes vs older stock. It must also recognise rising dependency in the sector and the impact this has on the cost of care.

- We would also welcome the establishment of an independent body to provide support and guidance to local authorities and other commissioning bodies in relation to long-term planning. To be effective it would need to be truly independent and to be able to enforce action where local authorities are failing to demonstrate that they are undertaking appropriate long-term planning as part of their market shaping duties.

- We welcome the suggestion that one of the proposed independent bodies could play a role in adjudicating disputes between local authorities and providers.

- To be effective, any independent body would need to involve providers as well as local authorities in the development of any framework for estimating reasonable fees or any guidance for commissioning bodies.

- We welcome the further exploration into local authorities deterring the use of top ups which otherwise increase the choice available to local authority funded residents, and support the proposal for recommendations to local authorities on good practice on allowing and administering top ups.

Consumer protection (Q10-14)

- We would welcome further guidance for care home providers on their obligations under consumer law. In particular, we note the CMA's recognition that many people are uneasy thinking of social care as a "consumer" purchase. Current consumer law, as a result, is not always easy to apply to the care home/resident relationship.

- Any guidance or further consumer protections in relation to clear, timely information for prospective residents must consider that care home residents often do not have the benefit of significant periods of time to "shop around", and that there are pressures from local authorities to admit residents quickly.

State procurement: best practice (Q15)

- Clearer guidance for both LAs and CCGs regarding top-up payments would be welcome, including a clear emphasis on choice.

- A move towards greater standardisation of LA contract terms and conditions would be welcome.

Price differentiation (Q16)

- In exploring price differentiation between publicly-funded and self-funded residents, acquisition costs for self-funders need to be considered. These costs include advertising/marketing as well as contract processing.

- Other additional costs associated with self-funders can arise when a self-funding resident in a higher cost facility becomes eligible for local authority funding as their wealth falls below the threshold for local authority support. In these situations providers can find themselves having to find alternative accommodation for residents or having to provide care at a significantly higher cost than the fee provided by the local authority.

- Administration and management costs are also higher where a home manages different resident cohorts (LA/CCG/self-funded).

- It should also be noted that LA/CCG fee rates rarely take into account quality reporting or contractual compliance costs.

- Any assessment also needs to factor in the additional risk in regard to self-funders, arising, for example, from debts and write offs.

Barriers to providers responding to future needs (Q17)

- The biggest barrier is the failure of authority fees to increase in line with rising costs of care. This is exacerbated by a failure on the part of many public funders to recognise dependency appropriately.

- LA/CCG fees fail to recognise the need for return on capital and profit to invest in refurbishment and rebuild costs, leading to under investment in both current and future supply.

Market development (Q18)

- There continues to be a lack of understanding on the part of many LAs about how the private sector functions in regards to return on capital and profit and the importance of this in funding reinvestment to support future provision.

- To effectively 'shape' their local markets, LAs need to do more to look at and quantify rising dependency by resident type, recognising that different homes have different cost bases due to different resident profiles and different staffing requirements.

- Potential indicators for measuring whether LAs are 'shaping' their markets effectively could include:
    - Capacity/occupancy
    - Referral times
    - Dependency levels by resident type and how effectively changes in dependency are being tracked
    - Staffing levels, including attrition and full time vs. agency usage
    - New entrants to the locality
    - Closures
    - Quality issues/CQC ratings
    - Resident satisfaction
    - Levels of investment in refurbishing/maintaining existing homes and levels of investment in new homes/units

Establishment of an independent body to support long-term planning (Q20) Establishment of an independent body to develop framework for reasonable fee rates (Q21)

- See response to Q1 and Q2.

Fee transparency for LAs (Q22)

- More transparency from LAs on what their fee rates are, and how they have determined their fee rates, including what assumptions were used and how dependency was considered, would be welcome.

Staff challenges (Q23)

- We would encourage the CMA to pursue recommendations in relation to regulatory barriers to the labour market. Staffing pressures are a significant issue in the sector, in particular a shortage of nurses and the resulting increases in agency costs.

- As part of any investigations into staffing pressures and the impact of this on both the cost of providing care and quality, particularly the impact of the shortage of nurses, we would encourage the CMA to review the work done by Mazars as part of the review of the Funded Nursing Care (FNC) rate.