

NI Health & Social Care Board draft response to specific questions posed by the Competition & Markets Authority in respect of the Care homes market study – Update paper released 14th June 2017

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.

Yes. While there may be regional differences, we would agree with the broad analysis set out in the paper. Our key issues at present are:

- Uncertainties (unknowns) within the sector and potential risk of market failure.
- Lack of information / support for public in either selecting care home accommodation or awareness of rights and protections.
- Long term planning to ensure continuity of service for existing residents and to match supply to projected demand in the appropriate locality.

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

- Yes. The 4 jurisdictions in UK need to coordinate and share information on financial health of suppliers who operate in more than 1 jurisdiction. We would oppose establishment of any national independent body to develop framework for estimates of reasonable fee rates in light of anticipated local variations
- In an effort to inform the Public, any remedial action should provide clarity about the component parts making up the cost of residential / nursing home care, stipulate regional tariffs and set out clear standards / expectation in terms of staffing levels, qualifications and care practice (related to category of care). If CMA were to bring forward a recommendation along these

lines, we could easily comply.

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?

- Publish on NI Direct / Independent website the weekly tariff rates, copy of standard contract between Trusts / Care Home Providers, put link on website to individual Trusts who can advise on availability from their bed bureau and provide link to RQIA website for accessing inspection reports.
- Need for greater transparency (and protection) around top-up fees.

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?

- Develop targeted awareness campaign to highlight typical weekly fee rates for care home bed, percentage of specific (elderly) age group who require a care home, and high level summary of how placement is funded.
- Any such campaign would need to reflect the various care options available e.g. domiciliary care / supported living / self-directed support to assure people that they have a choice of care model to meet their needs

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, e.g. giving greater personalised assistance through 'care navigators' and other advocacy services?

- Yes. The information is "out there" so the issue is about raising awareness of individuals of first place to look which will then signpost them as required. This could be linked in to responses

to Q 3 & 4 above.

- Advocacy services are available in some Trusts (although these could be better advertised) but these tend to be used to deal with complaints or other disputes rather than admissions to care.
- We should build on existing arrangements to build further capacity to assist people in identifying and choosing the best model of care to meet their needs

Complaints and redress

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

- Arrange regular meeting (quarterly ?) in each care home with specific time slots for residents / family members / staff for Trust personnel to hear complaints. The Trust personnel should contact the appropriate relative of the resident a few days before the scheduled meeting in the care home to see if there are any issues that might warrant a complaint – this would help protect the anonymity of the complainant.
- Much depends on the culture (acceptance) within a home regarding complaints and the provider's attitude and openness to receiving and dealing with complaints / concerns.

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

- We believe that a robust model already exists within NI and we would recommend it to CMA

- Is there any evidence to suggest that existing processes aren't working well and what it is that proves that a particular process is working well ?

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

- Ombudsman should be referenced as an integral part of the complaints process.
- What may not be widely understood is that the ombudsman's role is to consider if processes have been followed as opposed to attributing blame.

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

- They should monitor the complaints to see if there are any trends and have the power to enforce corrective action to try and prevent the situation that led to such trends from happening in the future.
- It would appear that the regulator in NI has stepped back from complaints investigation in a majority of cases, deferring instead to the Trusts who commission the care home placements.
- The regulator only takes a role in these investigations if there has been a breach of regulations. This is not ideal as the person carrying out an investigation on behalf of the Trust may not be aware that a regulation has been breached.

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?

- 'Cooling off' / 'Test the water' periods could be introduced to allow residents (and their advocate) to try out the home for a given period of time and to consider the terms of the full contract before they have to sign up on a longer term basis.
- It could be argued that the care management system, regulations, inspection and safeguarding procedures provide 'protection.' The

discussion therefore should be about what extra protections the individual requires e.g. having clarification about the actual costs of care (including top-ups) and what the person can expect to receive.

- We believe CMA should look into providing guidance on the rights of a resident in the situation where a care home provider wishes to terminate their placement

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?

- Requirement for 'plain English' guide, in a standardised format with key terms / conditions to be presented to prospective residents (and their advocate) ideally before they move into the home but certainly before the "cooling off" period ends.

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?

- Standardisation is the key and self-regulation (and enforcement) will not necessarily deliver in this regard.
- We certainly would not support any proposal to replace statutory regulation with self-regulation but there may be merit in self-regulation that would encourage improvements to quality of service

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

- We believe the response to this particular question is best placed to come from our local regulator i.e. the Regulation & Quality Improvement Authority.

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?

- Yes. Care Home providers must ensure that they provide written documentation, as per response to Q11 within a specified timescale and the 'cooling off' period (per response to Q10) will be linked to provision of that information.
- We have no knowledge here of residents being required to pay a deposit before admission to a care home.

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, e.g. in relation to offering choice to people and facilitating top-up payments?

- Policy makers (i.e. Dept of Health in NI) would need to consider existing guidance in this regard in light of experience elsewhere in the UK.

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

- Need clear definition of what is meant by publicly funded residents and self-funding residents, particularly in regard to those individuals who solely benefit from state support in the form of the "free nursing care" contribution. Would it be reasonable / fair to require care home providers to declare the quantum of income they generate from third party top-ups.
- Maybe some clarity about a baseline fee and what is provided for that rate and what are regarded as optional extras for which an additional fee may be paid by an individual.

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?

- Ability to accurately predict demand and occupancy levels for individual care homes

- Level of profit expectation that could reasonably be expected and who the paying customer would be (state supported v private funder).
- Proposed development of any alternative forms of care provision in those localities.
- Lack of a strategic statement of assessed needs (number of homes, beds, locations and categories of care) over the next 5, 10, 20 years.

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?

- In NI, we do not have a good track record in shaping market development as the HSC Commissioner cannot influence planning applications / approvals (LA's in GB may be able to do so), we cannot guarantee levels of business (flies in the face of client choice) and uncertainty of future HSC budgets.

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?

- In NI, we already enjoy a good working relationship with the Housing Executive
- Joint working with other public sector bodies (including Housing Executive) to develop supported housing models of care has already proved very fruitful within NI.

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?

- Unless the one public sector organisation has the financial resource under its own control, experience has shown it's problematic to deliver the desired outcome.

- The establishment of an independent body is not appealing and is unlikely to win much support - it would be expensive and introduce another layer of bureaucracy / management.
- Having a UK body would bring economies of scale but would appear 'distant' and because of variations across jurisdictions, a local presence would be required.
- How much support and guidance would such a body provide and for how long? Would it operate as an advisory body only? Not sure that a population of 1.9m justifies the establishment of such a body.

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?

- No. We find it difficult to see the logic in such an approach due to the material variability in business models and how they are funded

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?

- There would be no issue in Commissioners publishing the Tariff Rates set and Trusts can easily indicate the average gross cost of a placement. However, any Providers who see that the fee rate they receive is below the average is likely to increase their prices at the earliest opportunity and this would put further pressure on budgets.
- The Tariffs set by Commissioners tend to act as a guideline as it is up to Care home providers to set their prices, negotiation can take place around the margin dependent upon supply / demand.
- Public should understand how the cost of care is calculated.
- See point (iv) below that we've asked CMA to consider.

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?

- Harmonisation of wage rates across public & private sector employers may reduce excessive levels of staff turnover from private to public sector.

Points that we would ask CMA to clarify and / or consider

- (i) For each of the 4 jurisdictions in UK (England, Scotland, Wales & N.Ireland), can CMA show what percentage of the elderly population (say the over 85's) currently reside in a care home
- (ii) Can CMA provide a definition of what is meant by:
 - a 'self-funder'
 - someone funded by the public purse
 - someone who self-funds part of their care

We are particularly interested in knowing which of these 3 categories that a resident who only benefits from the "free nursing care" fits into. Perhaps monetary examples for hypothetical residents would help clarify the difference in the categories.

- (iii) Can CMA show the split of Self Funders / Funded by public purse / Self funds part of their care in percentage terms for each of the 4 jurisdictions & comment upon any variability and what the underlying reasons for that variability might be
- (iv) Could CMA recommend a nationwide advertising campaign to highlight typical weekly cost of Nursing & Residential Home Care and its constituent parts i.e. hotel costs / care costs / financing & profit margin. Campaign could highlight that it is not unreasonable for residents to contribute towards the hotel costs component as a minimum

- (v) We would ask CMA to investigate arrangements were a resident of one jurisdiction wishes to be placed in a different jurisdiction, and there is likely to be a material difference in the terms and conditions of contractual arrangements between those different jurisdictions.