**CMA – Care homes market study – update paper, June 2017**

**Response from MHA**


## MHA is pleased to respond to the CMA Care Homes Market Study update paper

### Invitation to comment

We welcome submissions, supported wherever possible by evidence, on any of the issues we address in this update paper from interested parties by no later than 5pm on 5 July 2017. We would particularly like to hear views, on possible remedial recommendations, how they address the identified issues, whether they would be effective and proportionate, and how they might be implemented.

### Key questions

In addition to general submissions, we particularly welcome responses to the questions below. Respondents are welcome to address some or all of these questions.

### 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.*

We welcome this update paper and its recognition that residents and relatives receive good care and that the sector provides a vital public service that benefits many people. However, it's clear that a number of issues have emerged, some of which are disappointing for the sector. Our initial statement responding to the findings in the update paper can be found here.

This is a highly regulated sector, so additional regulation may not necessarily be the answer. Self-regulation and voluntary codes of conduct can do a lot to improve some of the consumer law compliance issues highlighted in the study. And while the study has found examples of very poor practice, some proportionality is needed in how best to address these examples – most providers seek to offer a high quality service on fair terms.

We were interested in the analysis of the issue of price differentials between self-funded and state funded consumers and how this fits with the need to provide current sustainable high quality care as well as investment in future capacity. We set out more detail in our response to Q16 and Q17 but the key issue here is being clear about a fair price for high quality care, regardless of the source of funding for that care.

We don't agree with the analysis of dynamic online purchasing systems being used by both Local Authorities and Clinical Commissioning Groups. We provide more detail in Q15 but in our experience, they are vastly bureaucratic, are likely to put disproportionate weight on price before quality and more importantly, are not enabling individual older, frail and vulnerable people to have their needs met in the way they would like to choose, by the provider they would like to choose and in the way their relatives would like to see care commissioned and procured.

A number of the issues identified link back to a key fundamental issue which the study does not consider – the long term sustainable funding of social care. Without a proper public debate on this, the funding pressures and associated poor practices with remain. And this needs to fit into the broader issue of planning for later life.

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

Many of the potential remedial actions seek to strengthen transparency across the sector, which we would broadly welcome. We also welcome further consideration around public sector procurement, especially if this is geared to improving personal choice by consumers and their ability to access high quality care that meets their needs in a place and area they want to live.

A number of the potential remedial actions potentially risk making the system more costly and bureaucratic, e.g. care navigators. While we recognise that the current system can be hard to navigate, we suggest more consideration needs to be given to an effective solution.

In terms of a market that works well for consumer, it is essential that fees represent a fair price for care, covering all the costs involved in delivering high quality care in that care home and allowing for sustainable refurbishment, improvement and some new development.

The study seeks to do more on the issues of price differentiation - the key issue here is to establish a 'fair price for care' approach, with a clear understanding of the full costs that this must include and what is really needed to provide the high quality care and quality of life we all want to offer to older people.

## 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?*

The initial findings suggest that there are good sources of information but no one authoritative source, which suggests that people are not using the existing information and an authoritative source is needed.

It would be useful for the study to consider some real life customer journey mapping to provide insight as to what authoritative information source would solve this issue. There may be digital solutions that could help – so carehomes.co.uk provides personal views and experience while the new carehomeadvisor.co.uk seeks to bring objective reported data into one place. Helping people to understand the whole system is a bigger challenge - perhaps a basic booklet of the journey ahead might help?

From a provider perspective, providing real time vacancy information would be very difficult – currently it would not be possible for us to do this. Providing useful, relevant information on fee rates will also be complicated without a clear explanation of the complexities of current funding routes. In our view, an assessment of the individual's needs is also essential before providing accurate fee information.

We already display CQC quality ratings and our standard Terms and Conditions could be easily displayed.

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?*

We are very supportive of encouraging better planning for future care needs, but this needs to fits into a wider discussion about later life and later life planning. It's a cultural and societal issue which charities like us in the older people's sector recognise and are trying to change.

The issue is bigger than thinking specifically about future care needs or about a move into a care home – the bigger picture is around planning for where you will live during your later life, the help you might need, the things you want to be able to do and the funds you will need to pay for later life. An Older People's Commissioner role in government might help to drive policy focus on this, while charities and the sector can also help to change public perceptions.

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?*

The concept of 'care navigators' seems like a costly and bureaucratic solution to the problem of information and support. Currently, there are social workers providing some of that role and LAs are vastly under resourced to make that work well currently. Care navigators also offer the risk of a subjective gatekeeping role in terms of access to and choice of care homes – so any advocacy and support services to help people navigate their way into social care needs some caution and clear objectivity to support the customer voice. Part of the problem is the inconsistency between different LA areas so a standard 'journey' guide might help people.

Customer journey mapping would help – by following people through the process of finding care and support and trying to understand the system, it would be clear as to where exactly

the issues are that need resolving. Digital support via websites would also help – greater use of dynamic purchasing/ bidding systems would not help.

## Complaints and redress

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

In our experience, people welcome the opportunity to provide feedback/ complaints/ compliments if a) they think they will be listened to and b) there will be no repercussions to their loved one. And in our experience, people complain with integrity as their key aim is to raise the issue so it can be resolved and the situation improved. People will feel more comfortable about making a complaint if they have a relationship of trust with the organisation and if they feel it is a learning organisation. It is not clear how an advocacy or support service could create this environment.

A key learning for us was to encourage feedback to come to our Derby office rather than via home managers – this provides an objective response and has driven an increase in the amount of feedback we get. Our compliments vastly outweigh complaints, but either way, people feel safe in raising things with us centrally and we can then address it at the local level if need be.

The solution is for providers to create an open, honest, learning and improvement culture. We do this through training for all staff, additional dedicated training for managers and a central support service which provides advice and support to any customers who wish to make a complaint and our staff who are handling them.

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

It's hard to see how this could work well as one size won't easily fit all. For example, we have a single 'compliments, comments and complaints' service which applies across our care home services, our retirement living/ housing with care services and our Live at Home Community services. We specifically designed it this way so we have one single process that makes it simple and clear for all our customers, regardless of which service we provide to them. We have recently revised our process to ensure we adhere to the voluntary consumer code which we have signed up to via ARCO (Associated Retirement Community Operators), in terms of timescales for response.

We are a large and diverse organisation, so our process is structured to reflect that – we have a process with four stages in it, ranging from stage one which is dealt with at a local level by the relevant manager to stage four, dealt with by a director and a member of the Board. This approach may not suit other, smaller care home providers.

A model complaints process would need to suit many different sizes of organisation. This

could be problematic. We would be happy to share our learning and experience in terms of an effective process if it would help. We would be wary of having to introduce a separate approach for care homes which differs from the approach for our retirement living and Live at Home schemes as this would not be in the best interests of customers.

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

Currently, we are not sure it would help. The current arrangements mean that, in most cases, the ombudsman expects organisations to have followed and exhausted their own complaints process prior to getting involved (unless it's a very, very serious case). The ombudsman then looks at how the organisation has handled the complaint, have we followed our procedures correctly, have we been open and fair etc.

Clearly, people need to be aware of the ombudsman and their rights to use it, an additional clarity and signposting may help, but it would need to make it really clear to customers when they and how they can use the ombudsman, to avoid any confusion and frustration about the role of the ombudsman.

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

We currently keep in close contact with the CQC and other regulators (in Scotland and Wales) in terms of reporting serious incidents/ allegations and potential / actual safeguarding issues and we tend to over report in the interests of trust and transparency. Any additional role for the regulators in terms of complaints needs to balance this with their other responsibilities in terms of inspection and improvement work. The CQC already seem quite stretched.

## 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?*

We are not aware of any.

*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?*

Clearly, from the issue identified, it seems that additional guidance may be helpful. We work hard to make sure that our contracts and terms and conditions are clear and understandable, we don't ask for deposits or other upfront payments and we have clear

processes

A couple of points to note in response to the findings under this section of the interim paper:

- online indicative pricing information is not as straightforward as it sounds, as we explain in response to Q3.
- In terms of fee increases, as we explain our Resident's Terms and Conditions, we review our fees annually, in April. We do also reserve the right to review fees at other times if there is a change in the law which means we have to cover an increase in our costs. A resident's fee level might change from the original fee level quoted if the care needs assessment changes due to a change of need and/ or type of care. Usually this happens when needs increase and a resident becomes more frail. And sometimes, residents' dependency can temporarily increase and one to one care is needed during this period. The fee will increase during these periods. If a resident chooses to move to from a standard room to one with enhanced features, the fee is appropriately increased to that displayed in our room charge tariff in the home.
- The study mentions extra 'hidden charges' and then include examples of chiropody and hairdressing. These are additional services a resident may choose to buy as and when they want them. We make it very clear that these are additional optional extras. In our view hairdressing and chiropody are very different to other services mentioned, such as medical supplies, visits to appointments etc which should not attract an extra charge.

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

Yes it could and we would be happy to help in developing this.

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

This would need further consideration. We do not think that the role of the CQC should be widened to include this as we feel strongly that the focus of CQC should be on quality and improvement.

*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?*

Alongside the importance of a fair price for care from local authorities, we suggest that there are issues around access to Continuing Healthcare Funding from Clinical

Commissioning Groups that needs some scrutiny from a consumer protection angle.

We also suggest that the introduction of dynamic purchasing systems, by both LAs and CCGs, also needs further scrutiny to ensure consumer protection. Our experience of these systems is that they do not protect the individual's right to their choice of person centred care and that they are enormously bureaucratic for providers. See Q15 below for more detail.

**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, eg in relation to offering choice to people and facilitating top-up payments?*

There are definitely areas of better practice and areas of poor practice amongst LAs and CCGs in their commissioning and procurement practice. A key area of concern for us is the increasing use of dynamic online purchasing systems.

In paragraph 6.4 of the CMA update paper, you reference these systems. Your findings are that *'These can be efficient to operate but we have heard that, depending on design, there is a risk that these are less able to reflect the personal needs of the prospective resident and might give disproportionate weight to price'.*

Our experience of such systems is that this is definitely not the way to procure high quality person centred care and it seems that it is common to give disproportionate weight to price rather than a provider's ability to meet needs and the person's preferences.

We do not agree that they can be efficient to operate – from an LA or CCG perspective, this may be true, although presumably, there is additional work involved in creating each 'package' of care to put onto the system. But they are certainly not efficient for providers – in fact, they are enormously bureaucratic for providers, both in terms of monitoring them to identify new packages of care within the 'bidding window' and in terms of the amount of information required to support each 'bid', even if the 'bid' is not successful. This places an additional and bureaucracy cost burden on providers.

More fundamentally, we do not believe that these systems are enabling individual older, frail and vulnerable people to have their needs met in the way they would like to choose, by the provider they would like to choose and in the way their relatives would like to see care commissioned and procured. We fully support the recent statement by the Care Provider Alliance who *"… strongly opposes the use of reverse auctioning in social care. People should not be treated like commodities. Commissioning services in this manner fails to take the individual care needs of service users into account and removes any element of choice in the kind of care that they receive."* We would be happy to provide some more detailed case study examples if this

would help.

On the subject of exploring how top-up fees work, our experience of the use of top-up payments is that there is considerable variation between the approaches of LAs, so some sharing of good practice might help the consumer.

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

The section in the CMA update on price differentials between LA and self-funded residents was interesting. The study has found no evidence to date of LAs paying fees that fail to cover the home's direct operating costs in providing care. This statement needs unpicking – direct operating costs do not account for a whole range of other essential costs to running a high quality care home such as the ongoing capital expenditure on the maintenance and refurbishment of care homes, the costs of repaying any loans and interest on the care home property / land in terms of purchase, the provision of essential central services e.g. HR, finance, internal quality assurance etc or the costs of regulation (such as CQC fees) and other Government policies such as the Apprenticeship Levy. The study does recognise that LA fees do not provide sufficient funding to support new investment, but there is no reference to fees covering the full direct and non-direct costs of running a high quality care service. In our experience, it is common for LA rates to be insufficient to cover the full, true costs of providing a high quality care home service.

In terms of a market that works well for consumer, it is essential that fees represent a fair price for care, covering all the costs involved in delivering high quality care in that care home and allowing for sustainable refurbishment, improvement and some new development. Our fees are set at the price it costs us to deliver high quality, person centred care in a sustainable way that ensures a high quality environment that offers the quality of life we all want older people to be able to enjoy.

The study intends to explore price differentiation in more detail. A key point to observe here is that there have been funding pressures within the system, for a number of years now. LA fee rates have, in recent years, consistently been well below the true costs of providing care. Different providers have responded differently to this challenge, but the rates paid by most LAs are simply not sustainable for most care providers. If LAs were able to pay the real fair price for care, this would remove that pressure within the system.

One of the potential remedial actions being considered is to enable LAs to assist self-funders to secure a better deal. This seems to us highly unlikely to deliver the sustainable, high quality care market that the study is seeking to achieve. It seems likely to drive lower unsustainable prices across the sector, making it more fragile. It may well ultimately lead to less choice for consumers as more providers exit the market.

Any potential remedial action for pricing transparency to challenge price differentiation, needs to take account of a 'fair price for care' approach, with a clear understanding of the

full costs that this must include and what is really needed to provide the high quality care and quality of life we all want to offer to older people.

The study highlights some important issue about the need for long term sustainability and transparency within the sector. The key point here relates to the bigger picture of sustainable social care funding which various governments have grappled with but been unable to solve so far. There is a need for a proper public debate on the future funding of social care and while this study can make some recommendations about how the care market might work, without some long term solutions to the very real funding pressures, sustainable change cannot happen.

## 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?*

A fair price for care is essential to ensuring that providers are able to cover all existing costs of providing high quality care and plan for future growth. Without this, providers are not able to fund a pipeline of future investment. It's important to understand the full range of costs that need to be factored into the fair price for care and that they vary on a geographical basis, especially in terms of land costs. And it's important to understand the timescales involved – the lead time is between four to five years for an investment in a new care home to work.

The planning process for developing new care homes can be a barrier to future growth as can the strategic vision – or lack of – in local areas. And of course, land prices can be a barrier.

*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?*

Yes. LAs with a really clear understanding of their strategic future local needs and the picture of the housing and care services that will be needed in their area for their population can be in a positon to effectively shape future developments – a good example of that is our partnership with Bedfordshire, where we are developing a new care home with them. An open honest dialogue about how to ensure more integration between health and social care can also help, as can recognition of the importance of sustainable fees and sustainable commissioning practice.

*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?*

There is potential for a longer term approach between LAs and care providers to ensure that the care services needed in a locality can be delivered. This needs a clear vison by the LA as to

the needs in its local area and how it intends to meet tem, streamlined planning processes, an imaginative approach to the use of land and a sustainable pricing and contracting model. Long term planning needs certainty and commitment, along with openness. As LAs control all the planning and development in their areas, they have an opportunity to shape future development in a way that includes the care needs of older people as part of standard developments.

*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?*

There may potentially be scope for such a body but it would need to consider the wider picture of older people's housing provision and it would need to add value to the existing landscape of bodies providing such advice and guidance.

## 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?*

Potentially yes, in terms of estimating fee rates but it would need to really understand the full costs of providing high quality care, as well as the costs of future growth and it would need to have some power to apply those fee rates.

The key issue here for consumers is to establish a 'fair price for care' approach, with a clear understanding of the full costs that this must include and what is really needed to provide the high quality care and quality of life we all want to offer to older people.

There is immense bureaucracy in the system already so another layer of adjudication may not be helpful or beneficial for consumers.

*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?*

Yes, absolutely. We would like to see greater transparency from both LAs and CCGs in the way they approach fee setting.

*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?*

There are a number of challenging in the recruitment and retention of a high quality care workforce but one of the key issues is the poor profile of the wider sector as career choice. Work is needed to improve the public profile of the care sector overall and specifically in valuing and respecting those provide an essential service for older people.

Nursing recruitment is a particular challenge, given the shortages currently in the country and Government plans for training new nurses, which removes the nursing bursary. The issue of Brexit also complicates the picture as the Government has yet to agree the future status of EU workers, especially those in the NHS and social care.

*For transparency and to help debate, we intend to publish responses we receive. In providing responses:*

*(a) please supply a brief summary of the interests or organisations you represent, where appropriate, and*

**About MHA**

MHA is an award-winning charity providing care, accommodation and support services for older people throughout Britain. We are one of the most well-respected care providers in the sector and amongst the largest charities in Britain, providing services to older people for almost 75 years.

Our aim is to eliminate isolation and loneliness among older people by connecting older people in communities that care.

MHA delivers a range of high quality services to more than 17,700 individuals:

- 10,330 older people supported through 61 Live at Home services in the community.
- 2,780 older people living independently in 73 retirement living communities with flexible support and personalised care, with a further ten sites in development
- 4,600 older people living in 88 care homes - residential, nursing and specialist dementia care – with two more in development

Our services are provided thanks to 7,000 dedicated staff and enhanced by the commitment of 5,500 volunteers.

*(b) please consider whether you are providing any material that you consider to be confidential, and explain why this is the case. Please provide both a confidential and non-confidential version of your response.*

N/a