

5 July 2017

Care Homes Market Study
Competition and Markets Authority
7th Floor
Victoria House
37 Southampton Row
London
WC1B 4AD

carehomes@cma.gsi.gov.uk

Dear Sir/Madam

LGO contribution to invitation to comment

About the LGO

The Local Government and Social Care Ombudsman (LGO) investigate complaints about councils and some other authorities and organisations, including independent adult social care providers in England. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services.

Our jurisdiction spans the whole adult social care sector; we are the single point of independent redress for complaints about adult social care irrespective of whether that care is arranged and funded privately or through a local authority. We share data with the Care Quality Commission (CQC), as regulator, including when we find fault in the way a care provider or local authority has carried out its duties. This intelligence helps to identify potential risks, inform inspections and highlight emerging issues within the adult social care sector.

We publish all our formal decisions on [our website](#), unless we have concerns that to do so could compromise the anonymity of the people who use our service.

What our data shows

Complaints and enquiries about Adult Social Care account for the second largest category of our work (behind Education and Children's Services). In 2016/17 we received 3,061 complaints about adult social care, an increase of 3% on the previous year. We subcategorise our complaints according to their theme; in 2016/17, we received 609 complaints that involved residential care homes.

It is, however, often more valuable to look at complaint outcomes, rather than complaint volumes alone. Where we find fault in the way providers or councils carry out their duties we will uphold a complaint, and where harm or injustice has been caused, we will make recommendations to put things right. In 2016/17, we upheld 63% of the detailed investigations we completed for complaints about adult social care compared with 53% for all complaint types within our jurisdiction. In fact, adult social care had the highest uphold rate of all complaint types. This means we were more likely to identify fault in how councils

and care providers deliver adult social care services compared with all cases we decided. Looking at complaints about residential care homes, we upheld 67% of those we investigated in detail, a 9% increase on the previous year.

The recommendations we make aim to put things right for the individual affected and also to improve services for others. We will do this through making recommendations to review procedures or deliver staff training, for example. When we surveyed care providers earlier this year, 76% of those who responded believed that our investigations had an impact on improving services.

As we are in the unique position of being able to investigate complaints across the adult social care sector, we publish an annual [Review of Adult Social Care Complaints](#). The report makes available our data for complaints about both councils and independent care providers, and supports transparency and accountability across the whole adult social care complaints system. We report the common themes we have seen from the complaints investigated, highlighted by some of the personal stories we hear and the remedies we have recommended to put things right, where they have gone wrong.

We also identify thematic issues and publish focus reports that draw together the learning from the complaints we see, highlighting the issues and making best practice suggestions for councils and providers. [Counting the cost of care: the council's role in informing public choices about care homes](#) was published in September 2015. The report looked at the complaints we see in relation to top up fees paid by families for their relatives' care and highlighted the confusion faced by people looking to place a relative in a care home. Councils providing confusing or incorrect advice, and families being offered a lack of choice, including affordable choice, in the care market were common issues we reported. This report may be of particular interest to your study.

We welcome and agree with the study's key findings to date and possible recommendations contained in the update paper; a number of which we have previously publicly called for. The remainder of this submission provides our detailed views on those recommendations that focus on complaints and redress.

Complaints and redress

The study's update paper rightly recognises the challenges of ensuring effective mechanisms that enable residents and families to raise concerns and complaints and have confidence that they will be acted upon. It is right that special attention should be made to the arrangements in care homes; complaining about the place in which you live brings with it particular challenges. We are at the apex of the complaints system and offer a one-stop shop for complaints about adult social care. However, to reach our service, a person may have already had to overcome a number of barriers, perceived or real, to raise their complaint at the local level.

You may be aware that our colleagues at the Parliamentary and Health Service Ombudsman (PHSO) [published a report](#) in December 2015 that looked at the barriers older people face when raising concerns or complaints about their care, in any setting. The research identified a number of recognisable themes: lack of information about how to complain, feeling like complaining would make little difference, a lack of support to complain, and not wanting to make a fuss and worry about what will happen if they do. We recognise these barriers are likely to apply equally to social care settings.

You may also be aware that the LGO, PHSO and Healthwatch England published a framework to help improve the way complaints are handled across the NHS and social care. [My Expectations for raising concerns and complaints](#) was produced in consultation with over

100 patients and service users and over 40 organisations and describes people's expectations of good complaint handling. The CQC adopted *My Expectations* as a tool for determining what 'good' looks like in complaint handling when inspecting services.

The update paper references the work currently being led by the CQC and involving a range of partners across the social care sector, including the LGO, to improve the quality of care in the sector (*Quality Matters*). One of the practical elements of this work is about acting on feedback, concerns and compliments. This work recognises that making the complaints system work well is not only about processes, but is largely about culture – the way in which frontline staff respond to initial concerns from care users and families, and the attitude to and ownership of concerns and complaints by managers, and their willingness to learn from them. People who raise concerns and complaints should have confidence that they will be heard, understood and responded to appropriately, and staff should be equipped with the tools they need to respond to concerns and complaints confidently and be empowered to resolve matters quickly, where appropriate to do so. Managers, directors and board members should take an active role in monitoring patterns, trends and implementing learning. We are leading a range of work to enable practical action to improve the response to concerns and complaints by care providers.

Signposting to the Ombudsman

While the processes people follow are only one part of an effective complaints system, it is nonetheless an important one. An essential element of making the complaints system accessible is ensuring that users of a service know about their right to complain to the provider and their right to seek the view of an independent ombudsman. We are working with a range of colleagues, including Healthwatch England, to develop a single complaints statement that can be used by all care providers. By simplifying and unifying the information available about complaints we hope to reduce variation and inconsistent approaches to complaints handling and provide simple, clear information to care users and their families.

The adoption by the sector of a single complaint statement would also go some way to ensuring that people with a complaint are directed to us if they remain unhappy with the response to their complaint. However, experience from both the financial and legal sectors has shown that a requirement to signpost the complaints process is most effective when information is provided at the time the service is being delivered. Statutory signposting provisions have meant that the burden of ensuring users understand the complaints process has shifted from the users themselves to the provider.

A similar statutory requirement for providers of adult social care could be an important first step in ensuring that users of services, their families and representatives understand how to complain and have the reassurance of knowing that there is an independent avenue to seek redress when complaints are not resolved locally. Such a statutory provision could be taken into account by the CQC when considering providers' compliance with regulatory standards.

The update paper also notes that re-branding of the ombudsmen may help to ensure people have a better understanding of our remit. You may have noticed the inclusion of the '*Social Care Ombudsman*' in our name and logo. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves and help to make our role clearer to the public.

Advocacy and support

Of course, while statutory signposting might go a long way to making it easier to complain it would not address the fears and concerns that many users may have about making a

complaint. Worries about the consequences or difficulties of complaining will not be resolved simply by making the process more visible.

We receive complaints across our jurisdiction where the complainant is being supported by an advocate, whether that is an MP, voluntary organisation or formal advocacy service. This brings many benefits. Helping to articulate the complaint, overcoming communication barriers or providing the information needed to conduct a swift and effective investigation has shown us that advocacy can play a key role in making the complaint system more accessible.

While local authorities have a statutory responsibility to provide health complaints advocacy, a similar requirement does not exist in adult social care. By extending the availability of advocacy to include social care provision, users would have access to greater support and reassurance when considering making a complaint. It would also help to ensure that there is a consolidated, independent advocacy service for users of an increasingly integrated health and social care system.

Model complaints processes

The update paper seeks feedback on the introduction of a model complaints process, specifically designed for care homes. The development of a single complaints statement is likely to go some way to achieving this, with the inclusion of a complaints pathway that guides people about who to complain to and how to do it.

We have, for many years, offered training to local authorities on effective complaint handling, including a specialist course for adult social care. We have recently launched bespoke courses for adult social care providers; one provides training to managers investigating complaints and the other focuses on complaint handling for frontline staff. In addition, our website offers a range of [resources for care providers](#) to access, including template complaints processes, letter templates and a range of guidance notes. CQC is committed to signposting providers to these resources when they identify they may need support with their complaint handling.

We favour this approach of developing tools and training that can support and equip care providers in their role, ahead of prescribing defined model processes. We believe this approach encourages providers to take ownership of their complaints procedures, and recognises the variation in the care market; a procedure that suits a large, national provider is unlikely to suit a single, small care home, for example. The 2009 guidance, [Listening, Responding, Improving](#), published by the Department of Health, also followed this model, providing guiding principles for complaint handling rather than prescriptive detail.

We would consider that there is, however, potential to explore opportunities for sharing best practice in complaint handling across the sector. We recently held a number of events with adult social care providers where informal feedback from those who attended suggests there is an appetite for this; the social care market is vast and disparate and many providers can feel quite isolated from peers who may be dealing with similar issues. We are currently working to establish a provider complaint-handler network that will support the sharing of best practice and approaches to complaint handling and resolution.

The role of the regulator

CQC has a role in complaints as part of its function to monitor the quality and safety of services. However, it cannot investigate or remedy individual injustice, which should be signposted to us. We know the roles of the ombudsman and regulator can be confusing for the public and have worked closely with CQC to ensure that people are directed to the

organisation best placed to help them with their issue. We operate a live call transfer system so that a person can be transferred directly between our two organisations depending on who is best placed to help with the matter. In 2016, we helped over 1,400 people to get in touch with the right organisation; we think this work acts as a potential model for how ombudsmen and regulators can work together.

In addition to this work, we have an information sharing agreement with CQC so that the information from the complaints we receive about providers is shared with them promptly, and can form part of the range of information they use to inform their approach to targeted inspections. During the course of an investigation, we will always notify the CQC if we consider a Fundamental Standard of quality or safety has been breached by the provider.

Reviewing the lessons from complaints should be a standing item for boards and for local government scrutiny committees so that providers can be held to account for the service they provide and for the improvements they deliver in response to feedback. We consider that a reporting requirement for social care providers and commissioners to produce an annual review of complaints would support ownership of the first tier system and encourage accountability and scrutiny by local authorities, local Healthwatch organisations, the boards of care providers, and CQC.

Furthermore, a mandated data return to CQC and ourselves from all social care providers about the patterns and outcomes of complaints would shine a spotlight on local complaint handling and help providers to demonstrate the impact and difference that complaining can make, while providing a tool for national oversight of the complaints system.

We welcome the opportunity to support the study team further with its work and to discuss any element of this submission in more detail.

Yours faithfully,

Michael King
Local Government and Social Care Ombudsman for England
Chair, Commission for Local Administration in England