

Care Homes Market Study

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The CMA and our market study

The CMA's mission:

“to make markets work well in the interests of consumers, businesses and the economy.”

- Market study into care homes in the UK
- Launched 2nd December 2016
- Aim to review how well the market works and if people are treated fairly.

Outcomes of the market study

- Outputs from the study– a report with:
 - recommendations to regulators, industry or national and local government
 - publicity and guidance (e.g. to consumers, advice to public bodies, guidance to the industry on compliance with consumer law)
 - or we may decide no further action is needed (if no problem is identified or responses would be disproportionate).
- Where we find issues of particular concern, potentially opening:
 - further consumer protection cases or
 - competition enforcement cases.
- We are now seeking views and information from stakeholders in response to our update paper, including to help develop our proposals for remedies.

Overview of our findings and remedies

The update paper emerging findings were grouped by six areas:

1. Choosing care homes
2. Complaints and redress
3. Consumer protection
4. State procurement
5. Investment in future capacity
6. Funding challenges

1. Choosing care homes

Our emerging findings

- Prospective care home residents/families need to be able to make informed choice.
- Our consumer research show many people struggle to make decisions on care.
- It is generally not realistic to expect residents to move to another home.

Our potential remedy areas

- The provision of information through centralised and well-publicised sources.
- Providing assistance to people to support decision-making.
- Ensuring information on care homes is available in a standard format that allows for comparison.
- Encouraging residents/families to consider possible care options in advance.
- Guidance to LA's in relation to top-ups.

Our consultation questions

- What could be done to make information about care homes more useful and easily accessible?
- How could people be encouraged to consider, and plan ahead, for care needs?
- Do people need greater support in considering the care options available to them/choosing a home?

2. Complaints and redress

Our emerging findings

- It is important that residents are protected by effective complaints and redress systems, given the difficulties in moving between homes.
- Complaints and redress systems often do not work well and it can be challenging to make complaints and 'consumer' type complaints are not considered by families.
- It is difficult to navigate complaints systems.

Our potential remedy areas

- Model complaints processes which are specifically designed for care home residents
- Provision of statutory advocacy services to help people make complaints
- Better signposting and access to the ombudsman (including branding)
- Regulators or others having better oversight of individual providers' complaints systems

Our consultation questions

- How can people be helped to feel more comfortable in making a complaint about a care home?
- Would model complaints processes, designed for care homes in each of the four nations, be helpful?
- To what extent would better signposting/access to the ombudsman improve the complaints processes?
- What role should regulators play in relation to complaints systems and complaints from individuals?

3. Consumer protection

Our emerging findings

- We have identified a number of business practices and contract terms that may breach consumer law.
- For self-funder residents (SF), we have concerns about: lack of indicative fee information, large upfront fees/deposits and requirements to pay fees for extended periods after a resident's death.
- Other issues include: provision of contracts; guaranteeing care home fees; direct payment of top-up fees to care homes; fee increase terms; termination clauses; and some issues relating to NHS Funded Nursing Care (FNC) and Continuing Healthcare funding.

We have launched some consumer protection cases against some providers charging large upfront fees and after-death charges.

Our next steps and potential remedy areas

- We may open further investigations at a later date;
- Publish guidance for care home providers on their obligations under consumer law; and
- Embed consumer law compliance into the regulation of the sector.

Our consultation questions

- Are there any other consumer protection issues that we have missed and which we should be looking at?
- Would guidance for care home providers on their obligations under consumer law be helpful?
- Could self-regulation play a greater role in this sector to drive good practice?
- Could sector regulators help to 'embed' compliance with consumer law/best practice across the sector?

4. State procurement

Our emerging findings

- Generally effective competition between care homes for HSC Trust placements.
- Some providers find public procurement complex, inflexible and insufficiently person-centred.
- But we have found a great variety of practice, some examples of sophisticated practice.
- Some LAs discourage use of top-ups, impeding choice.
- Differential pricing is common - self-funders tend to pay more compared to state-funded resident rates.

Potential remedy areas

- Sharing good practice on procurement and greater LA transparency to improve accountability.
- We are currently considering the reasons why price differentiation arises. If we do find a problem, there could be recommendations around price transparency or enabling LAs to potentially assist self-funders secure a better deal.

Our consultation questions:

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

5. Investment in future capacity

Our emerging findings

- Demand for care home services is expected to increase very substantially in the coming years.
- Building additional care home capacity takes time. Our analysis is still underway, but our initial findings suggest that while investment will be attractive in some areas, recent financial performance indicates returns to the sector overall are insufficient to attract investment in new capacity.
- Short-term funding pressures, both in current fee rates and uncertainty over future funding, mean that the sector is not attracting the necessary investment to grow capacity, particularly in relation to SFs.

Our potential remedy areas

- Recommendations aimed at:
 - sharing and adoption of good practice, and
 - promoting long-term approaches e.g. an independent body with a duty to guide long run planning and facilitate the development of appropriate capacity.

Our consultation questions

- What are the barriers to providers responding to future needs for care home beds and how are these best addressed?
- Can LAs/commissioning bodies effectively 'shape' how local care home markets develop?
- Can LT considerations be promoted through sharing of good practice between LAs and commissioning bodies?
- What scope is there to establish an independent body or bodies with a duty to provide support and guidance to commissioning bodies in relation to LT planning/ development of care home capacity?

6. Funding challenges

Our emerging findings

- Concerns about the sustainability of the sector because of fee rates paid by the state, increasing staff costs and recruitment challenges.
- Our analysis of the performance of the sector is still underway, but preliminary results indicate that the levels of profitability overall are low, and lower for homes focused on state funded residents.
- While there is a lot of variability between providers and regions, our initial analysis suggest the sector is generally financially viable in the short term, but that the margins achieved are not large. Consequently we see little investment in new capacity for the SF sector.

Our potential remedy areas

- Remedy options that could provide a greater degree of clarity to investors, and provide an adequate return to motivate investment. For example, recommendations:
 - LAs to take account of key costs (operating and capital) when determining their fee rates
 - An independent body to develop a framework to determine the cost of care, including the cost of capital, advise LAs and adjudicate on disputes between LAs and providers
 - Greater LA transparency on their fee rates and the reasons for them
 - LAs to take measures to facilitate and promote investment such as offer long-term block contracts or build care homes and lease these to operators
 - an independent body with a duty to guide long run planning and facilitate the development of appropriate capacity
- Recommendations relating to regulatory barriers to the labour market.
- We are also exploring the different arrangements across the UK for monitoring the financial health of providers and sharing knowledge between regulators

6. Funding challenges

Our consultation questions

- 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?
- Would there be merit in LAs being required to be more transparent in relation to the fee rates they pay for care home places and how these fees are determined?
- How should the challenges of recruitment and retention of care home staff be addressed, including by LAs, in particular are there any regulatory barriers to the labour market?
- There are different arrangements for monitoring the financial health of significant operators in the UK, including the CQC's 'market oversight' function in England, and we are looking at whether there is sufficient coordination between these systems. Any views?

Next steps

- Many thanks for sharing your views today.
- We have made a note of these views and will treat this as a response to the update paper.
- We also welcome any further responses in writing to our update paper – see our website for further details:
<https://www.gov.uk/cma-cases/care-homes-market-study>
- We would like to continue to work with you to develop our findings and remedies, ahead of publishing our final report by 1 December.
- **We welcome any views and suggestions for how we could continue to work together.**

- Should you have any queries and/or require any further information, please contact:
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