

Scottish Care Response to the CMA Consumer Protection Consultation

About Scottish Care

Scottish Care is the representative body for independent social care services in Scotland. This encompasses private and voluntary sector providers of care home, care at home and housing support services across the country. Scottish Care counts over 400 organisations as members, which totals just under 1000 individual services. Scottish Care is committed to supporting a quality orientated, independent sector that offers real choice and value for money. Our aim is to create an environment in which care providers can continue to deliver and develop the high-quality care that communities require and deserve.

In relation to older people's care, this sector provides 89% of the care home places in Scotland, both residential and nursing. There are more older people in care homes any night of the week than in hospitals – as at 31st March 2016 there were 873 care homes for older people providing support to 33,301 residents any night of the year.

It is in this representative capacity that we are responding to this consultation.

Scope

2.1 Does the draft advice cover all of the important issues around the contract terms and practices used by care homes with their residents? If not, what else should this advice include and why?

We believe that the broad scope of the draft advice is sufficient. However we are concerned that the Note in its current form does not give sufficient cognisance to nor make reference of the specific particularities of the Scottish context. In particular we would like to see illustration made of the Scottish National Care Home Contract and its processes and content. This would especially relate to contracts with residents. It might be beneficial to show evidence of the Scottish contract and related issues such as the 12 week disregard.

In addition, we would like to have seen some specific reference in the Guidance for those instances where there is a potential conflict of interest in the information being given to prospective residents. In particular where a local authority appointed social work assessor is employed by an Authority which itself delivers care home services, we would like to have seen explicit reference made to the importance of independent and transparent information and guidance. We have previously expressed our concern at the risks inherent within a situation where the Local Authority and its officers are assessor, information source, commissioner and provider.

2.2 Are there any reasons why the illustrative examples of contract terms and practices that the CMA considers are more likely to be fair or unfair might be problematic? Are there any better examples that could be used?

See above comment.

Providing upfront information (section 3 of the draft advice)

2.3 Do you agree with the CMA's views on the key information that care homes should provide to prospective self-funded residents and their representatives when they make first contact with a care home? In particular:

1. *a) Is there any key information currently included in paragraph 3.15 of the draft advice that you do not think is likely to affect someone's initial decision about whether or not to shortlist, make further enquiries of or visit a particular care home, and if so why?*
2. *b) Is there any other important information that you think ought to be included here, and if so why?*

We believe this initial key information to be reasonable. However reference needs to be made to the Free Personal and Nursing Care payments in Scotland and what they constitute and do not constitute as there is often a lack of full understanding on this.

We are concerned that providers should not be expected to have control over information and data which appears on third party websites with whom they have no contractual relationship. The growth of these is becoming a challenge. 3.11 and following needs to make this explicit.

2.4 In relation to the important, additional information that should be provided in good time before a resident accepts an offer of a place (paragraph 3.23 of the draft advice) is there any other information that you think is likely to affect someone's decision about whether or not to accept an offer of a place in a care home, and if so why?

None.

2.5 Based on your experience, are there any reasons why the ways in which the CMA has suggested care homes should provide information (including when and how it is provided) may not be workable in practice? Are there any better ways of providing information (particularly key information)?

There is at times a presumption throughout the Note that the majority of care providers utilise a website – with so many small and singleton providers in Scotland's care home sector this is not always the reality, and this should be appreciated within the main narrative.

Treating residents fairly: contract terms and business practices (section 4 of the draft advice)

Changes to a self-funded resident's fees during their stay in the home

Consumer law requires that self-funded residents are able to foresee, on the basis of clear and intelligible criteria, how their fees may change whilst living in the home and that they are able to evaluate the practical implications for them, before accepting an offer of a place. This is likely to require care homes to set out clearly in contracts with

residents the circumstances in which fees may change and the method for calculating it. The CMA has suggested the following three approaches by which care homes may comply with the law:

- a) Fixing a resident's fees for the duration of their stay;
- b) Specifying the precise level and timing of any future fee increases within very narrow limits, e.g. *'your fees will be increased by £500 per annum on the first and subsequent anniversaries of your arrival at the home'*;
- c) Reviewing residents' fees on an annual basis by reference to a relevant, objective and verifiable published price index e.g. the Consumer Prices Index including housing costs (CPIH), or the average of (i) the percentage increase in the CPIH over the previous year and (ii) the percentage increase in the National Living Wage rate compared to the previous year.

2.6 In relation to these suggested approaches, what are the likely consequences? Are there any which you consider would not be workable in practice, based on your experience and why?

We would suggest that a) is wholly unworkable and undesirable. It will first of all be impossible to achieve and would also potentially have unintended psychological consequences. It is not the sort of rights based, positive person-centred model we would agree with.

Again whilst b) might be desirable, care home providers are not economists able to determine the impact of global trends and changes over a long period of time. We doubt even the Bank of England would willingly adopt such 'calculation' as the basis of its contract formation.

Whilst c) has an obvious appeal again we are concerned about some of the ramifications here. The CPIH is not wholly appreciative of the realities of care home service provision. It is rather like comparing oranges and apples – they may look the same shape, but they are inherently different. In Scotland the development of an Indicative Cost Indicator should be highlighted as one of the bases which would be utilised in such a calculation, illustrating the agreed cost increases for state funded individuals.

2.7 In relation to reviewing residents' fees on an annual basis by reference to a relevant published price index, do you consider that the CMA's suggested indices/approaches adequately reflect care homes' cost drivers? Are there any other relevant, published price indices that you consider more accurately reflect annual increases in care home costs, whilst granting prospective residents (and their representatives) the foreseeability they need?

See above.

General/additional

2.10 What, if any, aspects of the draft advice do you consider need further clarification or explanation, and why? In responding, please specify which section of the draft advice (and, where appropriate, the issue) each of your comments relate to, for example:

- a) Upfront information (section 3)*
- b) Treating residents fairly(section4)*

- c) Quality of service (section5)*
- d) Complaints handling (section 6)*

We do not believe that the document is fully appreciative of the distinct Scottish Care Inspectorate role in the handling of complaints.

In addition there is no reference to the role of digital, data and technology in use in care homes and the role and rights of the individual in this regard. This should, given its development, be referenced in some way.

2.11 Do you have any suggestions on the best ways of disseminating the content of the final advice to ensure that it is easily accessible to care homes and, in particular, to smaller care homes?

Scottish Care, Cosla and other parties are involved in developing guidance and literature for those entering care homes. There is a real opportunity here for these two processes to support one another. In its present format the draft advice is inaccessible. We would suggest the use of social media, possibly a short video, would be more beneficial than a weighty document.

For further information, please contact:

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