

Association of Directors of Adult Social Services (ADASS) and Local Government Association (LGA) response to the Competition and Markets Authority's (CMA) draft report 'Care home market study'

1. Background

The Association of Directors of Adult Social Services (ADASS) is a charity. Our members are current and former directors of adult care and social services and their senior staff. Our objectives include:

- Furthering comprehensive, equitable, social policies and plans which reflect and shape the economic and social environment of the time
- Furthering the interests of those who need social care services regardless of their backgrounds and status and
- Promoting high standards of social care services

The Local Government Association (LGA) is the national voice of local government, working with councils to support, promote and improve local government.

The LGA is a politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

2. Overview

ADASS and the LGA welcome the opportunity to contribute to the Competition and Markets Authority's (CMA) draft report 'Care home market study'. This submission builds on our earlier joint submission in March 2017, the central messages of which still stand. We are all living longer, which is a success story of our age that we should celebrate – but it has profound consequences for the kind of care and health services our country will need in the future. Increasingly, there is not enough funding for adult social care and it has continued to reduce in real terms. As well as people living longer, there are more people with disabilities who need care and support. Fewer and fewer of them are receiving public funding.

Adult social care is critical to the health and wellbeing of people with a complex range of often intense needs, their carers and families, and our communities more generally. Through commissioning social care, councils play a key role and its reach is significant; from safeguarding people in the most vulnerable circumstances to making an important contribution to the national economy as employers and commissioners.

Social care contributes to economic growth as well as meeting social needs. Most care providers are small businesses that form a sizeable chunk of the local economy in many places. It contributes as much as £43 billion to the national economy and supports 1.5 million full time equivalent jobs. As the majority of spending is on staff, there is the potential for a significant multiplier

effect to stimulate economic growth. Strong social care and a strong economy go hand in hand.¹

ADASS recently published our annual Budget Survey, in June 2017, which we have used to help shape our response. Further details of the Budget Survey can be found by clicking [here](#).

3. Key points

- **Commissioning of services** - The commissioning and provision of social care is a vital council service that can transform people's lives. Adult social care is, however, experiencing deep and challenging pressures. The recent focus on adult social care in the media, public and political realm reflects the urgency of the crisis in this sector, particularly the instability of the provider market.
- **Sustainability of the care market** – Councils have prioritised meeting adult social care needs (including counteracting previously planned savings) and support to the NHS in relation to planned expenditure of the additional £1 billion improved Better Care Fund (the 2017/18 allocation of the £2 billion for social care announced in the Spring Budget). Councils' struggle to pay an hourly rate sufficient to make the care market – particularly domiciliary care – sustainable in the longer term and this is a particular issue in some parts of the country. Councils continue to report the closure of services and the handing back of contracts. Most strikingly, 74 percent of respondents to the ADASS budget survey believe that providers are facing quality challenges.
- **Information and advice** – Local authorities have duties to provide people with information and advice (including access to independent financial advice) relating to care and support, which includes information and advice about preventative services, facilities or resources, so that anyone can find out about the types of support available locally that may meet their individual needs and circumstances, and how to access them. This should help prevent or reduce the need for care services and ensure we get the right help, at the right time, in the right place. Councils did a significant amount of work on their websites during the period of Care Act implementation and much of the information is provided in the form of written materials. Advice is more personalised and interactive through personal contact – and therefore may be beyond the resources of councils to provide as fully as they would like.

4. Funding pressures

Adult Social Care currently faces both short-term and long-term funding pressures.

The recent ADASS Budget Survey showed that local authorities are prioritising adult social care in their budget setting. Local authorities spend £14.2 billion: 36.9 percent of their total spending and the biggest single budget that councils control (up from 35.6 percent in 2015-16). Nevertheless, with further savings of £824 million – equating to 5 percent of net budgets -

¹ ADASS, Distinctive, Valued, Personal, March 2017

planned in 2017/18, total cumulative savings in adult social care since 2010 will amount to over £6 billion by the end of March 2018. With a reported overspend of £366 million against budgets for 2016/17, the pressure of which will roll forward, Councils are finding it increasingly difficult to implement planned cuts in practice.

Only 31 percent of respondents to our budget survey are fully confident that planned savings for 2017/18 will be met, despite the additional funding which has been made available for adult social care.²

The LGA estimates that, even with the £2 billion for social care announced in the Spring Budget, social care faces an annual funding gap of £2.3 billion by 2020, which includes the money desperately needed to stabilise the provider market.

Within squeezed budgets, local authorities need to take the necessary steps to ensure they are not only acting within their allocated resources, but also commissioning care in such a way as to give better protection to those who deliver and receive it.

5. Commissioning

The commissioning and provision of adult social care is an important council service that can help substantially improve people's lives. The recent national focus on adult social care has highlighted the growing recognition of the problems it faces, particularly the instability of the provider market. National politicians are also increasingly voicing their fears about the sustainability of care and support, echoing what the care sector has been saying for many years.

There is a varied picture of joint-procurement between CCGs and local authorities. Some CCGs and local authorities operate independently of each other, while others use the same contract but procure placements separately. However, there is an increasing number of local authorities and CCGs commissioning jointly, or aligning their practices. For instance, Luton CCG and Luton Borough Council have recently agreed to merge health commissioning budgets so the organisations can spend their funds more effectively.

One of the biggest challenges is building a sustainable local market. To achieve this, local authorities need to work closely with providers to attract and retain a skilled workforce, particularly care workers. Care workers need to be recognised for the work they do, which includes financial recognition. The National Living Wage and National Minimum Wage requirements have posed a challenge for some care providers, which needs to be reflected in commissioning arrangements between councils and providers. For example, Nottinghamshire County Council significantly increased its hourly rate paid to commissioners, which helped dramatically reduce the turnover of care staff. The relationship between local authorities and providers is often helped by having a transparent and open discussion, often through an open book approach to accounting. It is hoped this will give providers and councils a better understanding of each other's challenges but there are risks in the system. One significant potential risk is the continuing uncertainty over whether 'sleep ins' are considered 'working time' and, as such, attract the

² ADASS Budget Survey, June 2017

National Living Wage. Employment tribunal decisions and amendments to BEIS guidance (stating the NLW should apply to sleep-ins) not only contradict National Minimum Wage regulations but have led to HMRC seeking retrospective costs and penalties from providers. The first action will conclude by 1 September this year, despite on-going uncertainty and an appeal scheduled for March 2018. Back pay, penalties and future costs could be potentially devastating for the provider market. Mencap estimates the total bill for back pay - due by September, and in some cases dating back six years - could be £400 million. It should be noted that ADASS and the LGA fully supports the NLW. Despite working in an increasingly financially constrained environment, care workers continue to provide a high-quality service and should be remunerated properly.³ However, these potential costs further threaten the sustainability and stability of adult social care. If Government concludes that sleep-ins should be paid at the NLW rate, then they must make genuinely new funding available to cover historic liabilities and future, on-going costs.

For some time, Directors have raised concerns about the sustainability of the local voluntary and community sector market which will impact on their ability to deliver their duties relating to advice, information and prevention. Some councils are reconfiguring or decommissioning care services to increase choice and flexibility for people who use services, particularly those with learning disabilities.⁴

6. Information and advice

Information and advice support people to look after themselves, their family and friends. The need for information and advice starts before we actually need care and support. Information and advice should enable us to make the most of a fit and active life, equipping us with information about particular health conditions and signposting us to sources of further information and support. Ideally, we should all be thinking and planning ahead for the eventuality of having significant care needs, whether it be for our support or housing arrangements. This will help prevent or reduce the need for services and ensure we get the right help, in the way we choose, at the right time, in the right place. It will put us in a better position to understand what the options might be and enable us to make better informed choices.

Councils' resources are under increasing pressure which means they might not be able to provide all the information and advice they would like. 20.3 percent of Directors responding to the ADASS budget survey felt less than confident that councils' budgets will be enough to meet specific statutory duties regarding information and advice. However, 98 percent of councils reported that the Care Act had made a positive difference to practice and culture in councils' approach to providing information and advice.⁵

Our expectations about the quality of care we want for ourselves and our family, the degree of choice and say in how our needs are met and the kind of information on which to base these decisions has changed beyond recognition. Whereas previous generations may have been content to be

³ Mencap <https://www.mencap.org.uk/what-were-doing-about-sleep-ins>

⁴ LGA, ADASS and DH, Care Act Stocktake 6, November 2016.

⁵ 56 percent to some extent, 42 percent to a great extent. LGA, ADASS and DH, Care Act Stocktake 6, November 2016.

passive recipients of care, today most of us will want to be active participants in shaping our own care and support arrangements. Digital technology and social media create new possibilities to address some of these challenges. The qualitative comments from the Care Act Stocktake 6 indicate the main focus for councils has been on developing their digital offer. However, councils need to be mindful that their duties under the Care Act cannot just be met through just digital channels. People sometimes need face to face advice. “Linking assessment with market place and using universal and community based solutions as part of the offer is helping to “normalise” provision rather than pulling people into “social care” services”⁶.

We are aware that there are opportunities to build on the growing range of innovations across the sector that have made information and advice more readily available and tailored to meet people’s needs, such as highly dynamic websites, health and social care navigators who help connect people to information, and strength based approaches to assessment which help people understand what advice is already available to them amongst friends and family.⁷

The provision of information and advice is important in supporting individuals to manage their own health and care needs and accessing the right help. However, advice is more personalised and interactive through personal contact and therefore may be beyond the resources of some councils to provide as fully as they would like.

7. Personalised care and support

We need services that are personalised, of good quality, and are coordinated and joined-up around the needs of the individual, with a parity of emphasis on our social, physical, mental, and other needs. Since the implementation of the Care Act 2014, personalisation has become part of the mainstream of adult social care, with rights to personalised care and support enshrined in law. Having worked with users, carers and partner agencies to implement personalised social care, ADASS and the LGA champion personalisation, recognising people as individuals who have preferences and putting them at the centre of their own care and support arrangements. This was highlighted in the recent ADASS report on personalisation ‘It’s Still Personal’.

Discussions about taking personalisation further are happening in a very difficult financial climate. Many local authorities have worked hard in challenging financial circumstances to give people greater choice and control. Despite the growing financial pressures, there is consensus that the principles of personalisation should be supported. Individuals should be in charge of their own care and support and have control and choice over the key decisions that affect them. However, market fragility is such that availability at an affordable price (for individuals or for councils commissioning services on their behalf) is such that choice may be very limited.

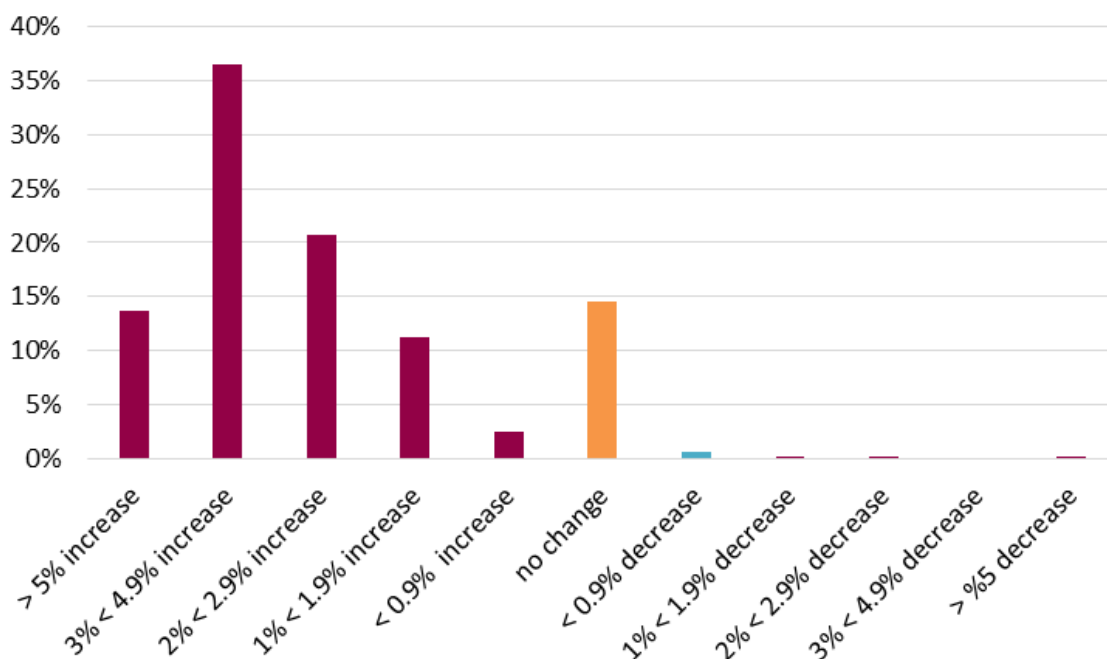
8. Provider fees

⁶ LGA, ADASS and DH, Care Act Stocktake 6, November 2016.

⁷ ADASS, Distinctive, Valued, Personal, March 2017

As councils' budgets are squeezed, they in turn look to reduce expenditure, which can have an impact on providers' fees. The overall squeeze on fees stopped last year and increased again this year but is still having serious consequences for adult social care providers

Figure 1: Changes in provider fees (including inflation) between 2016/17 and 2017/18



The introduction of the National Living Wage (NLW) and other pressures have driven an increase in fees paid to providers. This was the case in 2016/17 (the NLW, affecting both direct council costs and increased provider fees, added an estimated cost of £520 million), with further increases reported in 2017/18. There is a wide variation in price paid.

Figure 2: Key drivers for increases in unit costs for residential/nursing and home care in 2017/18⁸

	Residential/ nursing care			Home care		
	high	medium	low	high	medium	low
Overheads (food costs, rents etc.)	8.7%	56.5%	34.8%	5.9%	23.5%	70.6%
Regulatory pay pressures (NLW, travel time, sleep-ins, etc.)	94.2%	4.3%	1.4%			
NLW				89.9%	7.2%	2.9%

⁸ ADASS Budget Survey, June 2017

	Residential/ nursing care			Home care		
	high	medium	low	high	medium	low
Other pay pressures (pay uplifts, difficulties recruiting staff, etc.)	58.3%	38.1%	3.6%	73.4%	22.3%	4.3%
Local market issues (lack of capacity, competition, etc.)	51.4%	30.7%	17.9%	56.1%	29.5%	14.4%
Primarily to cover winter pressures, quality issues	10.9%	45.3%	43.8%	12.4%	43.8%	43.8%
Reduction in cross-subsidisation	7.4%	43.7%	48.9%	4.5%	28.4%	67.2%

9. Provider failure

There is continued evidence from the ADASS Budget Survey of failure within the provider market in the last six months, affecting at least 69 percent of councils and thousands of individuals as a consequence. This disruption significantly impacts on wellbeing and is thought to impact on mortality when it involves someone moving home in an unplanned way.⁹

Figure 4: Councils with providers that have closed, ceased trading or ‘handed back’ contracts within the last 6 months, and the number of people this had an impact on

	Closed or ceased trading within the last 6 months		“Handed back” contracts within the last 6 months	
	Number of councils (123 responses)	Predicted number of people affected (117 responses)	Number of councils (117 responses)	Predicted number of people affected (117 responses)
Home care	48 (39%)	5,670	43 (36.8%)	3,135
Residential/Nursing care	54 (43.9%)	1,793	11 (9.3%)	331

Over 60 percent of directors reported that their council has commissioned alternative providers for ‘handed back’ contracts.¹⁰ This has led to wider

⁹ Mortality rates following an emergency move range from zero percent to 43 percent and “Reports of post move mortality, physical or psychological health suggest and confirm that relocation without preparation carries higher risk of poor outcomes than moves that are orderly and include preparation”: Forced relocation between nursing homes: residents’ health outcomes and moderators. Holder, J and Jolley, D. Reviews in Clinical Gerontology. Volume 22 / Issue 04 / November 2012, pp 301-319

¹⁰ ADASS Budget Survey, June 2017

concerns about provider viability and sustainability and the quality, quantity and duration of commissioned care.

There has been growing concern that the 'duty to arrange' could result in significant further funding pressures on the care system. Currently, councils tend to pay lower fees than self-funders due to their bulk-buying power. With the difference between council and self-funder rates made potentially more transparent it is likely that either providers will have to accept and absorb lower fees or councils will have to increase their rates to providers. Neither option is sustainable.

10. Miscellaneous

- **Paying for care** - the role of government and national bodies should be about creating the right framework of policies, funding, payment and contracting mechanisms, and regulatory regimes that encourage and incentivise local partners to achieve the best outcomes for their populations. The forthcoming Government consultation on the future of adult social care is needed urgently and will be an important opportunity to build a system for the future that addresses these challenges. It must offer workable proposals for how to stabilise and sustain social care for the short-, medium- and long-term in such way that both acknowledges the different circumstances that different areas face and lays the ground for a much greater emphasis on prevention and wellbeing.
- **Continuing health care** - There are often varying interpretations of how continuing health care is applied at a local level; despite there being a very clear message coming from the Department of Health and NHS England, that there is no intention to move the thresholds. The issue with thresholds is the inconsistency of application of eligibility. There is a large variance across the country. Even if the outliers are discounted, the variance shows that there is something awry. There is a danger that some Clinical Commissioning Groups might interpret this as a reason to try and pass costs onto councils.
- **Moving care homes** - once a resident is settled into a care home, if they have to move, the upheaval of moving from a familiar environment can be extremely disturbing, can adversely impact on a resident's health and care outcomes, remove their dignity and reduce their quality of life. Residents may also develop attachments to other residents, staff or locations and so be reluctant to move. The Citizens Advice found just over two-thirds of people stated the main reason for not moving, is that it would cause too much distress and harm.¹¹

¹¹ Citizens Advice, Taking Greater Care, 2016.