

Annexe D

Methodology

May 2005

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1 METHODOLOGY

Introduction

- 1.1 The care homes market study was launched on 29 June 2005 in response to a super-complaint from the Consumers Association¹ submitted on behalf of an umbrella organisation called SPAIN. SPAIN is the 'Social Policy Ageing Information Network'. Its members include Age Concern, Help the Aged and the Alzheimer's Society. The full list of signatories to the super-complaint can be found in Annexe M.

Remit

- 1.2 The super-complaint was received on 5 December 2003 and the Office of Fair Trading gave a public reasoned response to the complaint on 5 March 2004, identifying in that response the issues that it intended to examine. Briefly, the study which was launched on 29 June 2005 was designed to focus on three issues.

Consumer behaviour

- 1.3 Older people and their representatives may have to choose a care home in a hurry and in other difficult circumstances. Once settled in, they may be reluctant to change homes. If this is a common experience, consumer may not be making the best choice.
- 1.4 The study therefore set out to examine the context in which older people and their representatives make choices about a care home.

¹ Now 'Which'

Price transparency

- 1.5 If there is a lack of transparency in relation to prices, services offered and related contractual issues then this may distort consumers' choice of care home. This may then give providers scope to set higher prices or reduce service quality.
- 1.6 The study therefore set out to examine the ease with which prospective residents and their representatives can obtain sufficient clear and accurate information on fees and services offered and consider the level of price transparency for both self and publicly funded residents, including the transparency of core fees and top up fees.

Contracts in relation to current or future fees

- 1.7 If contracts are not in place, or fail to have transparent clauses in relation to prices and how these can change, then consumers may be vulnerable to unreasonable and unexpected price increases. These concerns will be of particular significance if consumers are reluctant or unable to move to a new care home.
- 1.8 The study therefore set out to examine whether contracts offer sufficient transparency and protection against unreasonable price increases.

Complaint procedures and redress

- 1.9 After issuing its public reasoned response, but prior to launching the market study, the OFT gave further consideration to the subject of complaint procedures and redress in this sector. In light of this, the OFT's view was that aspects of the redress available to consumers is an important issue in relation to whether contracts between care homes and residents offer sufficient protection against unreasonable price increases. The OFT therefore informed interested parties of the possibility that, in order properly to carry out its functions under section 5 of the Enterprise Act 2002, it might be necessary to consider aspects of redress.

General strategy

- 1.10 At the commencement of the study, the team developed a general strategy combining elements of original research and survey work, widespread consultation with stakeholders and efficient use of existing data sources and information.
- 1.11 It was envisaged that the original research would contain three main strands: mystery shopping, a consumer survey and a study of existing contracts. It was also considered essential that this element of the research included work to provide factual and background information. A survey of care homes was planned to help establish information about charges, top up fees, and terms and conditions. A survey of Authorities was included to clarify their relationship with consumers and their behaviour in this market.
- 1.12 Meetings with stakeholders provided the team with knowledge, qualitative evidence and casework material relevant to the key issues. A full list of stakeholders that we spoke to is attached at the end of this Annexe. Broadly it includes groups covering care home providers, central and local government, devolved administrations, bodies connected with the sector such as inspectorates, charities, advocacy and support groups and a variety of interested fringe bodies such as the British Medical Association and the Federation of Small Businesses.
- 1.13 Among existing data sources and information, the team made considerable use of official sources such as census data, Government Actuary projections and statistics published by the devolved administrations and the relevant inspection bodies such as CSCI, CSIW and others.
- 1.14 The team gathered information about the various regulations that apply in this sector. These encompass Authority obligations and the legal framework under which care home inspection operates, which vary in the four countries of the UK, and the roles of related bodies such as the Local Government Ombudsman.

- 1.15 We made use of published research of which there is a considerable volume. This included such material as the Personal Social Services Research Unit's report on Care Homes for Older People, BUPA's census of the health status of residents in their care and nursing homes, and, with due acknowledgement, publications by consultants and other industry observers.

Detailed survey structure

Mystery shopping

- 1.16 The research strategy relied primarily on the use of mystery shopping to examine the availability of information prior to choosing a suitable care home. This method has two particular strengths. Trained professionals can be used to carry out the research and the chosen mystery shopping scenario, where a younger adult makes enquiries on behalf of an older parent or relative, is extremely plausible.
- 1.17 This was intended to provide the main body of evidence on the proportion of homes that provide information, the quality of that information and especially the issue of price transparency. It was planned that this final element would also examine the extent to which providers are able to provide advice on issues such as additional extras and top up fees.
- 1.18 We were concerned, however, that not all older people enjoy the valued support of relatives and friends. We therefore conducted additional research in this area and employed OPRSI (Older People Researching Social Issues), to conduct case studies. This was akin to the main mystery shopping but involved single unaided older people attempting to research the market.
- 1.19 The full questionnaires are contained in Annexe H, but the general structure and topics covered are set out below.

Mystery shopping: Structure

- General introduction
 - Acceptance of self funded residents, Authority funded residents or both?
 - Current vacancies

- Fees and charges: examples include basic fees, what fees cover, fees for optional extras, contracts or terms and conditions.
 - What information was provided?
 - When was the information provided?
 - How was the information provided?
 - How clear was the information?
 - Was the information sufficient?

- Service and facilities: examples include types of rooms, special needs, interests, outings, baths and showers.
 - What information was provided?
 - When was the information provided?
 - How was the information provided?
 - How clear was the information?
 - Was the information sufficient?

- Other information: examples include staff qualifications, visiting rules, periods of notice, absences for holidays or hospital stays.
 - What information was provided?
 - When was the information provided?
 - How was the information provided?
 - How clear was the information?
 - Was the information sufficient?

- Mention of special items
 - Inspection reports
 - How to complain and seek redress
 - Overall handling of enquiry
 - Effort required completing the enquiry using calls, literature, and visits

Consumer survey

- 1.20 The consumer survey focused on those elements of consumer behaviour that were both memorable and within the consumer's direct experience. The objective was to use this research to gather robust information on the personal factors that influence consumer decisions. These include issues such as the older person's state of health, how quickly they need to make decisions, the degree of choice available, and the importance of remaining local to friends and relatives.
- 1.21 The research was specifically designed to avoid asking technically difficult questions, such as on contractual terms and conditions, with which the respondent might be unfamiliar, or seeking too much specific detail that the respondent might be unable to recall.

- 1.22 In the issues set out above, some are more closely concerned with the experience of choosing and moving into a suitable care home and others about changes after entering care and residents' longer term experiences.
- 1.23 To properly examine both types of issue, the consumer survey was designed to interview two distinct groups; one made up of newer residents and one made up of longer-term residents. A different questionnaire was designed for each group that, while having certain things in common, focused on the key issues for each group.
- 1.24 Additionally, further differences in questionnaire design were included to ensure questions were appropriate to the different situation of self funding residents and those having some or all of their fees paid by the Authority.
- 1.25 This research required a considerably greater degree of organisation than most consumer surveys. It involved seeking co-operation from a variety of sources, care homes, Authorities, the residents themselves and also residents' relatives or supporters who wished to act as 'chaperone' at any interview.
- 1.26 The survey proved exceptionally difficult. The involvement of up to four parties (the home, the interviewer, the resident and often a relative or supporter) frequently made it difficult to secure the necessary co-operation. Working to a tight deadline made the task of synchronising suitable interview times and dates more difficult and the ability to talk to randomly selected residents was severely curtailed by the need to interview residents who enjoyed comparatively good physical and mental health.
- 1.27 We made contact with 736 suitable homes to ask if we could speak to some of their residents, but found approximately 460 homes opting out for one reason or another. Homes have very good reasons to be cautious about people they allow to enter their premises as they have a duty of care to their residents who are considered vulnerable adults under the Protection of Vulnerable Adults regulations. Nevertheless, the number of homes that either refused to take part in our survey or proved unable to

do so by failing to co-operate seems high, given that our researchers stated upfront who they represented.

- 1.28 While we are very disappointed that so many care homes felt unable to participate, we are very grateful to all to the homes who made it possible for our researchers to interview their residents and to the older people themselves (and their representatives) for taking part in our survey.
- 1.29 We are grateful also to the care home owners and managers who let our study team visit their homes and showed us around.

Consumer survey: Structure

General

- About the home
 - With or without nursing care
 - Residents self funding, Authority or mix of both
 - Smaller business, larger chain, voluntary or Authority run

- About the resident
 - Gender
 - Age
 - How funded
 - Ethnicity

Resident one year or more

- Changes
 - What has changed since coming to live here?
 - Any change of room?
 - What was the effect on fees?
 - Fee increases, information or explanation, period of notice
 - Changes in terms and conditions, information or explanation, period of notice about changes
 - Other changes in services, information or explanation, period of notice

- Making complaints
 - Cause for complaint
 - Wishing to complain but not doing so
 - Actual complaints and outcomes
 - Not complaining, why not?

- Moving to another home
 - Considering moving?
 - How far with the process?
 - Likelihood in the future?

Residents entering care within the last six months

- Background before entering care
 - Health
 - Where were you before moving into care?
 - Why did you move into care?
 - Did you have a care needs assessment?
 - Place of residence

- Information
 - Finding out about homes in the area
 - Awareness of advice booklets and leaflets
 - How many homes did you consider?
 - What other guidance did you get and from where?
 - Did you get advice on financial arrangements?
 - Did you have a financial assessment?

- Choosing the home
 - Why this home?
 - What choice was available?
 - Did you face any time pressure?
 - Did you have a trial stay or visit?
 - Did you see an inspection report?
 - Did you make the right decision?

- Care home information and fees
 - What information did you get on prices and fees?
 - Are you self funding?
 - Is someone paying a third party contribution for you?
 - Are you paying for extras?

All residents

- Overall satisfaction
 - Personal care
 - Quality of nursing
 - Room
 - Meals
 - Dignity and respect
 - Overall assessment

Survey of care home providers

- 1.30 The survey of care home providers was mostly used to establish sound factual information about providers and to seek the views of providers on various issues. It was conducted by a contractor through telephone interviews, using sampling frames compiled with the help of the regulation and inspection units in each of the four UK constituent countries.
- 1.31 The survey was structured so that extra interviews were conducted in Wales, Scotland and Northern Ireland to provide information specific to those countries. For the purpose of making UK estimates, results were therefore weighted.

Survey of care home providers: Structure

- Screening
 - Is it a single home or group?
 - Answers provided by owner, proprietor, manager or other?
 - Check quotas
 - Select appropriate questionnaire

- General background

- Type of business
 - Business within a single Authority
 - Places
 - Types of care
 - Unoccupied places
 - Accepting Authority funded residents
 - Types of residents
 - Proportion with third party contributions
 - Any feedback or provider views on this issue?

- Contracts with clients
 - Contracts, terms and conditions in place
 - Contractual set up for third party contributors
 - Payment arrangements for third party contributors
 - Any feedback or provider views on this issue?

- Fees
 - Are fees same for all residents?
 - Fee levels where variable – upper limit, lower limit and average
 - What controls fee levels?
 - Factors affecting increases in fees
 - How often they occur
 - Period of notice
 - Re-assessment if needs change?
 - Any feedback or providers views on this issue?

- Relationship with Authority
 - Authority funding level
 - Meeting the usual standard fees of the home or not?
 - Contractual arrangements: block contracts, case by case placement
 - Any feedback or providers' views on this issue?

- Other issues
 - Attracting new residents
 - Retaining existing residents
 - Advice and information to those considering a home
 - Information for current residents
 - Getting feedback from current residents
 - Complaints settled within the home

- Complaints to outside agencies
 - Residents and family associations and advocacy groups
 - Any feedback or providers' views on this issue?
- Classification information
 - How long in operation?
 - How far to the next nearest similar home?
 - Are any homes in the business in isolated locations?

Authority and Northern Ireland Health Boards and Trusts survey

1.32 On 29 June 2004 the OFT wrote to the Social Services Departments within all Authorities informing them about the launch of its study into aspects of the care homes market for older people. In September 2004, the OFT contacted them again, sending a request to complete a questionnaire about their work in this sector.

Authority and Northern Ireland Health Boards and Trusts survey: Structure

- General
 - Number of homes in the Authority
 - Number of homes accepting publicly funded residents
 - How many older residents are publicly funded?
 - Does the Authority run its own homes, how many, how many places?

- Conditions for consumer choice
 - Policy towards publicly funded residents and choice
 - Capacity level in the Authority
 - Ability to place residents with and without top ups
 - Dealing with delay
 - Moving unhappy residents

- Information provision
 - Is a list of homes provided?
 - What information is included?
 - Is additional information provided about how to fund care, third party contributions, deferred payment etc?
 - Additional general information

- Usual rates and fees
 - Does the Authority have usual rates?
 - Are these ever exceeded and under what circumstances?
 - Initiatives relating to the setting of rates
 - Third party contributions or top-ups
 - Proportion of homes currently top ups
 - Proportion of residents currently paying top ups
 - Current amounts being paid - minimum, maximum and average
 - Are they paid via the Authority or direct to homes?
 - Complaints about top ups

- Self funding residents
 - Arrange and contract for the care of individuals need care home placement but do not qualify for Authority support?
 - Under what circumstances?

- Contracts
 - Request for examples of standard spot and block contracts
 - Contracts with third party contributors

1.33 Distinct from the contracts that exist between care homes and residents, where the resident is paying for their own care, Authorities also contract with care homes to secure places for Authority funded residents.

Examination of contracts

1.34 It was originally planned that, as part of the mystery shopping exercise, researchers would request examples of contracts. It was hoped that this would generate a sufficient number of contracts to allow a technical examination of a suitable cross section of examples.

1.35 In the event, only small numbers of example contracts were obtained in this way. As a result, the survey of care home providers was adapted to provide a second source of example contracts. Providers were asked to send copies directly to the OFT, anonymously if they chose, and this source provided considerably more examples.

1.36 From the two sources, the OFT was able to examine 151 examples of contracts in this sector from a variety of businesses both large and small. The examination focused on the identification of potentially unfair fee related terms.

1.37 The questionnaires sent to Authorities requested examples of the contracts used between the Authority and the care home providers.

2 ACRONYMS

ADSS	Association of Directors of Social Services
ADSW	Association of Directors of Social Work
ASA	Advocacy Safeguards Agency
CCH(S)A	Community Care and Health (Scotland) Act 2002
CHAI	Commission for Healthcare Audit and Inspection
CSA	Care Standards Act
CSCI	Commission for Social Care Inspection
COSLA	Convention of Scottish Local Authorities
CRAG	Charges for Residential Accommodation Guidance
CSIW	Care Standards Inspectorate for Wales
DH	Department of Health
DHSSPS	Department of Health, Social Services and Public Safety
EAC	Elderly Accommodation Counsel
ECCA	English Community Care Association
EMI	Elderly Mentally Impaired
FAC	Fair Access to Care
FPNC	Free Personal and Nursing Care
HPSSRIA	Health and Personal Social Services Regulation and Improvement Authority
LASSA	Local Authority Social Services Act

LGA	Local Government Association
LGO	Local Government Ombudsman
NCSC	National Care Standards Commission
NHS	National Health Service
NI	Northern Ireland
OFT	Office of Fair Trading
OPAAL	Older People's Advocacy Alliance
OPRSI	Older People Researching Social Issues
PEA	Personal Expenses Allowance
POVA	Protection of Vulnerable Adults
PSSRU	Personal Social Services Research Unit
RHA	Registered Homes Act
SAGE	Senior Action Group Edinburgh
SAP	Single Assessment Process
SPAIN	Social Policy Ageing Information Network
SSA	Single Shared Assessment
SSIW	Social Services Inspectorate for Wales
UTCCRs	Unfair Terms in Consumer Contracts Regulations

3 GLOSSARY

Advocacy

There are many different definitions of advocacy and various models in operation at present, but this outline from the Older People's Advocacy Alliance (OPAAL) is the most appropriate in the context of our recommendations: '*A one-to-one partnership between a trained, independent advocate and an older person who needs support in order to secure or exercise their rights, choices and interests. The three key principles are independence, inclusion and empowerment*'.

Authority

The **care needs assessment** and the **financial assessment** are carried out by the individual's Local Authority, Primary Care Trust or in Northern Ireland the Health and Social Services Board. These bodies should also provide information and support through the process of choosing a care home, for example by providing a list of care homes in the areas. We refer to these bodies collectively as 'Authorities'.

Care home

The term 'care home' generally refers to a home registered under the Care Standards Act providing personal and residential care for older people. We use the term to also include homes that provide nursing care (**nursing homes**). Generally, care homes provide day to day care and support for older people that are unable to manage at home.

Care home directory

A list of all the care homes in the local area provided by the relevant Authority.

Care needs assessment

An assessment carried out to establish a person's need for long term care. It considers the person's ability to perform activities of daily living such as moving about, eating and drinking, using the toilet, getting washed and dressed and preparing snacks and meals. The availability of support and the existing home environment may also influence the assessment.

Choice of Accommodation Directions

The rights of individuals to choose their care home accommodation are set out in various acts of Parliament. In October 2004, the Department of Health issued new guidance to Authorities explaining the implication of these regulations as Local Government Circular LAC (2004)20. In simple terms, the guidance sets out that where someone has a preference for a particular care home, the Authority should arrange for accommodation in that home subject to certain conditions being met. Those conditions are that the home is suitable to meet the individual's assessed needs; that it does not cost more than the Authority would pay to accommodate someone with those assessed needs, that it is available and that the care home is willing to enter into a contract on the Authority's usual terms.

Consumer groups

Organisations that represent the interests of consumers in this sector, for example Which? and the Relatives and Residents Association.

Devolved administrations

The executive bodies of the three devolved regions of the UK: the National Assembly for Wales, the Scottish Executive, and the Northern Ireland Department of Health Social Services and Public Safety ('DHSSPS'). Care for older people is a devolved matter, which means that policy in this area is set by the relevant devolved administration.

Domiciliary care

Care provided in the individual's own home. For example, a care worker may visit the person's home to help them wash and dress, carry out housework and grocery shopping.

Extras

Additional services provided by care homes that are not covered by the fee for accommodation and care. For example, a care home may offer to arrange for a hairdresser or chiropodist to visit the residents for an additional fee.

Financial assessment

This is the process that is used to determine, based on means testing criteria, the individual's ability to pay for their care needs and what, if any, level of contribution they should pay towards their care. The basic process of the financial assessment is the same across the UK, although the upper and lower limits for financial assets differ. Individuals with capital below the lower limit are fully funded by their Authority, while those with capital above the higher limit are liable to pay the full rate for their care. Those with a level of financial assets between the two limits will be expected to pay a varying contribution towards the cost of their care.

Government Actuary's Department

The United Kingdom Government Actuary's Department is a government department providing actuarial consultancy within the public service, and advising on a comprehensive range of topics. The Government Actuary produces the official national 'population projections' for the UK and its constituent countries. The primary purpose of the projections is to provide an estimate of future population which is used as a common framework for national planning in a number of different fields. The projections, especially for older age groups, have relevance to future demand for long term care.

Intermediate care

Intermediate care is a short term intervention to preserve the independence and establish the best long term care solution for people who might otherwise face unnecessarily prolonged hospital stays or inappropriate admission to hospital or residential care. Intermediate care places great emphasis on rehabilitation and maximising independent living, but also seeks to find the most appropriate care solutions for individuals.

Local Government Ombudsman

The Local Government Ombudsmen investigates complaints about maladministration by Authorities and certain other bodies. They investigate complaints about most Authority matters including housing, planning, education, social services, consumer protection, drainage and council tax. The Ombudsmen can investigate complaints about how the Authority has done something, though they cannot question the decision the Authority reached unless the process followed was flawed.

National Minimum Standards

Under the Care Standards Act 2000 (CSA), care homes for older people must operate to a set of standards set out by the governments of each country in the UK. The standards are used by the regulatory and inspection bodies to determine whether registered care homes in their regions are providing adequate care, are meeting the needs of the persons who live there and are otherwise being operated and run in accordance with regulatory requirements. The governments of each country are able to review standards, and may publish amended standards when appropriate.

Nursing home

The term nursing home generally refers to a home registered under the Care Standards Act providing nursing care for older people, in addition to personal residential care.

Protection of Vulnerable Adults

Protection of Vulnerable Adults (POVA) is a scheme designed to provide a workforce ban on care workers who have harmed vulnerable adults in their care. The POVA scheme covers both registered providers of care homes and domiciliary care agencies, and employment agencies and businesses who supply care workers to these providers.

The POVA scheme gives protection to vulnerable adults by placing care homes under a statutory duty to check that potential new care workers are not on the POVA list before allowing them to work in a care position. Care homes also have a responsibility to refer care workers to the POVA list where such workers have harmed vulnerable adults in their care.

Regulation and inspection bodies

These are the four bodies in the UK responsible for the registration of care homes for older people, and subsequent inspection under the Care Standards Act to ensure they comply with National Minimum Standards. They are respectively

Commission for Care Standards Inspection (England)

Care Standards Inspectorate for Wales

Social Services Inspectorate: Registration and Inspection Units Northern Ireland

The Care Commission (The Scottish Commission for the Regulation of Care)

Self funding

An individual who does not receive funding for their care from their Authority and who therefore pay their fees in full from their own income or other resources.

Care plan

Under the National Minimum Standards each service user's health, personal and social care needs, are set out in an individual plan of care. Such a plan should be drawn up with each service user to provide the basis for the care to be delivered. The plan sets out in detail the action which needs to be taken by care staff to ensure that all aspects of the health, personal and social care needs of the person are being met. It should be regularly reviewed by care staff in the home, and updated to reflect any change in the needs and objectives for health and personal care.

Single assessment processes

This describes efforts under which agencies responsible for assessing older people's care needs work together to minimise duplication of efforts. In England, this is known as the Single Assessment Process for Older People or SAP. In Wales, there is a unified assessment process and care management system for older people. In Scotland, there is a Single Shared Assessment (SSA) which seeks to achieve the same goals, and extends to both older people and other community care groups. In Northern Ireland, a comprehensive assessment of health and social care needs takes place within the context of an integrated health and personal social services.

Statement of terms and conditions

For individuals who have their care funded by their Authority, the contract for care will exist between the care home and the Authority. The individual should receive a written record of the relevant terms of the contract, so that they are clear about the roles and responsibilities of the care home, the Authority and the resident. This written record is known as a Statement of Terms and Conditions.

Statutory notification

Where a home has contravened or failed to comply with regulations, the regulator may issue a statutory notification setting out the regulations that have not been complied with, what actions need to be taken and the period within which the action needs to be completed.

Super-complaint

A super-complaint is a complaint about how a market works in general rather than about the operation of one or more individual companies in the market. Under the Enterprise Act such complaints may be brought to the attention of the OFT by a number of designated bodies, including *'Which?'* (formerly the Consumers Association), the body responsible for the super-complaint about the care homes sector considered in this report.

Top up or third party contribution

Some care and nursing homes have fees that are higher than the rate the Authority would usually expect to pay for an individual's assessed need. If an older person eligible for Authority funding wishes to stay in such a home, they need to find a third party willing to pay the cost above the Authority's funding level. This contribution is known as a third party contribution or more commonly as a 'top up'. In Wales, the top up may be paid for by the resident as well as a relative, whereas in England, Scotland and Northern Ireland the top up cannot be paid by the resident themselves. Charities may make a grant towards a top up.

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