

**CMA Care Homes Market Study Update Paper  
Scottish Care Response – July 2017**

**Introduction:**

Scottish Care welcomes the opportunity to comment on the Interim Report on the Care Homes Market Study of the Competition and Markets Authority.

Scottish Care is the representative body for independent social care services in Scotland. This encompasses private and voluntary sector providers of care home, care at home and housing support services across the country. Scottish Care counts over 400 organisations as members, which totals over 830 individual services. Scottish Care is committed to supporting a quality orientated, independent sector that offers real choice and value for money. Our aim is to create an environment in which care providers can continue to deliver and develop the high quality care that communities require and deserve.

In general we acknowledge that there is much within the Interim Report in which we find ourselves in agreement. However, it is our overall conclusion that many of the comments and findings relate very specifically to a non-Scottish context and at times, the Report is not fully appreciative of the distinctive dimension and practices which are occurring in Scotland and on which we have already submitted evidence.

Specifically we would submit that the particular recommendations within the Report are already, in some form or other, being addressed within Scottish practice.

Nevertheless we would concur that it is important that where there are issues of complaint that these are addressed timeously and in a supportive manner, and that where a resident has to withdraw from a care home that this is undertaken in a manner which supports the rights and dignity of the individual.

We would further agree that improvements could be made to the information given to individuals at the point of selection of a care home, and most especially that there are potential improvements in terms of the transparency and

independence of assessments and advice undertaken by statutory services at the point of placement. In particular Scottish Care will continue to work with others within the Scottish environment to ensure that the principles of choice and control which are central to the Self-directed Support legislation in Scotland become increasingly evident in practice.

We would also concur with the assessment of the Interim Report that a greater degree of long-term assurance needs to be given to the sector as a whole in order to ensure sustainability and to address market pressures. We very much support any efforts which would assist in the removing of barriers to investment so that the sector can be incentivised to respond to demand and which would encourage future investment. The short-term nature of fee arrangements (even given a national cost of care calculator model) does little to facilitate planning within the sector.

The remaining part of this response relates to the questions in the Interim Report.

1. Do you agree with our analysis of the issues affecting the care homes market? Please provide evidence in support of your views.

See above.

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

We would ask the CMA to be sensitive to the ongoing reform work which is currently being undertaken in Scotland and which will address some of the issues raised within the Interim Report.

### **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?

As the Interim Report itself states many individuals are ill-prepared for making the decisions which are required to place a relative or themselves in a care home. In part this is the result of circumstances relating to sudden ill-health but it is also indicative of a wider societal unwillingness to plan for declining health and older age. So it is not surprising that most relatives and individuals have little prior experience of care homes. A national scheme which would enable care homes to advertise availability and associated costs would go some way to enabling individuals to get information re. availability and costs. However given the reality that many care homes are small, often single, businesses the costs of establishing and maintaining such a scheme would need to be carefully considered and nationally supported. In Scotland there is easy access to the latest Care Inspectorate reports which are, in their latest formats, very accessible and give a good impression of the quality of a service. It would be hoped by all the partners involved that moving towards the new National Health and Care Standards and their implementation from Spring 2018 would further assist the process of decision making for individuals.

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?

As stated above greater focus needs to be placed on encouraging individuals in society as a whole to talk about and plan for their old age and to improve their level of awareness and understanding about care homes. There are still many unhelpful myths and stereotypes abounding around care homes and negative media coverage does little to encourage individuals to plan and think ahead. Scottish Care established 'Care Home Week' in 2017 and the positive response to this initiative illustrates the many 'good news stories' that do exist. However there is still a real difficulty in convincing the media that positive narratives are worth covering. Care homes need to be seen as a positive choice and as places of positive experience. A national media campaign supported by Government would go some way to advancing the positive images of care homes.

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?

There would be real benefit in the development and funding of independent advocacy and advice at the point of choosing a home. We acknowledge that these decisions are often taken in times of stress and distress and any support would be beneficial and would prevent the selection of a home which might not be the best fit for an individual. At the same time there has to be a realisation that the extent of choice might not be as great as individuals imagine or desire, especially within rural parts of Scotland.

Too often, and we are concerned that there is increasing evidence of this, we hear of instances where the individual is pressurised by a social worker to select a care home run by the local authority over and against a care home from the independent sector. As the Interim Report itself states, 'the guidance and advice provided by the social worker can be variable and sometimes quite limited.' The Interim Report again states, and we would agree, that 'the provision of information can be variable. Public perceptions are that the availability of personalised advice and support is often limited.' The creation of a wholly independent body would remove the risk of undue influence and would enable real choice and control for individuals. It will be important that such individuals/organisations are properly resourced and are enabled to develop good relationships with providers within the local area. To enable and maximise choice we would suggest that the service was made available to those wishing to use it rather than it becoming the route by which all must go.

### **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?

It is central to the delivery of good and effective relationship-based care and support that where issues arise or difficulties develop that individuals and their families have confidence that their concerns are going to be taken seriously and addressed. It is our general experience that the current system in Scotland, where the Care Inspectorate is closely involved, is increasingly effective and we would not want to see any intervention which would damage this progress. We are not

convinced that there would be proportionate value through the creation of another agency or organisation than that which already exists through existing advocacy and related groups.

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

We would contend that in Scotland this already exists.

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

Again, as has been submitted before, we believe the system which currently operates within Scotland with potential recourse to the Ombudsman is both appropriate and accessible.

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

See above.

### **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 do not believe so.

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?

Refreshed guidance and information is always beneficial but we are not sure further guidance is wholly necessary.

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?

Scottish Care has developed a human rights based charter for individuals in residential and nursing care and has recently developed its own membership Code of Conduct. Both state clearly what an individual should be entitled to expect and receive in a care home. Together with the creation of the new National Health and Care Standards, individuals in Scotland have now increased assurance of quality. We do believe that self-regulation offers an important guarantee of assurance to the public when it is placed alongside an appropriate regulatory contribution.

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

We have stated above the value of self-regulation alongside the appropriate role of regulatory authorities.

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?

There might be benefit in introducing mandatory time periods for statutory authorities in relation to their responsibilities to arrange funding in a timeous manner, thus enabling individuals to exercise the maximum degree of choice.

### **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?

The ongoing reform of the National Care Home Contract in Scotland and the development of a cost of care calculator does, we would suggest, have potential to produce insights and benefits for the other nations.

16. What factors should we take into account in our further work exploring

price differentiation between publicly funded care home residents and self-funders?

As we have stated in earlier evidence, the development of a transparent cost of care calculator and the full payment of agreed 'fair fees' should reduce the risks of significant differentiation unless the services offered were substantially more than what was being publicly funded.

### **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?

There is a real lack of external funding within the care home sector across the United Kingdom and Scotland is understandably not immune to these fiscal pressures. The level of return for a care provider has significantly reduced in Scotland over the last ten years and this has had an impact on the shape of the sector and the ability of small businesses to continue to remain operational. Some of the external pressures brought about by increased regulatory requirements and changes in workforce remuneration, e.g. the Scottish Living Wage, have had unforeseen and unintended negative consequences given that these have not been fully funded. It is therefore an exercise of no or very little faith for a provider to invest in an uncertain future without the necessary assurances that are required. In Scotland the establishment of longer-term commitment through commissioning and a clear cost of care calculator would assist in giving some assurance.

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?

Market shaping and development cannot be undertaken by one partner but for it to be effective, must be a co-produced process involving providers and most importantly the local community in which care homes are established. The relationship between commissioners and providers needs to become much more mature and reciprocal than it is at present.

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?

See above but again in Scotland where national models exist there is already effective sharing.

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?

We believe the creation of yet another body is unnecessary if true partnership working was occurring.

### **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?

As we have stated before, in Scotland work is currently underway with stakeholders around the development of a transparent cost of care calculator. This work has now reached the stage that external independent analysis on some outstanding area requires to be undertaken. It would be our hope that these can be completed, to the satisfaction of all parties, by the end of 2017. If, however, the current process were to prove to be unsuccessful then Scottish Care would agree with the principle that the establishment of an independent body to create a transparent cost of care calculator and to adjudicate in disputes would be beneficial.

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?



Scottish Care has always argued that there requires to be much greater transparency on the part of local authorities in relation to the fee rates which they pay through the National Care Home Contract and this lies at the heart of current reform processes. We would further contend that local authorities who act as assessor, commissioner and provider of care homes are in a self-evident situation where there is a conflict of interest. In addition local authorities do not adequately communicate to family members the fees at which they operate in-house provision and this perpetuates the lack of equitable funding for the independent care home sector.

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?

Workforce pressures are a major issue of sustainability for the care home sector in Scotland. Recruitment and retention remains an issue of real concern, especially following Brexit. Scottish Care believes that it is important that when initiatives such as the Scottish Living Wage are undertaken that these require to be fully funded otherwise they have a negative impact on the sector instead of acting as the positive measure they are designed to be. It is also important that as new developments and initiatives are undertaken, e.g. the implementation of the new National Health and Care Standards, that cognisance is taken of the impact of these upon the workforce.

Dr Donald Macaskill

5<sup>th</sup> July 2017