



advice and support for older age

**Independent  
Age**

# **Response to the Competition and Markets Authority's Care Homes Market Study Update Paper**

August 2017



## **About Independent Age**

Whatever happens as we get older, we all want to remain independent and live life on our own terms. That's why, as well as offering regular friendly contact and a strong campaigning voice, Independent Age can provide you and your family with clear, free and impartial advice on the issues that matter: care and support, money and benefits, health and mobility. A charity founded over 150 years ago, we're independent so you can be.

### Website

For more information, visit our website [www.independentage.org](http://www.independentage.org)

### Helpline

We give free, confidential advice over the telephone for older people, their families and carers on issues such as getting help at home, adaptations, care assessments, paying for care, staying in touch with other people and welfare benefits.

Call our team of experts on 0800 319 6789, Monday to Friday, 8am-8pm, and Saturday to Sunday, 9am-5pm, or email your query to [advice@independentage.org](mailto:advice@independentage.org)

Registered charity number 210729

## 1. Executive Summary

Independent Age welcomes the opportunity to comment on the Care Homes Market Study Update Paper. As stated in our original submission, we have long been concerned that this is a market that does not work well for consumers, particularly in terms of transparency and choice. We are therefore pleased that the Competition and Markets Authority (CMA) is undertaking a detailed review of this market.

We have structured our submission in line with the questions asked, focusing on the areas where we have direct experience and expertise.

### Main points:

- **We are broadly supportive of the approach being taken by the CMA. However, one area we believe warrants further investigation relates to price differentials** and the extent to which local authority fees, and how these are set, have an influence on quality in care home provision.
- **We worry there is little public confidence in, and understanding of, how care home fees are set and what they really cover.** In this regard, an independent body that works to develop a framework to estimate reasonable fee rates would be a real step forward.
- **Independent Age would at least like to see more work carried out to provide transparency on fees.** One possible approach would be to provide a historic median price that self-paying residents had to pay for a given provider in the past financial year, as an illustrative - average - figure that other prospective clients could then use to compare across other homes they approach.
- **Independent Age sees the CMA market study as the obvious opportunity to strengthen and clarify guidance on care home contracts** so these can be drawn up as clearly and as fairly as possible for consumers.
- **We would like to see the introduction of model template contracts**, which clearly spell out in plain English what the terms of the contract are.
- **With respect to care home contracts, we would also like to see recommended timeframes for people to not only receive a contract but also to ensure that people have adequate time to digest and seek advice on the contract itself.**
- **It would be useful to see the CMA provide guidance on how trial periods for new residents can be accommodated at the beginning of a resident's stay** but still enable an individual to

leave a care home before a full contract takes effect, and at very short notice.

- **We need to have higher aspirations on the data that can be routinely collected and then disseminated for consumers to see on standards and performance** across residential and nursing care.
- **What is truly lacking is any comprehensive assessment as to how service users or relatives experience care homes** – data that could be provided through a Friends and Family Test, which has been used for a number of years in the NHS.
- **Independent Age has also argued for some time now that the social care sector needs to have a staff survey**, which among other things would provide benchmarked data on how many staff who work for a given provider would recommend it to their own friends or family.
- **We would like to see the Quality Matters programme being co-ordinated by the Department of Health and the CQC leading to some firm action and agreement on what new information can be collected and how much of this can then get presented to consumers.**

## **2. General**

**Q1. Do you agree with our analysis of the issues affecting the care home market? Please provide evidence to support your views.**

**2.1 Independent Age is broadly supportive of the approach taken by the CMA. However, one area we believe warrants further investigation relates to price differentials and the extent to which local authority fees, and how these are set, have an influence on quality.** We expand on this later in our submission.

**2.2** The CMA states that the evidence it has obtained to date doesn't point to councils paying fees that fail to cover homes' direct operating costs. We understand there are many different perspectives on the level care fees are set at and the degree to which they represent the 'real' or a fair market value of providing care. We also recognise the inherent difficulties involved in setting and agreeing fees. Fees in large part need to reflect the cost of individual care packages, some of which may prove far costlier than anything that could be priced at a standard rate.

**2.3** However, Care England's analysis from July 2017<sup>1</sup> signals the ongoing concern a number of care providers still have about future finances and

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<sup>1</sup> 'Social Care Collapse is Ever Nearer', Care England, July 12 2017 <http://www.careengland.org.uk/social-care-collapse-ever-nearer>

the extent to which care homes now feel confident taking on local authority placements. With 45% of providers who were surveyed now stating they are projecting to take on less local authority placements over the next few years<sup>2</sup>, we believe the CMA study needs to probe further into the question of fees; how they get set, and the sustainability of local authority placements in residential care.

**2.4** The results from the recent ADASS budget survey provide further compelling evidence this area needs to be examined afresh. Of the savings local authorities are making this year, £13 million has been identified through increasing fees to providers by less than inflation. 19 councils responded to the annual budget survey by explaining that raising fees by less than inflation was an approach they had decided to adopt for 2017<sup>3</sup>. With the costs of care often rising faster than general price inflation, we cannot see how this necessarily squares with the CMA observation that councils are paying what they need to.

**2.5** There are instances of care home groups challenging councils about the fees they set, such as in Essex. The Update Paper provides insights into private investment and funding challenges for private sector providers but we feel in its remaining stages the CMA study could examine the role of council commissioning in more detail. Like Age UK, we also agree that unless the local authority-funded system improves, there will always be constraints on making improvements in the care homes market.

**2.6** We would encourage the CMA to examine how local authorities vary in their approach to setting a 'standard' rate which then gets used as a benchmark for setting care fees. This could consider the different algorithms and methodologies they use and how, if at all, these different approaches to setting fees can help or hinder growth in capacity in the care homes market.

## **Market shaping**

**2.7** We are pleased local authorities' role is referenced in the Update Report, but market shaping is another area we think the CMA could probe a little deeper.

**2.8** Since the Care Act was introduced, it doesn't always seem obvious how the new legal duty on local authorities to shape their local market, or provide for a diverse mix of quality providers, has worked in practice. It certainly doesn't appear to have been evaluated or audited in any meaningful or comprehensive way.

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<sup>2</sup> Ibid.

<sup>3</sup> ADASS Budget Survey 2017.

**2.9** Our own early insights suggest some local authorities are much further advanced in their understanding of this duty and what it means in terms of planning for continuous improvement in their local care market. Others appear to have a far weaker approach to building a diverse, or “quality” market of care providers, which is what the Care Act specifies needs to occur.

**2.10** We have new research underway which we would be happy to share with the CMA in the autumn. It looks specifically at local authorities’ own performance around market shaping and their management of care home top-up fees. One of our early insights is that local authorities have a mixed approach in terms of how they account for their role shaping a strong care homes market.

**2.11** Some councils still place residents in care homes rated by the Care Quality Commission as ‘Inadequate’ or ‘Requires Improvement’ even though they claim they take homes’ rating into account before they make placements. Others are far more cautious about making placements with poor performing care homes and stipulate they will only place residents in homes that have a good rating from the CQC. This at least poses questions about how consistently duties on market shaping are getting fulfilled. This is an area we would be pleased to follow up and provide further evidence on.

**Q2. Do we have comments on their proposed next steps and remedial action, including suggestions for other remedial action?**

**2.12** The CMA’s enforcement action is focused on extremely important issues so we would simply encourage the CMA to be led by whatever evidence it comes across without of course pre-judging at this stage whether the enforcement action could be broadened out to cover other important areas of consumer law.

**2.13** In addition, **Independent Age sees the CMA market study as the obvious opportunity to strengthen and clarify guidance on care home contracts so these can be drawn up as clearly and as fairly as possible for consumers.**

**2.14** Previously, the Office for Fair Trading (OFT) produced sector-specific guidance – including for care homes – on contract terms. This study should lead to an update in that piece of guidance and to focus on tackling unfair contract terms in particular. Later in the submission, we set out why a model contract template is now required.

**2.15** We would also like to support what a number of partners have called for, including Age UK, around enforcement of consumer protection and the potential for a beefed up industry code of practice.

### **3. Choosing care homes**

**Q. 3 What could be done to make information about care homes more useful and easily accessible so people can see which care homes have availability and compare factors such as fee rates, quality ratings and contractual terms or whatever other information they may find useful and can engage with?**

#### Immediate reflections

**3.1** While there is a wealth of information on care homes it can prove to be very confusing and not easily accessible to older people and their families.

**3.2** In their recent study, consumer group Which? revealed that of 100 UK care home websites, only three care home providers included their terms and conditions online. Nearly 9 in 10 provided no pricing information. Independent Age believes this is unacceptable as it means people looking to arrange care for a loved one or for themselves will have little information to go on when comparing prospective care homes. This would be bad enough if people searched for care homes well in advance of a move into a home but from our own evidence<sup>4</sup> we know the reality is that most people make a “distressed purchase”, choosing a care home bed in a crisis.

**3.3** In fact, work we carried out in 2016 highlighted the degree to which older people and their families “delay” or simply “deny” a need to have conversations about care, with around 7 million people across the UK finding themselves in this position<sup>5</sup>. In this environment it becomes all the more important that older people are presented with easy-to-understand and reliable information about care homes.

**3.4** However, the ‘information deficit’ might extend even wider still. A recent audit of local authority websites by *Better Connected*, in partnership with Independent Age, highlighted that around half of all local authorities don’t provide a good service online to help residents find local care and support for an older person<sup>6</sup>. Local councils are cited by around 1 in 6 people (16%) as the first place people would go to when looking to find out information about a care home<sup>7</sup> so this is of course cause for concern.

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<sup>4</sup> Shining a light on care: helping people make better care home choices, Independent Age, 2016.

<sup>5</sup> We need to talk about caring: dealing with difficult conversations, Independent Age, 2016.

<sup>6</sup> Better Connected survey ‘Find local care support for an older person - 2016-2017’

<https://betterconnected.socitm.net/services/social-care/find-local-care-support-for-an-older-person/2016-2017>

<sup>7</sup> Shining a light on care: helping people make better care home choices, Independent Age, 2016.

**3.5** Furthermore, very few councils appear to feature a calculator tool on their website so that residents can hope to understand or estimate the cost of any care needs.

**3.6** A number of bodies collect information about care homes but with the exception of NHS Choices, and a few notable websites such as Care Home Advisor, very few attempt to create a portal gathering all the relevant information about a care home in a single place.

#### Moving beyond inspection reports

**3.7** Care Quality Commission (CQC) reports provide valuable information but they inevitably focus on the basics: whether a care home is safe, effective and well-led, as well as caring and responsive. What we have heard from our own focus group work is that in addition to reports from the CQC, people making a care home choice want to get a real sense of how residents experience life in a care home that allows for a richer and more human comparison.

**3.8** That is why we have trialled new care home quality indicators, with a local Healthwatch, in the London Borough of Camden<sup>8</sup>. The eight indicators are grounded in what older people and their loved ones' have told us matters most to them in terms of how a care home is run and the quality of life there. We encourage other Healthwatch to make use of these indicators to help evaluate local care home provision through their Enter and View powers. This has worked very successfully in Camden, with volunteers from the local area helping to carry out the Enter and View visits. The result has been an increase in the information available to residents on local care home choices, but crucially, information that goes beyond CQC-ratings and inspection reports.

**3.9** The CMA is absolutely right to point to the need for more information on available care beds, fee rates and contractual terms. However, **what is also truly lacking is any comprehensive assessment as to how service users or relatives experience a service – for example data that could be provided through a Friends and Family Test, which has been used for a number of years in the NHS.**

**3.10** There is a deficit in terms of consumer feedback, with most Trip Advisor-style websites generating few detailed reviews or comments for other consumers to then view. There are many good initiatives, such as *Your Care Rating*, with a widening range of voluntary surveys comprising the views of care home residents, but relatives and employees too. But in the end this information is not widely known about. In essence, it is

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<sup>8</sup> Evaluating residential care in Camden: A review of our work with Heathwatch Camden, 2017.



voluntary for care homes to participate in surveys of this kind so there will always be limited use of this data from a consumer point of view.

**3.11** The concern with so much of the information currently available – and across so many of these platforms – is that it only represents a snapshot of how a home is performing, and at a historic moment in time. CQC is clear that the quality of care in a home can change quite suddenly and dramatically, especially if a number of key staff leave in a short period of time or a home loses its registered manager.

**3.12** Consumers expect that care homes are at least safe but to truly make informed choices, they need information that would be available in any comparable market, not least to make judgements about value-for-money and whether current or past users would recommend a service.

**3.13** The focus has to be finding simpler ways to present information, but in “real time”. It has to be in a format that is easy to find, easy to digest, but is also based on what consumers themselves say would be useful.

#### A way forward

**3.14** We think a number of interventions would be useful and whilst we hope the CMA could point to all of these as useful solutions, we are clear a fair amount of work would still need to be carried out to examine which are a priority and which approaches could be introduced and implemented soon.

**3.15** On one simple level, we believe the current facility within NHS Choices could be strengthened.

**3.16** Whilst NHS Choices is not by any means the best name for a site for people to go looking for a care home, the reality is that it is popular and large numbers of people don't separate out healthcare from social care. The problem at present is that the information displayed on care homes is limited with details of a care home's recent CQC-inspection rating and a couple of other basic details about food and safety and staffing.

**3.17** It would at least be strengthened by more consumer feedback, or in the absence of any reviews in future getting submitted through the website, then a Friends and Family-style Test that could be applied across all care homes. This would provide benchmarked information to get reported on, across homes of all types and sizes.

**3.18** A Friends and Family-style Test would focus on whether residents (and in addition) relatives would recommend the home. Whilst we recognise there will always be a limit to what smaller social care providers can report, compared with say large NHS acute trusts, we feel the sector

still has more work to do to identify what *could* at least get captured that will meet the needs of regulators, commissioners and consumers.

**3.19** Independent Age has also argued for some time now that the social care sector needs to have a staff survey, which among other things would provide benchmarked data on how many staff who work for a given provider would recommend it to their own friends or family.

**3.20** Other questions that could be featured within such a survey could include whether staff have seen incidents which have led to harm, not unlike the question on patient harm in the current NHS Staff Survey. Considering the literature on safeguarding in care homes and the extent to which safeguarding enquiries aren't thought – at least yet - to represent the full scale of neglect or abuse that occurs in care homes, information gathered from a staff survey would be useful, although potentially quite troubling. Nonetheless it's information that should be available in the public domain.

**3.21** In summary, **we need to have higher aspirations on the data that can be routinely collected and then disseminated on standards and performance across residential and nursing care.**

Moving further on reporting quality

**3.22** We are encouraged by the new *Quality Matters* commitment to "bring clarity to quality" and an improved approach to "*measuring and publishing quality*"<sup>9</sup> but have firm views this needs to lead to the creation of a simplified data set that works in the interest of consumers.

**3.23** Information which would be of particular use to consumers and allow them to make more informed decisions about care quality includes staff-to-resident ratios as well as the ratios between the use of agency and permanent staff. However this is not always readily available. Other metrics might be useful for homes to report on, including the proportions of staff working at night, relative to staffing levels during the day plus the number of complaints that have been made against a care home that led to an investigation by the Local Government and Social Care Ombudsman, and were upheld.

**3.24** **We would like to see the *Quality Matters* programme being co-ordinated by the Department of Health and the CQC leading to some firm action and agreement on what new information can be collected and how much of this can then get presented to consumers.**

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<sup>9</sup> Adult Social Care: Quality Matters, Department of Health and Care Quality Commission, 2017.

## Information on fees and value-for-money

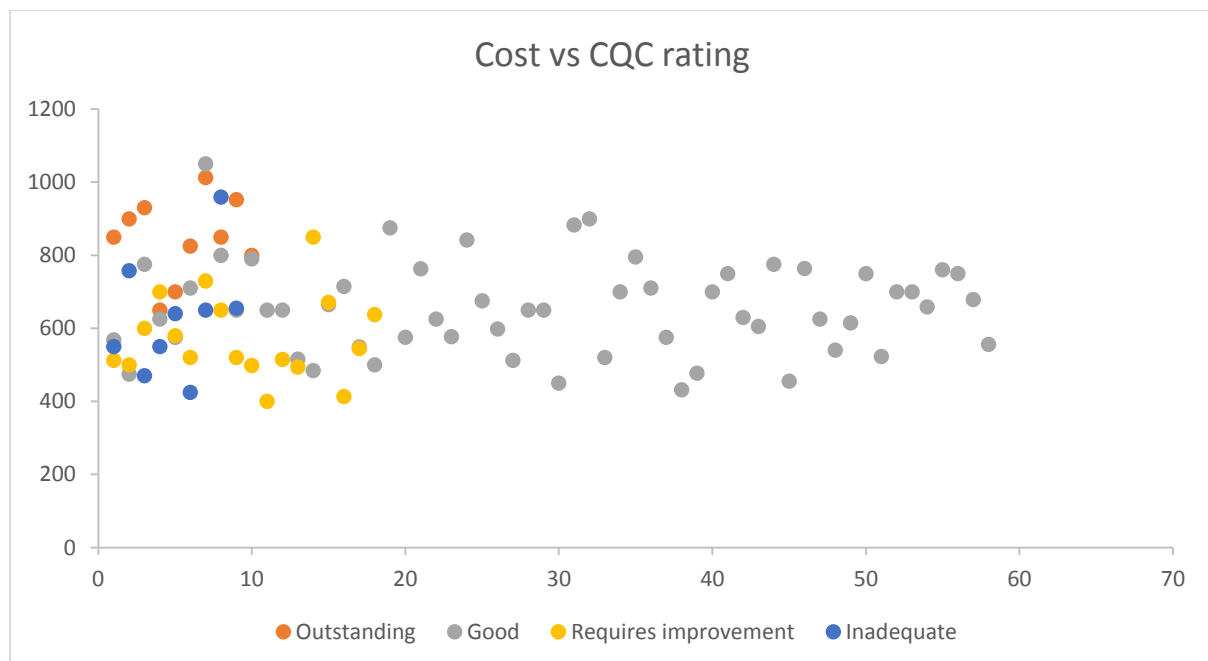
**3.25** On the topic of cost and fees there is often no simple way to gather this information without consumers conducting substantial research themselves, something which is often not possible, particularly if a move into a care home is sudden and urgent.

**3.26** It is very difficult for residents, families and carers to make informed decisions, particularly on price, without contacting a range of homes directly and even then the level of information they can obtain differs.

**3.27** Our own preliminary investigations have shown there is sometimes a poor correlation between price in a care home and its overall quality.

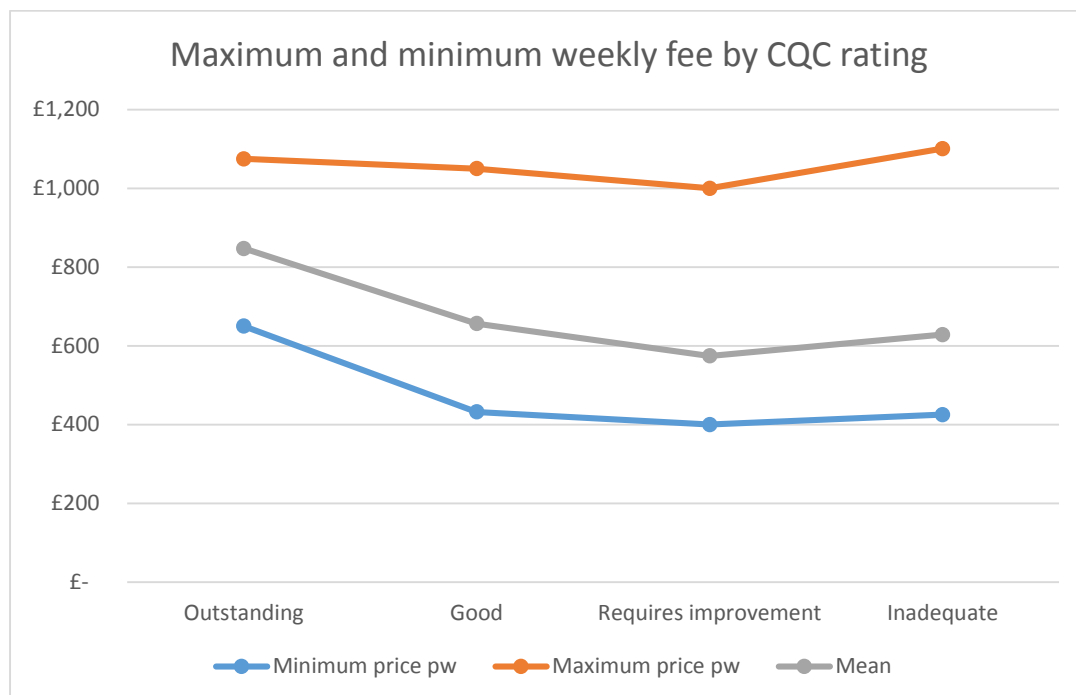
**3.28** In a well-functioning market we would expect a care home offering a high standard of care to cost more than one offering a low standard of care. As such, an older person looking for a care home might feel that paying more for care will guarantee them a higher quality of service.

**3.29** As part of a mystery shopping exercise we conducted with 100 care homes in 2016, we wanted to check whether in England price *could* help inform older people and their families in their search for high quality care. So, we plotted the average price per week against the CQC rating received at a home's latest inspection (the graph below shows the spread of results).



**3.30** At first, the results appear to reveal there is some kind of relationship between the average cost of a care home and its CQC rating:

- 18 of the 20 most expensive care homes we researched were rated 'Outstanding' or 'Good' by the CQC;
- Care homes rated 'Inadequate' were twice as likely to be in the bottom half of the cost spectrum than in the top half; and
- 11 of the 20 cheapest care homes were rated 'Requires Improvement' or 'Inadequate' by the CQC.



**3.31** However, those hoping to rely on price as a guarantee of quality could be in for a surprise:

- Care homes rated 'Good' were evenly split between the top 20 most expensive care homes (10 homes) and the top 20 cheapest care homes (nine homes).
- The third most expensive care home we spoke to, which cost £959 per week for our example customer in Mystery Shopping, was rated 'Inadequate' by the CQC.
- The average cost of a 'Good' care home (£656 per week) was only £27 per week higher than the average cost of an 'Inadequate' care home (£629 per week), and the average cost of a 'Requires Improvement' care home was the lowest of all at £574 per week.

**3.32** Our analysis started to demonstrate that too often older people and their families cannot access the information they need to make an informed decision about a care home, even when they are speaking directly to the care home itself – and they cannot rely on proxies for quality as they might in other kinds of market.

**3.33** In its 2013 report on care fees, *Right Care, Right Price*, the Strategic Society Centre suggested a more interventionist approach with councils being required to publicly update their 'usual costs' for care and greater regulation over the pricing of care, so that it is linked more explicitly to quality<sup>10</sup>. The Strategic Society Centre even suggested that care homes could be prevented from charging more than a defined fee-range unless they had attained a certain quality rating from the CQC.

**3.34** Independent Age would at least like to see more work carried out to provide transparency on fees. One possible approach would be to provide a historic median price that self-paying residents had to pay for a given provider in the past financial year, as an illustrative - average - figure that prospective clients could then use to compare across other homes they approach.

**3.35** With less than half of those over the age of 75 regularly using the internet<sup>11</sup> it is also important that there is adequate accessible information that older people can access for themselves which doesn't rely on access to the internet.

**3.36** Our mystery shopping research suggests care homes could also look to improve what information they provide about themselves and their quality, over the telephone<sup>12</sup>.

#### **Q. 4 How could people be encouraged to consider, and plan ahead for care needs away from an immediate crisis or circumstances arising that trigger a decision to move into a care home at short notice?**

**4.1** Independent Age is a strong advocate that individuals should plan ahead for potential future care needs. In addition to our range of print and online information we also provide information and advice to individuals through our Helpline.

**4.2** However, our experience working with older people tells us that planning ahead is not something that individuals are likely to do without

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<sup>10</sup> Right care, Right price, Strategic Society Centre, 2013.

<sup>11</sup> Just 4 in 10 adults over the age of 75 have used the internet in the last 3 months. Office for National Statistics, *Internet Users in the UK: 2017*, 19 May 2017, Available at: <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2017#adults-who-have-never-used-or-no-longer-use-the-internet> (accessed 4 July 2017).

<sup>12</sup> Shining a light on care: helping people make better care home choices, Independent Age, 2016.

prompting. Future care needs tend to fall into an 'out of sight, out of mind' mentality with many people actively avoiding thinking about care until it simply cannot be ignored.

**4.3** Barriers to planning ahead not only involve a lack of information or a reluctance to consider a loss of health or independence. The poor public perception of care homes means that they are largely viewed as places people don't want to consider as a future place they might one day live.

**4.4** Our 2016 research found that more British adults believe overall that the quality of care homes is bad (45%) than those who believe the overall quality of care is good (39%)<sup>13</sup>. This in turn builds on a finding from the Demos Commission on Residential Care that only 1 in 4 surveyed would consider a move into residential care if they became frailer in old age. 43 per cent said they would definitely not move into a care home<sup>14</sup>.

**4.5** Elsewhere, we have learnt that self-payers can still find themselves deterred from finding out about paying for care. Individuals who want to plan for potential care needs are sometimes presented with obstacles, told by their council for example that they should return for assistance when they do in fact develop needs but that is premature for them to be in contact any sooner<sup>15</sup>.

**4.6** More could be done to facilitate early planning so that people can have a higher level of control over any future change in their care needs or health.

**4.7** In their 2011 report on a fairer funding system, the Commission on Funding of Care and Support recommended the government should "undertake an awareness campaign to encourage people to plan ahead for future possible care needs". Very little has happened since, but we still think an awareness campaign would serve a useful function. Elsewhere, we have previously joined charity partners to call on government to consider a 'Ready for Later Life' pack targeted at 50-year olds<sup>16</sup>. It would signpost people, at the age of 50, to additional information and advice on preparing for their own, or loved ones' own retirement and old age.

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<sup>13</sup> Independent Age, *Shining a light on care: helping people make better care home choices*, November 2016, p.17, Available at: [https://www.independentage.org/sites/default/files/2016-11/Shining\\_a\\_light\\_on\\_care\\_report.pdf](https://www.independentage.org/sites/default/files/2016-11/Shining_a_light_on_care_report.pdf)

<sup>14</sup> The Commission on Residential Care, Demos, 2014.

<sup>15</sup> Unmet social care needs and well-being, Ipsos MORI, July 2017.

<sup>16</sup> 'Ready for Ageing Alliance calls for creation of a 'Ready for Later Life' pack targeted at 50-year-olds', Ready for Ageing Alliance, August 2014.

**4.8** Among other things, a 'Ready for Later Life' pack could contain basic information on how the social care system works and how individuals qualify for help with paying for residential and nursing care.

**Q5. Do people need greater support in considering the care options available to them and in choosing a home, and if so what are the best ways to ensure this is delivered effectively, e.g. giving greater personalised assistance through 'care navigators' and other advocacy services?**

**5.1** Independent Age certainly sees a need for greater support so individuals can consider all the relevant care options available to them. Often, the best option won't be residential or nursing care.

**5.2** First, it is important to underline there is an existing statutory right to access independent advocacy in the Care Act 2014. The legislation extended the right for people to have independent advocacy to help them to be properly involved in their care and support planning, where they have substantial difficulty being involved and no one appropriate has been identified to support them.

**5.3** *Think Local, Act Personal (TLAP)* has carried out work to analyse the implementation of the Care Act and of 1,100 adults surveyed with care and support needs, only 11% were offered and then received help from an advocate<sup>17</sup>. TLAP concluded that local commissioning of advocacy services appears to be "tentative, uncertain or reducing". Whilst provision of advocacy is not compulsory, such a low uptake is a cause for concern.

**5.4** Looking more broadly, personalised assistance through local 'care navigators' or other services sounds welcome in principle, particularly for older people without family. *Ageing without children*, which works to highlight the issues facing growing numbers of older people without a child, suggests that the numbers of people over 65 without adult children are set to double from 1.2 million at the present time to 2 million by 2030<sup>18</sup>.

**5.5** In practice, Social Workers can play a really instrumental role connecting people with care options, but only where they are adequately resourced. As one individual told us in a recent interview we conducted to help with our programme of work on care homes:

*"...You must find a good Social Worker...I didn't have any family and my Social Worker was brilliant! I think everyone who is going into a care home should have one – they know the area, they work for*

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<sup>17</sup> The Care Act 2014 Survey Results, Think Local, Act Personal, June 2017.

<sup>18</sup> Ageing without children <https://awoc.org/>

*you. They can also maximise your income and tell you what you're entitled to".*

**5.6** Unfortunately, there can still be too big a divide in terms of who gets to access local authority support, or Social Worker advice. Self-payers can find themselves 'screened out' of a care needs assessment because of their finances. This is evidenced in our recent *Obstacle course* report<sup>19</sup>. It is regrettable and shouldn't be happening. The Care Act 2014 is very clear that residents should be able to receive an assessment of need, no matter what their finances. Another individual with experience of choosing a care home told us:

*"At the time it would have been good to have had more help from social services. You were told 'if you're a self-funder; sort it out yourself'".*

**5.7** Another individual with a care home experience we spoke to told us that it would have been useful to have a checklist, which you could use as a guide to determine what's important and to determine whether the homes you are looking at provide these facilities or help. She said:

*"Make a checklist of what is important to you and make sure you know what you need."*

**5.8** She went on to say that it was important to get a 'feel' of the home before committing to living there. She had a two week trial to see if she liked the look of the home and felt comfortable there.

**5.9** Our only concern with the idea of care home 'navigators' is that they could in fact see less control given over time to individuals. It would be important for people with care needs to feel they can still voice various personal factors that are most important in terms of weighing up different care home options, and the interplay they feel is needed between quality, lifestyle and price.

**5.10** 'Navigators' or brokers would need to be genuinely personalised services. Moreover, to truly work in the interests of self-payers they probably need to play a greater procurement role, not just provide information and advice. This might mean local authorities commissioning third-party brokers, to work on behalf of self-paying residents in their area, so they can procure care at a closer rate to that currently getting quoted for local authority-funded residents.

## **6. Complaints and redress**

**6.1** Fears of retribution and of residents being 'punished' for speaking out about concerns present very real barriers to people making complaints,

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<sup>19</sup> The obstacle course: overcoming the barriers to a better later life, Independent Age, 2017.



particularly to the home itself, which is, for sound reasons, the first port of call for making a complaint.

**6.2** People often feel that they need to put up with unsatisfactory care in order to avoid 'rocking the boat', particularly if their complaint relates to a senior member of staff. Not only that, but relatives fear being prevented from visiting the home if they speak up.

**6.3** As we noted in our original consultation response, Independent Age has heard from a number of people who either complained and did not get a satisfactory resolution, or avoided raising concerns to begin with.

**6.4** In addition there appears to be a general lack of awareness about how to take complaints further, and the difference in arrangements between those whose care is funded and/or arranged by the council and those who are self-funders. There is still an assumption that people can complain directly to the Care Quality Commission.

**6.5** Information about how to complain is available in care homes. In addition, advocacy can prove useful, providing support to those who need it to make a complaint.

**6.6** For this to be truly effective, though, it is vital that advocacy is truly independent and provides close case management throughout the complaints process. However, what we have learnt from Healthwatch England in recent years is that independent advocacy for complaints in social care can be patchy with coverage in some local authorities under "significant threat"<sup>20</sup>.

## **7. Consumer protection**

**Q.10. Are there any consumer protection concerns in relation to care homes which have been missed and which they should look at?**

**7.1 With respect to contracts, we would like to see recommended timeframes for people to not only receive a contract but also to ensure that people have adequate time to digest and seek advice on the contract itself.**

**7.2** Independent Age hears from people who do not receive contracts until after they or their relative are already living within the home (therefore making it difficult for them to object to provisions within the contract they disagree with). Conversely, we hear from people who are

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<sup>20</sup> Improving independent complaints advocacy in health and social care. Background and position briefing, Healthwatch England, 2013.

given contracts in a timely fashion but are given less than 24-hours to consider the terms of the legal document and sign it.

**7.3** Under the current system there is an expectation that people both understand and are aware of their obligations and what they are signing, something which calls to our Helpline regularly suggest isn't the case in practice.

**Q.11. Would it be helpful to produce further guidance for care home providers on their obligations under consumer law and, if so, what should it cover?**

**7.4** Cooling off or trial periods for new residents looking to see whether a care home would be a sensible option are sometimes a feature of agreements, but can be impractical in other cases.

**7.5 It would be useful to see the CMA provide guidance on how these trial periods can be accommodated at the beginning of a resident's stay but still enable an individual to leave a care home before a full contract takes effect, and at very short notice.** This should look to clarify what prepayments or money can be paid back to a resident if they choose to leave within an agreed 'trial' period.

**Q12. Could self-regulation play a greater role in this sector to drive good practice e.g. through the development of voluntary consumer-facing codes of practice?**

**7.6** Independent Age would like to see regulation play a greater role in the sector in order to drive good practice. However we have reservations about self-regulation on an entirely voluntary basis.

**7.7** Without such regulation being mandatory we believe it will do little to boost the quality and best outcomes for consumers, particularly with respect to the worst performing homes. Voluntary self-regulation is unlikely to do much to lift the standards of providers which need to improve as they can simply be ignored. Such voluntary codes are far more likely to be adopted by homes that are already high performers and so while supportive of measures to facilitate best practice, we believe codes of practice need teeth.

**7.8** We therefore support the Age UK call, in their submission, for an industry code of practice. Like Age UK, we believe a stronger and preferable approach would see membership of an approved code as a condition of CQC registration.

**7.9** Longer-term, we also agree with Age UK that an agency could be charged with ongoing enforcement of consumer protection legislation in the care homes market.

**7.10** In an environment where regulation is softened we need to be alert to the risks of consumer detriment. It should be noted that the CQC is currently undertaking its own consultation process and as part of this is consulting on a more intelligence- and risk-based approach to future inspections of care providers. Independent Age is wary of lighter-touch approaches to regulation in the care homes market, particularly when a considerably high number of homes across the country are still not performing to the highest standard.

**Q.14. Are there any areas where additional consumer protections may be necessary beyond those provided by consumer law, existing sector legislation and national care home standards, e.g. in relation to ensuring clear, timely and comprehensive information for people when choosing care homes and to safeguard residents' deposits in full?**

**7.11** As outlined in the Update Paper, consumers in the care home market do not have the same options as consumers in other settings. They often do not have a wide range of quality homes to choose from – as many as 1 in 4 care homes requires improvement or has been rated by the CQC as 'inadequate'. Even then the choice is restricted by what is available in a market where capacity is known to be in decline. As a result Independent Age sees it as vital that residents have the strongest possible consumer protections.

**7.12** In particular we would like to see the introduction of model template contracts, which clearly spell out in plain English what the terms of the contract are and what it means for the resident or a third party. While we recognise that these will need to be tailored to reflect the particular contract an individual is entering into, we believe they should follow a standard format, making them easier to compare. A guide, issued alongside all contracts, should provide easy-to-follow guidance for residents and third parties, outlining exactly what each section in a contract should at a minimum cover.

**7.13** The circumstances in which fees can increase, and by how much, needs to be spelled out as a fundamental bit of information in any contract, so this should be a priority feature of a model contract. As the Update Paper notes, contracts do not always outline the circumstances in which fee increases can take place – at least not clearly.

**7.14** By way of illustration, an Independent Age service user told us that her mother went into her care home and was given 12-weeks funding before her Continuing Health Care assessment. However following the assessment the service user's mother was deemed not to have Continuing Health Care needs and so had to sign a new contract as a full self-funder.

Since then the care home has been taken over by new management and the fees have increased substantially. The family have informed us that they are currently paying £953.52 per week:

*"The fees have gone up by over 25% in a year and half. I don't mind paying for care but I think it is done unfairly."*

*"The problem is care homes can do what they want and raise the fees whenever. Sometimes you do feel the care home takes the mickey."*

**7.15** The service user noted that her mother's care needs had become less pronounced prior to the fees going up. Therefore, rather ironically in her opinion, she was now having to pay more despite her care needs becoming more manageable:

*"My head can't get around that when she was volatile she was paying less!"*

**7.16** This has forced the family to look at other homes but the service user highlighted the dilemma many other families' face, when she told us they do not want to do this when their mother is now settled:

*"I have looked but I worry about moving her."*

## **8. State procurement and Funding and investment in future capacity**

**8.1** Public funding in adult social care has historically been inadequate. Independent Age is eager to see the analysis of investment go beyond the suggested focus on private investment to also consider public investment and its role in ensuring the care home market adequately meets the needs of older people.

**8.2** There is a real mix of views on whether councils are in fact meeting their obligations and meeting the 'real costs' of care home provision.

**8.3** In their recent analysis, the New Economics Foundation (NEF) suggests bigger care providers dominate the sector and "send 29p of every £1 in public money to their private investors". They claim a fairer business model would "free up nearly £53m to go to delivery of care instead of investor profits, providing over 117,500 extra beds". They add that there should be a standard 5% return on investment as part of a new approach to care reform<sup>21</sup>.

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<sup>21</sup> £115m of Budget Cash for Social Care will go to Investors in Five Biggest Firms, Press Release from the New Economics Foundation, March 2017.

**8.4** We certainly don't have any evidence of our own to corroborate the NEF analysis. However, **we worry there is little public confidence in, and understanding of, how fees are set and what they really cover. In this regard, an independent body that works to develop a framework to estimate reasonable fee rates would be a real step forward.**

**8.5** NatWest has done some useful benchmarking by region<sup>22</sup>, where they looked at 156 homes. It would be useful to have something similar done on a wider scale which is more easily accessible and which can be used by commissioners but the public too.

#### Managing quality in the market

**8.6** Despite their obligations under the Care Act, local authorities are not always meeting the requirements placed on them to ensure that residents with care needs have a variety of high quality services to choose from (section 5 under the Act).

**8.7** Work Independent Age completed earlier this year using CQC data showed that there is widespread variation in the quality of care homes by region and that the likelihood that a local authority funded-resident will only be offered a home which is rated 'requires improvement' or 'inadequate' is a very real possibility in some parts of England. Specifically, the worst performing regions all had more than 25% of the care homes in their area rated as 'inadequate' or 'requires improvement'<sup>23</sup>.

**8.8** Analysis we have conducted indicates that lower prices being paid to providers by local authorities for adult social care could be contribute to poor quality. Market experts Laing and Buisson publish 'floor' prices for each region in England – the minimum that they think should be paid per week for residential care to meet what, in effect, are the 'real costs' of care.

**8.9** NHS Digital also publishes information on the actual prices paid by local authorities across regions on average. We can use this data to look at the difference between the 'floor' price and what is actually being paid to care homes. When we compare this against the CQC rating data, there does seem to be a moderate correlation between those regions where

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<sup>22</sup> NatWest, *Care home benchmarking report 2016/17*, Available at: [http://www.rcpa.org.uk/wp-content/uploads/2016/12/NAT00339\\_Healthcare\\_Report\\_Midres.pdf](http://www.rcpa.org.uk/wp-content/uploads/2016/12/NAT00339_Healthcare_Report_Midres.pdf)

*Shining a light on care: helping people make better care home choices*, November 2016, p.17.

<sup>23</sup> Independent Age, *Care home performance across England*, March 2017, Available at: [https://www.independentage.org/sites/default/files/2017-07/Regional%20care%20home%20performance%20briefing\\_FINAL.pdf](https://www.independentage.org/sites/default/files/2017-07/Regional%20care%20home%20performance%20briefing_FINAL.pdf)

local authorities are on average paying less than the recommended floor price for care, and poor performance as rated by CQC.

**8.10** Our April 2017 report on care home performance across England highlights the North West and Yorkshire and Humber as two of the three regions in England with the highest proportions of care homes rated by the CQC as Inadequate or Requires Improvement. And these two regions also have the highest gap between the recommended 'floor' price for residential care, and the actual price paid by local authorities (see table below). Conversely, London has the fewest care homes rated Inadequate or Requires Improvement, and yet it has the most positive price differential between the recommended floor price for care and what in fact gets paid by local authorities.

<b>Region</b>	<b>Weekly floor Price (Laing Buisson)</b>	<b>Weekly residential care - 65 and over (NHS Digital)</b>	<b>Percentage difference between Floor price and unit cost (%)</b>	<b>% of care homes rated 'Inadequate' or 'Requires improvement' (at Jan 2017)</b>
East of England	£579	£602.47	4.1	20.8%
North East	£539	£510.68	-5.3	25.6%
South East	£587	£610.45	4.0	28.2%
London	£646	£688.72	6.6	20.3%
South West	£585	£605.52	3.5	21.1%
West Midlands	£548	£509.93	-6.9	22.8%
Yorkshire and Humber	£553	£488.57	-11.7	32.2%
East Midlands	£559	£506.83	-9.3	24.2%
North West	£554	£468.11	-15.5	33.6%

**8.11** As highlighted earlier in our submission, we currently have research underway to examine in closer detail how local authorities are discharging some of their Care Act duties, including those relating to market shaping and choice of accommodation. Early results indicate that despite a number of clear rulings from the Local Government and Social Care Ombudsman, a number of councils still work on the basis that third party top-ups only need to get agreed between residents and providers. Others have been telling us that they have no need to keep a record of, or have

no oversight of how many third party top-ups have been agreed in their area. As explained, we are very happy to share these findings when we have them in full, in the autumn.

## **Conclusion**

Independent Age looks forward to seeing the final report and recommendations from the CMA by December 2017 and we remain ready to engage with the CMA when we have new insights to share in the autumn.

## **Completed by**

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