



Lancashire Care Association Co. Ltd

Representing Providers of Quality Health and Social Care

Response from Lancashire Care Association to CMA Care Homes Market Study Update Paper.

**Further to our Submission to the CMA: “CMA Market Study of Care Homes.
Statement of Scope – Lancashire Care Association comments”, 16 Jan 2017.**

Key Questions

General

1. Do you agree with our analysis of the issues affecting the care homes market?

Please provide evidence in support of your views.

The key issues affecting the care homes market are

- i. The absence of any sustaining narrative about the role society wants care homes to play. We don't want warehousing. We don't want abuse hidden in a box labelled 'care'. What does society expect of care homes? What are the components of care that pass the 'mum's test'? Most provider concerns come down to workforce issues. A subsidiary point we make is that the issue the CMA are looking at should not be seen in a 'care homes' compartment but from a whole systems perspective.
- ii. The narrative needs to shift away from blame and we need to move to a place where we can take pride in the care we have to offer society's most vulnerable. We need to rethink where we place care in society's priorities. We need an honest debate about resources and affordability and workforce capacity.
- iii. Care homes are structurally underfunded: data from LaingBuisson indicates that they are funded to about 70% of a 'fair price'. 'Cross-subsidy' is not the result of over-paying private residents but underpaying public care. We have plenty of evidence, from LaingBuisson and elsewhere as to what the costs of care are. We have had plenty of commissions and the like, up to and including Dilnot, which have explored funding and 'who pays?' issues but no political will in the midst of the challenges to public finances as to how to resolve this complex and politically sensitive issue. This is the current position.

- iv. Care homes are unable to influence structural issues around workforce insufficiency and capacity. This is the biggest issue of all. This loops back around to point i. because the care workforce of the future is at school now. ‘Workforce. Workforce. Workforce’ is our mantra.
 - v. We are particularly concerned over the pressures on Registered Care Managers (LCA facilitates a RCM Network across Lancashire) and the challenges of the RCM job. This is the pivotal role in ensuring quality and safety in the sector and ensuring the right culture is established. Any resources directed at building up this ‘corps’ is a good investment in care quality. One in eight RCM posts are vacant.
2. Do you have any comments on our proposed next steps and remedial action, including any suggestions for other remedial action?
- i. Transparency is key. No one should face hidden payments and extras. There should be no sleight of hand.
 - ii. Fees should be underpinned by a transparent costing model. We have used the LaingBuisson ‘Fair Price’ model (www.laingbuisson.com) in the past with Lancashire County Council and latterly (2014) completed an ‘actual costs’ exercise which showed providers at the time with a 0% return. We have worked with Caresolve (www.caresolve.org.uk) to help providers understand their costs and how to present their costs to customers and commissioners.
 - iii. The fragility of the sector and the narrow margins on which it operates should inform any processes around remedial action.
 - iv. We have drawn up rules around ‘top-ups’ (‘care contributions’) in the Lancashire area in the past for potential residents and families, local authority staff and care homes, for the public domain.
 - v. Homes looking for care contributions (‘top-ups’) are discriminated against. So long as they are reasonable and transparent an underfunded sector cannot manage without this additional money. Some research we did some while ago now through the, then, Social Care Partnership (between LCA and Lancs County Council) showed falls in ‘top-ups’ as fees made progress towards a fair price.

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?
 - i. In Lancashire 35-40% of care home beds are funded through the local authority, 15-20% (we think) through CCG funding for CHC and the rest is made up of ‘customers’. Clarity of information to funded and self-pay residents is something that we should be able to address through our partnership processes with health and local authority colleagues.
 - ii. LCA works through a Health and Social Care Partnership. This partnership has had an important role over the years since it was set up (in 2004) in addressing contractual, fees and quality issues. It has worked with independent costings models to inform fee-setting.
 - iii. We are currently working with local authority and CCG colleagues on how to rationalise the many sources of monitoring information for contracts, safeguarding and inspection and consolidate the information gathering. This will mean less of a reporting burden on providers and it also offers the possibility of a smaller volume of key information that customers might be able to access and use in decision-making. Relevant key up-to-date information is important. Information systems need to move toward real-time information. Interpreting inspection and safeguarding information is complex and challenging for customers.
 - iv. The best homes tend to have waiting lists rather than availability. Homes which are dependent on public funding are often those with more vacancies.
 - v. CQC information is not ‘customer’ friendly and the ratings categories do not give potential residents an accurate picture and can be significantly out of date. CQC information is too negative and the ratings categories, we argue, are difficult to interpret for potential residents and their families.
 - vi. We have always encouraged providers to have independent quality marks (e.g., RDB, IIP, ISO). It was a requirement when the Fair Price model operated in the Lancs area.
 - vii. Person-centred approaches should ensure prospective residents and their families are properly informed. There are training, leadership and organisational culture issues to address to ensure a person-centred approach defines the encounter.

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?
 - i. This is a political, cultural and psychological issue. It is also one where the insurance sector has been unable to present the right 'products' to 'consumers' to insure against catastrophic care costs.
 - ii. Many over 80s receiving care now thought the National Insurance system was for this purpose.
 - iii. Care homes are part of the spectrum of care. They should provide good and excellent quality care and it should be a "positive choice" rather than a "distressed purchase" and the system should allow time to potential residents and care homes. A cash-strapped, underfunded health and social care system cannot achieve this across the board. Introducing 'safe space' and 'reflective time' into a system under pressure has substantial cost implications.
 - iv. LCA are engaging with financial advisors and SOLLA reps to explore how we can work with care home residents, potential residents and local authorities (if we can, to move 'upstream') to encourage people to plan ahead and get the proper advice. One in four residents in care run out of money. Better financial advice earlier would mean there would be less need to call on public funds. It is a challenge to improve this interface between public bodies and financial advice.

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?
 - i. Independent, competent, advice is key. Whether 'care navigators' or other advocacy is the answer depends on the competence of the people in those roles and the support and training they get.
 - ii. We are inexorably moving towards more information online and more real time monitoring. Transparency in this context is a good thing and we welcome it.
 - iii. The biggest challenge for people looking for a home are the time pressures and the challenges associated with moving from free at the point of delivery health services to means-tested social care services at a time often of crisis all in the context of chronically underfunded health and social care services. A system where homes weren't under so much pressure to fill beds to remain viable because of that underfunding would help work towards a different customer experience in a crisis.

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?
 - i. Complaints are a necessary part of ensuring care quality. Complaints in a system where the culture is of appreciative enquiry and where all those involved in care seek to learn from mistakes is a different thing to complaints in a culture of blame and punishment.
 - ii. No resident should be fearful of making a complaint. None should feel unable to make comments or that they will not be heard. None should feel they cannot express compliments. No one should feel there is nowhere else to go if the complaint is not resolved.
 - iii. Complaints, comments and compliments can benefit from independent advocacy. We need to work to find a supportive milieu where care comes first and last and there is no place for fear.
 - iv. Sir Mike Richards commented: "More needs to be done to encourage an open culture where concerns are welcomed and learned from." We need to work with CQC and other bodies having oversight of care homes to create this new space of 'welcome criticism'.

7. Would it be helpful to introduce a model complaints process specifically designed for care homes in each of the four nations?
 - i. The most pressing challenge, from a provider perspective, is that we have an excess of monitoring and it needs to be rationalised. CQC inspection overlaps with local authority and CCG Safeguarding investigation and also overlaps with local authority and CCG contract monitoring and with Healthwatch roles. There are 'feeding the beast' reporting challenges and monitoring overload, with a questionable link to improving outcomes in the context of a scrutiny industry.
 - ii. Complaints are an important part of any quality system and are to be welcomed but it is difficult for providers to embrace complaints in blame culture.
 - iii. Any model which meant yet another body, or yet more processes, purporting to work in the interests of service users/ customers but really just adding to the burden on providers while delivering no improvement in outcomes and affording no help to providers to improve and to meet increased levels of demand and need would be counter-productive.

8. To what extent would better signposting and access to the ombudsman improve the complaints processes?
- i. The Local Government and Social Care Ombudsman has an important role to play as arbiter of last resort. It is important that everyone in receipt of care and support is aware of the role of the ombudsman.
 - ii. In a heavily-regulated sector we do argue, as a provider voice, that there is a legitimate issue over role clarity given the duplication across a number of bodies which have some oversight role in relation to care.
 - iii. The role of the Ombudsman vis-à-vis the role of CQC and health and local authority quality (and other) monitoring should be clearly distinct.
 - iv. We think it is important that individual complaints are linked to structural issues where providers are hard-pressed, over worked and under-resourced.
 - v. We also think the Ombudsman has an important role in hearing complaints from care providers as private individuals, companies or partnerships about poor commissioning and inspection practice.

Sections 9-14: The tight timescale for responses meant we were unable to consult properly on all sections. We have no comments on 9-14 at this point.

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

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

relation to ensuring clear, timely and comprehensive information for people when choosing care homes and to safeguard residents' deposits in full?

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?

- i. The Social Care Partnership in the Lancashire area drew up guidelines in 2008 for local authority staff, care staff and residents and family around 'top-ups' ('care contributions'). We've always considered these sensible examples of a transparent approach to 'top-ups'.
- ii. LCA has frequently highlighted the potential for us to work with CQC and other stakeholders to disseminate best practice and address barriers working through the Health and Social Care Partnership and by other means. The most important element, we think, in this is the opportunity to develop a positive narrative about care homes and home care services.

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

Fees should be based on needs and the costs of meeting those needs. There should be a transparent costings methodology employed. LCA have long supported the work done by LaingBuisson. If publicly funded residents had fees which met a Fair Price there would not be any structural unfairness vis-à-vis private funders. The debate has been flipped over as if care homes are to blame. It is structural underfunding which is at fault. In the Lancashire area we operated the Fair Price model for some years (up to 2011). This showed movement towards a Fair Price, equalisation across the 4 bands used to differentiate the market (so that no one was paid 'superprofits'), rebalancing fees to reward more efficient providers, and working towards delivering a reasonable return to providers.

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?

- i. Public funding cannot stimulate the new build services that will be required to ‘future-proof’ care homes. It is not just a matter of needs for care home ‘beds’. It is the physical environment, the level and type of equipment needed, including specialist equipment, the range of properly trained staff, and the level of investment and borrowing needed to set up and run tomorrow’s services to maximise resident quality of life that determine the level of resource put into the system.
 - ii. Partners should engage in forward planning for ‘vista’ and ‘quanta’: what models of care provision should be in place and how much of each model do we need to meet population needs. This planning should be with the engagement of provider reps at a formative stage.
 - iii. All commissioning decisions should be accompanied by a published impact assessment analysis that can be subject to critique.
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?
 - i. We have been trying to address this issue through our Health and Social Care Partnership Steering Group in Lancashire and through the Regulated Care Sector Workstream under the Lancashire and South Cumbria STP. ‘Dashboard’ information needs to be the right information delivered in a timely fashion. CQC data on closures and re-registrations and DTOC data are two key elements in the dialogue presently. The efficacy of Safeguarding data and inspection data as genuine metrics remains problematic. Sometimes challenges are faced without any knowledge of how to solve them. This is most apparent in the workforce issue. Lots of meetings and talk but little actual activity that addresses the shortfall in capacity in the workforce.
 - ii. The process of dialogue between providers and commissioners at a strategic level faces cultural challenges. There is a functional and often ideological divide between commissioners and providers and a differential power relationship where there are monopsony elements in the commissioning process. This can be addressed but it requires representative bodies for providers to be able to work in partnership with local authority and health commissioners.
 - iii. We reiterate that market-shaping for care cannot be addressed by just looking at care homes.
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?

- i. There need to be intermediary strategic partnership bodies at a senior level and coordination of dissemination. We would propose that the best vehicle is the local Registered Care Managers Network. In Lancashire we have the Health and Social Care Partnership for a strategic overview and provider forums and the RCM Network. This is where we can develop an esprit de corps and identify and share best practice. We have had some initial discussions how we might engage with CQC at a strategic level on this. We hope to have further dialogue.
 - ii. FE and HE has an important role to play.
 - iii. Re procurement: we need measurable standards for commissioning/ procurement and processes for monitoring and for accountability.
 - iv. The process of developing a Market Position Statement for each local authority area as a live and useful tool for engaging with providers over ‘market shaping’ requires some refinement around genuinely formative engagement.
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?
- i. The locality is the key issue. We would argue for a local forum that involves provider-side representatives working with other health and social care stakeholders at a strategic level, including FE and HE input. Lancashire’s long-established forum is, as we’ve mentioned elsewhere, the Health and Social Care Partnership.
 - ii. A strategic forum and an established set of trusted relationships between the stakeholders are central to this planning.
 - iii. On the point “...to establish an independent body or bodies with a duty to provide support and guidance...”, the issue would be who has the knowledge/ skills base, who would be independent and what resources would be diverted from elsewhere? And, what account would be taken of skills sets, structures and relationships already in place?

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?
- i. In Lancashire we have worked with the LaingBuisson ‘Fair Price’ model from 2005-2010 and from 2014 the local authority has recognised the validity of the LaingBuisson 2014 report on ‘actual costs’ in Lancashire (Mickelborough, P).

- ii. The aim is to have a shared model which is supported by providers and commissioners. This model should inform fee-setting but also inform bespoke fees – linking assessed needs to required staffing to costs. We have models in place for this. In the end, it is this chain which needs to have no broken links: assessed needs - required staffing and other support - ‘actual costs’ of care.
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?
- i. The key requirement is a transparent costing model to be agreed by providers and commissioners. Without this all else fails to achieve the ‘transparency’ bar required. We argue for the Fair Price work done by LaingBuisson (www.laingbuisson.com). The first version of this model was published by JRF in 1998 as a means for local authority commissioners to understand what a reasonable rate was to pay efficient providers and not pay ‘superprofits’. A Sep 2008 update first set out bandings as a mechanism and the latest version (‘Care Costs Benchmarks’) was published by LaingBuisson in 2016.
 - ii. Due to the perverse incentives inherent in the present system of care commissioning, commissioners fail to acknowledge or overlook care needs and misuse the banner of ‘best value’ to support their priority to drive the price of the service commissioned down to the lowest price. This undermines good care and the principles of best value.
 - iii. We need the right standards in public commissioning departments and the proper oversight. Provider concerns include the appropriateness and balance of the skill set for the task. Majority of staff appear to come from social work, nursing or other care backgrounds with no requirements to ensure sufficient expertise in the critical area of business management and finances. Potential consumers of care should have the right to expect appropriate expertise in these areas. There is nothing in the present system which ensures this is or will be the case.
 - iv. Commissioners are never held to account for failings. We should recognise there is good and bad commissioning in the same way we recognise the fact of good and bad care. Understanding costings methodology and the process of calculation of fees, along with knowledge of market impact analysis, should be core skills for commissioners and ones subject to audit.
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?

- i. There is a crisis in care in relation to the workforce. It covers care staff, nursing staff and registered managers. We need to see proper workforce planning across health and social care to look at the health and social care workforce as a whole. **This is urgent and critical** and requires leadership.
- ii. Our dialogue with front-line service managers throws into relief the increasingly thankless task care workers and their managers experience delivering care as being arising from the sense of being overwhelmed by criticism from every quarter in an unremittingly punitive culture. Independent monitoring of the processes of regulating and overseeing care (addressing the ‘who guards the guards?’ question) would help improve the system and would ultimately benefit consumers through more transparency in these key areas and help shift the system culture from blame and punishment to learning and improvement.
- iii. LCA supports any initiatives that help us work towards getting a competent, confident and well-rewarded workforce that feels valued. We do not want a low paid, low morale, insecure workforce who switch between care and checkouts. But this is as much a commissioning issue as an employer issue. And beyond both, it is a major social policy issue about the priority we give to social care and how we work towards obtaining the workforce we need to deliver the care we need.

Refs:

1. **CMA Market Study of Care Homes. Statement of Scope – Lancashire Care Association comments, 16 Jan 2017.**
2. **CLG Committee evidence. Written evidence submitted by Lancashire Care Association (LCA) [SOC 044], Aug 2016.**
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/adult-social-care/written/35680.html>
3. **Lancashire Care Association (LCA), Submission to Expert Panel on Adult Care and Support, 23rd January 2017.**

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4th July 2017**