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Care Homes Market Study
Competition and Markets Authority
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Victoria House
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Dear Sirs

CMA Care Homes Market Study

I refer to your Update Paper on the above Market Study, and we welcome the opportunity to respond to your invitation to comment. SCOTSS is always ready to support and contribute to CMA initiatives on market issues that have a positive impact for consumers.

Our comments are in the main around the section on consumer protection issues, i.e. questions 10-14.

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

- a. No, we believe that the report is comprehensive and well-considered.

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?

- a. The report highlights a number of issues around large deposits, lack of clarity as to fees and charges, and unreasonable costs being levied following termination of contracts and/or death of a resident. The protections to consumers provided by, for instance, the Consumer Rights Act 2015 from a civil/contract law perspective and the Consumer Protection from Unfair Trading Regulations 2008 from a criminal

perspective should be adequate, however, the apparent lack of recognition within (at least parts) of the sector of these obligations does pose a risk to consumers and specific sectoral guidance would be very helpful.

- b. We feel the compliance material produced by CMA, subsequent to advice given in respect of wedding venues, would be a good example.

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?

- a. SCOTSS' view is that priority should be given to ensuring that care home providers are aware of their legal obligations and have systems in place to ensure that they meet them.
- b. That being said, it appears that existing regulation in this market is somewhat inconsistent across the UK, and consumer-facing voluntary codes of practice, ideally approved by the CTSI Consumer Codes Approval Scheme, would play a valuable role and we would welcome their development.
- c. We are aware of some historic complaints around the selective publication and/or manipulation of care home reviews (consumer ratings and inspection reports). A more transparent system under an approved code may very well provide a non-regulatory solution to this.

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

- a. As the report acknowledges, care home residents, and their families, can be reluctant to raise issues or make complaints due to the (perceived or real) vulnerability of their situation. One of the consequences of this may be a reluctance to complain to enforcement authorities. The low numbers of complaints received by local authorities may be a reflection of this reluctance, rather than because problems do not exist.
- b. For this reason, it may be that a proactive approach is required, carrying out onsite visits, talking through the consumer law obligations of care home providers with their managers and owners, and checking terms and conditions. This could be a joint process with enforcement officers working closely with local authority colleagues who have responsibilities in this sector.

- c. SCOTSS would be happy to consider how a risk based programme of checks and advice in this sector could be co-ordinated across Scotland, possibly in the form of a fair trading project in 2018/19.

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?

- a. First and foremost, we feel that the particular vulnerabilities of consumers of these services in this sector put them under a high risk of consumer detriment.
- b. The report highlights that consumers are often not provided with indicative fee costs at the point of considering their options. The claim that it is difficult to give an indication of weekly fees on websites as prices are person-specific and dependent on completion of a care needs assessment is contradicted by the fact that some care home providers manage to do it. Furthermore, there is evidence of "hidden" extra charges, a practice which, if found in a contract for a holiday, gym membership or function booking, would not be accepted by most consumers and would lead to justified complaint and subsequent investigation.
- c. SCOTSS' view is that sufficient consumer protections exist to deal with these matters, particularly if supplemented by approved codes of practice as suggested at 12 above. The matter of the safeguarding of deposits is, however, different. There is currently no specific regulatory requirement for deposits to be safeguarded against the risk of insolvency, meaning that if a provider were to become insolvent there is a risk that residents would not get their deposit, and any other pre-payments, back. This is an unacceptable situation given the sums involved and we would therefore support additional consumer protections in this area.

I hope this is helpful, and if you wish to discuss further in relation to these or any other matters, please do not hesitate to contact me. Please feel free to publish our response on the CMA website if appropriate.

Yours faithfully

Peter Adamson
Chairman SCOTSS

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