

## Care homes market study final report

### Short summary for Scotland

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 38,000 care home beds for the elderly in Scotland, 69% 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 don't 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 the Scottish Government, the Care Inspectorate, local authorities and Integration Joint Boards (IJBs), and the industry across the UK to address these issues. We will also take measures to protect residents' rights and ensure compliance with consumer law.

### Support and protections for those requiring care

4. Those entering a care home face very significant barriers in making good choices. They often need to choose a 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. Furthermore, they are unlikely to have given the matter prior consideration or planning, and will generally 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 contracts and business practices. While many residents are state-funded and may benefit from the oversight of local authorities and the widespread use of the National Care Home Contract, some people, particularly self-funders, may experience issues. Problems may include a 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 may also find it difficult to make complaints. While there has been a lot of work in Scotland by the Care Inspectorate (who will hear individual complaints) and the Scottish Public Services Ombudsman to simplify complaints systems generally, we have heard that care home residents can perceive complaints systems as complex to use, and they may not want to complain against their carers or they may fear 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 Scottish Government to work with the NHS, local authorities, IJBs and 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 by trusted professionals; and
  - (c) governments 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 across the UK to address concerns that some care homes may not be treating residents fairly and may be 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 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) we are 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 Scottish 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 Care Inspectorate 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 Care Inspectorate when they ask residents to leave or impose a visitor ban.
9. To address any short-comings in the current complaints and redress systems, our recommendations include:
  - (a) the Care Inspectorate to include within its inspections an assessment of how effectively complaints and feedback systems are working so that a culture of listening to and acting on feedback prevails; and
  - (b) the Scottish Government to review the coverage of advocacy services for care home residents.

## State funded care now and in the future

10. The state, through IJBs, provides care for those who are unable to fund it themselves. However, public expenditure on adult social care has been under pressure. Our financial analysis shows that across the UK, fee rates paid by local authorities are insufficient to cover care homes' full costs. There is therefore no incentive on homes to incur the costs of modernising facilities or building new capacity, and in time some will 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 differential in Scotland at 38%. 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 state-funded sector. The upshot will be that in the future local authorities and IJBs 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 UK-wide, 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 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, IJBs need to be taking the appropriate action in good time to encourage investment. This requires accurate and informed planning. It is also necessary that investors can 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.
14. While we have made recommendations in England and Northern Ireland to address these concerns. In Scotland, there has already been a recognition of these issues and actions have already been proposed. We welcome these as they seek to address the need for planning of care provision and provide improved confidence to potential investors in respect of future returns:
  - The Convention of Scottish Local Authorities, Scottish Excel, the Coalition of Care and Support Providers and Scottish Care are developing a cost of care model to guide the rates paid by local authorities, reducing the risk that fees to providers are too low.

- IJBs govern Health and Social Care Partnerships that are responsible for the planning, funding and delivery of a range of community health and social care. The Scottish Government has told us that IJBs are now looking at developing models to meet future needs in the next ten to twenty years.
15. Therefore, we are not making recommendations for Scotland, as we need to give these initiatives a chance to deliver change. However, our concerns around the delivery of state-funded social care are important, as the delivery of an effective and sustainable social care system must be maintained. The impact of the existing initiatives will need to be assessed and further actions may be required. We urge the Scottish Government to keep this under review and in particular to consider whether improved planning and forecasting to facilitate the long-term development of capacity and provision is required.