

Care homes market study final report

Short summary for England

1. The CMA has published its final report from its market study into care homes. Choices on care for the elderly are an incredibly important decision taken by or on behalf of individuals who are often extremely vulnerable. The nature and quality of care has a massive impact on the person's happiness, health, and longevity. There are around 380,000 care home beds in England, 53% of which are in nursing homes.
2. In our market study, we have identified two broad areas where we have found problems in the market. These are:
 - (a) those requiring care need greater support in choosing a care home and greater protections when they are resident. Current and prospective care home residents must be able to make the right choices, and must be protected if things do not work out as expected; and
 - (b) issues around state-funded care and the provision of sustainable capacity. The market must support the state's intention to ensure that all those who have care needs have them met. This requires that the industry must be sustainable and incentivised to invest and modernise to meet future needs.
3. We have made recommendations to governments, the Care Quality Commission, local authorities, and the industry across the UK to address these issues. We will also take measures to protect residents' rights and to ensure compliance with consumer law.

Support and protections for those requiring care

4. Those entering care face very significant barriers in making good choices. They often need to choose a care home under extremely stressful circumstances, in a very short period and with very little knowledge of how the care system works or their eligibility for funding. They are unlikely to have given the matter prior consideration and planning, and will not know how to find the right kind of home.

5. Once established in a home very few residents are willing and able to move. Therefore they are unable to rectify a poor choice of home and are more vulnerable to unfair practices, particularly when they are self-funders. Problems may include the lack of indicative pricing information on websites, non-provision of contracts and the charging of large upfront fees and deposits. Some residents and their representatives also find it difficult to make complaints, partly because complaints systems can seem complex to use but also because they do not want to complain against their carers or are afraid of reprisals. Given the vulnerability of residents, the protections they are entitled to under consumer law, and sector rules and legislation are especially important here.
6. We are recommending that more support is given to people when making important decisions about care; that care homes should disclose accurate information about fees and terms and conditions in a timely way; and that local authorities should provide more support to people in understanding their entitlements and offering them help.
7. We are calling on the Government to work with the NHS, local authorities, providers and the third sector to deliver a programme of actions to help people make good decisions about their care needs:
 - (a) requiring local authorities to provide clear information to prospective residents on how the care system works and their entitlements, and on choosing care homes in the local area. Some local authorities already do this well, but they should all effectively match best practice;
 - (b) increasing the use of supported decision making to help people understand their care options. Such support could be provided via online tools, telephone advice, leaflets and/or trusted professionals; and
 - (c) undertaking a programme of work to promote awareness and encourage and support people to consider potential care options in advance. This will help people make better decisions – and potentially take steps to avoid a need to enter a care home - when a need for care becomes evident.
8. We are taking various actions to address concerns that some care homes may not be treating residents fairly and potentially infringing consumer law:
 - (a) progressing enforcement action against a number of providers across the UK who we think have been unfairly charging large upfront fees, and charging fees for extended periods after a resident has died. Because of the widespread public concerns that were raised during the market study about fees charged after death, in addition to raising concerns with some care homes, the CMA will also be consulting on new guidance in early

2018, setting out its approach on these fees. We may take further enforcement action against providers where appropriate on other issues of concern.

- (b) issuing detailed guidance in Spring 2018 on the standards of behaviour all care homes should be meeting to avoid infringing consumer law. We will also provide short advice for residents on their consumer rights.
 - (c) recommending to the industry that it develop model contracts which could be used by care home providers, to help encourage best practice and ease the workload of care homes in designing, preparing and updating their individual contracts so that they do not contain unfair terms. We would be willing to offer appropriate support to the industry in it taking forward the recommendation.
 - (d) recommending that the Government introduce stronger sector rules so that compliance with consumer law is embedded into the existing regulatory regime for care homes and is monitored by the CQC as part of its inspection regime.
 - (e) recommending additional sector regulations requiring care homes to have indicative fees and terms and conditions available on their websites, to safeguard deposits against the risk of insolvency and to notify the CQC when they ask residents to leave or impose a visitor ban.
9. To address the short-comings in the current complaints and redress systems, our recommendations include:
- (a) the CQC to include an assessment of how complaints systems are working within their inspections;
 - (b) care homes to signpost residents to the Local Government and Social Care Ombudsman (the statutory body for hearing individual complaints that are unresolved); and
 - (c) Government to review the coverage of advocacy services for care home residents.

State funded care now and in the future

10. The state, through local authorities, provides care for those who are unable to fund it themselves. However, public expenditure on adult social care has, been under pressure. In consequence, the fee rates local authorities pay to care homes have been pushed down, and our financial analysis shows these are insufficient to cover these homes' full costs. There is therefore no

incentive on homes to incur the costs of modernising facilities or building new capacity and some will in time be forced to close.

11. Most care homes serve a mix of self-funded and state-funded residents. The sector has to some extent maintained provision by charging self-funded residents in homes higher fees, we estimate the average cost for care to a self-funder to be £44,000 a year, around 40% more than local authorities pay on average. We do not consider this to be sustainable; we have seen very few examples of investment in new care home capacity primarily focussed at the LA-funded sector. The upshot will be that in the future LAs will not be able to provide services to all those with eligible needs. Moreover, the number of elderly people who are likely to need support, and the acuity of their care needs, is likely to increase.
12. We estimate that local authority-fees are currently, on average, around 5-10% below total cost for these homes, equivalent to around a £200-300 million shortfall in funding (UK-wide) for the care homes most exposed to local authority-funded residents. If local authorities were to pay the full cost of care for all the care home places they fund across the UK, this would cost them around £1 billion a year more.
13. For capacity to be in place to meet the future upturn in demand, LAs need to be taking the appropriate action in good time to encourage appropriate investment. This requires accurate and informed planning. LAs in England already have a “market shaping” duty which is intended to ensure that they plan for the future. Our assessment however, is that the approach that LAs take to this task is very variable, and that the current market shaping duty is not sufficient to meet this important work. This is not surprising since the availability of resources for them to do so and funding to encourage future care provision is very constrained.
14. It is also necessary that investors have confidence about the future in order to persuade them to make investments. Other things being equal, greater uncertainty about the future deters investment. It is important that local authorities are incentivized to prioritise long term planning of care.
15. In light of our findings, we are recommending that the Department of Health develop policies and practices to provide for:
 - (a) enhanced planning by local authorities, so that accurate and meaningful forecasts of future care needs and how to meet them can be built;
 - (b) oversight of local authorities’ commissioning practices to ensure plans will deliver the care that is needed, and improved support to LAs; and

(c) measures to provide confidence to investors that they will receive adequate fee rates.