

The Care Inspectorate welcomes the opportunity to respond to the CMA “Care Homes Market Study Update Paper”, published in June 2017. Many of the key questions in the paper relate to issues extensively discussed in the Care Inspectorate’s previous submissions to the CMA market study, and raised in fruitful discussion and dialogue with CMA. This paper responds to some of the key questions, where there is additional intelligence or perspective that we can bring.

General

We note the analysis of the issues affecting the care home market identified in the document. Some of these are similar to those that we have identified, including challenges about staffing, choice, and the important of ensuring that people experience care that is person-led, supports their rights, and allows them to experience dignity and respect at all stages.

Choosing care homes

We welcome any measures which would make information about care homes more useful and easily accessible, including in relation to availability and fee rates. In terms of quality grades, the Care Inspectorate provides this information on its website and actively encourages people to view, access and understand this information. We would be happy to consider further providing this in innovative ways that could be used on care home websites and other places.

We are interested in the recommendation that people could be encouraged to plan ahead for future care needs, including following an immediate crisis or circumstances that trigger a decision to move into a care home at short notice. There is a strong approach and support for anticipatory care planning in Scotland, where people are encouraged to think about future needs and wishes. We would welcome further discussion about the extent to which the issues raised by the CMA could be included in such policy approaches.

We recognise the very valuable approach that voluntary sector organisations and advocacy organisations play in supporting people experiencing care. The new Health and Social Care Standards in Scotland provide an important vehicle for establishing the quality which people should experience. For example, the standards establish that:

- If possible, I can visit services and meet the people who would provide my care and support before deciding if it is right for me
- I have time and any necessary assistance to understand the planned care, support, therapy or intervention I will receive, including any costs, before deciding what is right for me.

To make these standards the lived reality for people experiencing care, providers and commissioners will need to work with a range of partners to provide support, advice and guidance.

We also think it would be helpful for the CMA, in making recommendations, to consider further the policy of self-directed support, which is designed to ensure people are supported to make decisions about their care and can lead their care where this is what they wish.

Complaints and redress

We note the findings that complaints processes “do not function well”. It is not clear that the evidence base for so stark a finding is presented in the report or, indeed, established at all. Paragraphs 4.4 and 4.5 do not accurately describe the role of the Care Inspectorate’s complaints function and its relationship with the ombudsman (read to be the Scottish Public Services Ombudsman). The Care Inspectorate has the responsibility for investigating complaints about the quality of care in care homes. This role is not undertaken by the SPSO. Their roles in respect of the provision of care are quite separate: to consider complaints made about the Care Inspectorate itself, or complaints made about a local authority in the discharge of its statutory functions (including social work decisions, but not decisions about the quality of a care home, even if it is provided by the local authority).

This provides for a unified approach to scrutiny of care homes and a powerful combination of scrutiny findings, intelligence, customer feedback which informs national and local understanding of the prevalence of risk in care services. This is a model we can strongly recommend: it not only allows complaints to be investigated in concert with other scrutiny activities; it allows intelligence from complaints to direct and inform those activities too.

We would strongly welcome measures which can help us to improve the way in which we investigate complaints, and strongly value hearing the voices of people who have made a complaint or felt inhibited from doing so. We would welcome any measures which can better signpost the complaints processes.

We have sought to build relationships with advocacy and advice services, to empower them with the knowledge and skills to understand how our complaints process can help people.

We note the proposal to introduce a prescriptive complaints process for a care home. We are not clear that a top-down approach is the fastest route to success in this matter. Since at least 2001, care homes in Scotland have been required to have a complaints process, and the Care Inspectorate is empowered to examine both its quality and impact, requiring improvement where necessary. The emphasis in that is in relation to the impact of the policy: there is little point having an excellent policy if it has no impact because people and staff are not confident in using it.

Whilst we would be willing to consider developing exemplar policies and associated

materials to build confidence and skill in implementing complaint-handling (and are working with others to do so in relation to the imminent new duty of candour), experience suggests that transformational change is often best achieved and sustained when organisations are asked to devise policies and procedures best suited to their particular circumstances. Further clarity is therefore needed about how the proposals would add value in this area.

Consumer protection

We welcome the proposal for the CMA to produce further guidance for care home providers on their obligations under consumer law. The Care Inspectorate would be delighted to work in partnership with the CMA to progress this work and publicise it.

We note with interest the question as to whether “self-regulation could play a greater role in this sector to drive good practice”. We would welcome further discussion about what such self-regulation might be and the CMA’s suggestions for its use. We support proportionate regulation which is designed at public protection and improving the quality of care. At the heart of our scrutiny approach is the belief that self-evaluation is a powerful tool for assuring quality and supporting improvement. This does not negate the need for appropriate, modern and proportionate regulatory frameworks, but enhances them.

We note the question about what role “sector regulators play in helping to further ‘embed’ compliance with consumer law and best practice across the sector”. There are number of issues here which are relevant. First, the Care Inspectorate is keen to work in partnership with other regulators, particularly in areas which are not our primary specialism, such as consumer law. We already work strongly to spread good practice across the sector in a number of areas; we both develop the benchmark of such practice ourselves and act as a vector for practice developed by others. We generally eschew an approach based on compliance, preferring instead to work collaboratively to support improvement. Enforcement action is an important option open to us, but rare and always a last resort: we prefer to help people’s care improve where we can, rather than require them to be withdrawn.

In relation to question 14, the new Health and Social Care Standards establish the quality benchmark for many issues which go beyond the clinical or professional delivery of care, including accessing timely information when choosing care.

State procurement

We note the specific circumstances of the National Care Home Contract in place in Scotland. We are keen to work collaboratively with the parties to that contract to provide intelligence, data, advice and guidance. We are particularly keen to ensure that strategic commissioning of care is conducted in a way which supports a continual improvement in the quality of that care, rather than merely penalising its

absence.

Investment in future capacity

The update paper identifies many of the challenges in relation to the future need and provision of care. The continued policy of shifting the balance of care towards more care at home has the effect of supporting people to live at home for longer, which many people welcome. It is important that this is done in a way which ensures the experience of care remains positive and its quality high. At the same time, it is important to reflect on the size of care homes and the need to retain a homely environment in them.

There are specific models of strategic commissioning in place in Scotland to drive shared decision-making across health and social care partnerships. The Care Inspectorate and Healthcare Improvement Scotland will commence scrutiny of these arrangements from 2017 onwards. It is therefore too early to be able to describe the impact of these approaches, but doing so will become increasingly possible as scrutiny evidence emerges. We welcome the proposals to consider better sharing of good practice across local authority areas; indeed, the Care Inspectorate has a statutory role to recommend improvements in the quality of strategic commissioning.

We are not persuaded of the case to establish a new body 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. We believe that the existing arrangements, where by the Care Inspectorate works with a wide range of partners including the Scottish Government and the ihub at Healthcare Improvement Scotland, are satisfactory from a structural perspective. We would welcome further activity in this area if necessary and would be keen to work with others to contribute to this. We think that the costs of establishing a new body would be better spent delivering meaningful activity through existing structures.

Funding and staff challenges

We recognise the staffing challenges faced by care home providers, and collect and publish data around this issue. We are aware of the specific challenges around nurse recruitment and have supported some care homes to test and enhanced senior carer role to support the staffing mix within the home. That said, we recognise the importance of the nurse role in clinical leadership and the centrality of that role in many – but not all – care homes.

We welcome the role of workforce regulation in the sector and would not support any changes to remove this. The Scottish Government is currently leading work with Cosla around workforce planning and recruitment in the care sector and the Care Inspectorate is actively involved in supporting this work.

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