

Annexe J

Regulatory framework

May 2005

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1 THE REGULATORY FRAMEWORK FOR CARE HOMES

- 1.1 The regulation of care homes for older people follows broadly the same principles throughout the United Kingdom, although it has developed under different legislation, associated regulations and guidance in England, Wales, Scotland, and Northern Ireland. This annexe contains information on the key characteristics of the existing regulatory structures in the UK which are relevant to the issues in this market study.
- 1.2 Since the OFT study and recommendations on '*Older People As Consumers in Care Homes*' in 1998, there have been significant changes to the regulatory framework for care homes. New legislation and minimum standards have been introduced. Further changes are imminent in Northern Ireland with the development of minimum standards in respect of residential and nursing homes and further changes are also likely in England, particularly following the Government's consultation on how to improve social care services for adults. A Green Paper entitled '*Independence, Well-being and Choice: Our Vision for the Future of Social Care for Adults in England*' was published by the Department of Health on 21 March 2005 and consultation is scheduled to close on 28 July 2005.

England and Wales

Introduction

- 1.3 The Registered Homes Act 1984 was repealed by the Care Standards Act 2000 as from 1 April 2002. The Care Standards Act 2000¹ ('the Act') is now the primary legislation relating to nursing homes and residential care homes in England and Wales.
- 1.4 A care home is defined in sections 3 and 129(1) of the Act; in summary an establishment is a care home, if it provides accommodation, together with nursing or personal care for persons who are or have been ill, who

¹ S 117(2), Sch 6.

have or have had a mental disorder, who are disabled or infirm or who are or have been dependent on alcohol or drugs. An establishment is not a care home unless the care provided includes assistance with bodily function, where such assistance is required, or if it is a hospital, an independent clinic or is otherwise excepted by regulations.

- 1.5 The Act makes provision for regulations to implement the measures set out therein. The primary regulations governing care homes in England are the Care Homes Regulations 2001 and in Wales, the Care Homes (Wales) Regulations 2002 (together referred to in this section as 'the Regulations').

The Regulations

- 1.6 The Regulations, which came into force in April 2002, are wide in scope and cover a whole manner of areas including requirements on care homes in England and Wales to provide certain information to consumers (referred to in the Regulations as 'service users') and the establishment of a care homes regulator in both England and Wales. Although there are some differences in the detail between the English (2001) and Welsh (2002) Regulations, the requirements are broadly the same. The registered person in the care home (a person who is either registered as carrying on the home or its registered manager) is responsible to ensure that the information requirements under the Regulations are met.
- 1.7 The following information must be provided to all older people resident in the care home and contravention or failure to provide any of the following is an offence under the Regulations:²
- a service user's guide³
 - information about fees,⁴ and

² Regulations 43 and 44 of the English and Welsh Regulations respectively.

³ Regulation 5.

⁴ Regulation 5A.

- a written copy of the care home's complaints procedure.⁵

Service user's guide

1.8 The service user's guide must include the following information:⁶

- a summary of the Statement of Purpose
- the terms and conditions in respect of accommodation to be provided for older people, including the amount and method of payment of fees
- a standard form of contract for the provision of services and facilities by the registered provider to older people
- the most recent inspection report
- a summary of the complaints procedure, and
- the address and telephone number of the appropriate care home regulator.

Information about fees

1.9 There is a general requirement to provide information about fees in care homes in Wales. However, in England the information about fees only applies where nursing care is provided by the care home. The following information is required and in the case of the first and second bullet points (below) should be provided on or before the day on which the consumer enters the care home (or becomes a 'service user'):

- the fees payable for the provision of accommodation (including food), nursing and personal care and except where a single fee is payable, the services to which each fee relates

⁵ Regulations 22 and 23 of the English and Welsh Regulations respectively.

⁶ Regulation 5.

- the method of payment of the fees and the person(s) liable to pay the fees
- advance notice of one month of any increase in the fees payable or any variation in the method of payment or person(s) liable to pay, and
- whether a nursing contribution is to be paid in respect of nursing to be provided and if so, a statement specifying certain information in respect of that contribution.

National minimum standards

- 1.10 The English and Welsh governments have issued national minimum standards in respect of care homes for older people.⁷ These core standards are used alongside statutory regulations by the English and Welsh care home regulators to assess whether care homes are providing adequate care, meeting the needs of older people and otherwise being managed in accordance with regulatory requirements. The standards essentially set out a minimum level of service that should guarantee a basic level of care for older people.
- 1.11 While compliance with the standards is not of itself enforceable, in assessing whether the care homes have complied with the Act and Regulations (which are mandatory), the care home regulators must take the standards into account. Wales has recently issued revised national minimum standards for small care homes (with three or fewer beds) for older people.⁸ The revised standards reflect the results of consultation and incorporate relaxations to nine out of the 40 standards for care.

⁷ Issued under s 23(1) of the Care Standards Act 2000.

⁸ See www.wales.gov.uk/subisocialpolicy/content/circulars/care/circ28-2004-e.pdf

However, as these standards do not directly affect the scope of this study, we do not expand on them further here.⁹

- 1.12 As regards the information that is to be provided to consumers, the English standards (one and two) and the Welsh standards (one and five) are similar and deal with 'Information' and 'Contracts' respectively.
- 1.13 **Standards 1 'Information' provide that 'Prospective service users have the information they need to make an informed choice about where to live'**. The standards state that information must be up-to-date, written in plain language and made available in a format suitable for the intended resident (for example, if the resident is blind or visually impaired a suitable format might be to provide a Braille document or an audio format). The standards set out what must be included in the 'service user's guide' and builds upon that laid down in the Regulations.
- 1.14 **Standards 2 (English) and 5 (Welsh) 'Contracts' provide that 'Each service user has a written contract/statement of terms and condition with the home'**. This provides that every older person moving into a home is provided with a Statement of Terms and Conditions at the point of moving in to the home or a contract if they are purchasing their care privately. The standards set out a checklist of what the Statement of Terms and Conditions should contain as a minimum:
- rooms to be occupied
 - overall care and services (including food) covered by fee
 - fees payable and by whom (service user, authority, relative or another)

⁹ Standards were relaxed in the areas of: Meals – menu plans, Health and Safety – requirement for a qualified first aider at all times, Shared Facilities – space requirements (including outdoor), Lavatories and Washing Facilities – additional toilets and bathroom furniture and fittings – furniture and equipment in rooms.

- additional services (including food and equipment) to be paid for over and above those included in the fees
- rights and obligations of the service user and registered provider and who is liable if there is a breach of contract, and
- terms and conditions of occupancy, including period of notice (e.g. short/long term intermediate care/respice).

1.15 **Standards 16 (English) and 31 (Welsh) 'Complaints' provide that Service users and their relatives and friends are confident that their complaints will be listened to, taken seriously and acted upon'**. The standards require the care home to ensure that:

- there is a simple, clear and accessible complaints procedure in place which includes the stages and timescales for the process, and that complaints are dealt with promptly and effectively
- the complaints procedure specifies how complaints may be made and who will deal with them, with an assurance that they will be responded to within a maximum of 28 days
- a record is kept of all complaints made and includes details of investigation and any action taken, and
- written information is provided to all residents for referring a complaint to the care homes regulator at any stage, should the complainant wish to do so.

1.16 If the national minimum standards are not complied with, the care home regulators will include this information in their inspection report and will work with the care home to agree an action plan and a timescale to achieve compliance. This will be reviewed by the care home regulator at the end of the period through a follow up visit.

Complaints

1.17 The requirements governing the complaints procedures are contained principally in Regulations 22 and 23 of the English and Welsh

Regulations respectively. The complaints procedure must be appropriate to the needs of all residents. The care home is required to ensure that it has a complaints procedure which specifies how complaints may be made and who will deal with them. Complaints made should be fully investigated and by no later than 28 days after the date on which the complaint is made the care home must inform the person who made the complaint of any action (if any) to be taken.

- 1.18 A written copy of the complaints procedure must be provided to each resident or to any person acting on behalf of the resident if that person so requests. If the resident is blind or visually impaired a Braille copy of the complaints procedure is to be provided. In addition to these requirements, the complaints procedure must note the telephone number and address of the relevant care homes regulator. The care home is also required to supply to the care home regulator, at its request, a statement containing a summary of the complaints made during the preceding 12 months and details of action taken in response.

Care home regulators in England and Wales

- 1.19 The Act also sought to reform the regulatory system for care homes in England and Wales by establishing new regulatory bodies for the care services industry. In England, an independent regulatory body for social care and private and voluntary healthcare services known as the National Care Standards Commission (NCSC) was created¹⁰ and responsible for the registration and inspection of care homes.
- 1.20 On 1 April 2004 the NCSC was replaced by two new inspectorates: the Commission for Social Care Inspection (CSCI) and the Commission for Healthcare Audit and Inspection (CHAI), who now share the responsibilities previously carried out by NCSC. CSCI was created under the Health and Social Care (Community Health and Standards) Act 2003 and has a wider remit than the NCSC as it brings together the work previously undertaken by the Social Services Inspectorate, the SSI/Audit Commission joint review team and the social care functions of the

¹⁰ Section 6 of the Care Standards Act 2000.

NCSC. CSCI's remit as regulator extends to the issues which are the subject of this study, for example, CSCI will:¹¹

- carry out local inspections of all social care organisations - public, private, and voluntary - against national standards and publish reports
- register services that meet national minimum standards
- carry out inspections of local social service authorities
- publish an annual report to Parliament on national progress on social care and an analysis of where resources have been spent
- validate all published performance assessment statistics on social care, and
- publish the star ratings for social services authorities.

1.21 CHAI, on the other hand, encompasses all of the current and proposed work of the Commission for Health Improvement (CHI) and the Mental Health Act Commission (MHAC), the national NHS value for money work of the Audit Commission, and the independent healthcare work of the National Care Standards Commission (NCSC).

1.22 Further changes are proposed for CSCI. The Green Paper '*Independence, Well-being and Choice: Our Vision for the Future of Social Care for Adults in England*'¹² (March 2005) states that in principle the (English) government has agreed to merge CSCI and Healthcare Commission by 2008.

1.23 In Wales, the responsibility for the registration and inspection of care homes falls to the Care Standards Inspectorate for Wales (CSIW).¹³

¹¹ www.csci.org.uk

¹² Page 14.

¹³ www.csiw.wales.gov.uk

CSIW works alongside the Social Services Inspectorate for Wales (SSIW). Care homes in England and Wales may have a right of appeal against the decisions of the care home regulators and these appeals are heard by the Care Standards Tribunal.¹⁴

Scotland

Introduction

- 1.24 The Regulation of Care (Scotland) Act 2001 (ROC(S)A 2001) ('the Act') is the primary Scottish legislation relating to care services in Scotland. A 'care home service' is defined in Part 1, s 2(3) of the Act as a service which provides accommodation, together with nursing, personal care or personal support for persons by reason of their vulnerability or need; but does not include a hospital, a public, independent or grant-aided school, an independent health care service, or a service excepted by regulations.
- 1.25 Under s 4(1) of the Act the Scottish care homes regulator, the Care Commission (see below) has a duty to provide 'information and advice' to the public about the availability and quality of care services. Under s 6(1) the Care Commission has a duty to establish a complaints procedure 'by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of a care service or about the provision of a care service generally'. This complaints procedure is in addition to any complaints procedure established by the care home.

The Scottish Regulations

- 1.26 The primary regulations governing care homes in Scotland are the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (the 'Scottish Regulations'). These regulations set out requirements which providers of care services must comply with.

¹⁴ See www.carestandardtribunal.gov.uk for further information.

- 1.27 All care services should be provided in accordance with the general principles set out in Scottish Regulation 2, and in accordance with Scottish Regulation 3, the care home is required to provide a written statement of the aims and objectives of the care service. The care home is also required to prepare a personal plan for every older person setting out how their health and welfare needs will be met.
- 1.28 Scottish Regulation 25 requires the care homes to put in place a complaints procedure to consider complaints made by older people in care homes or their representatives. The requirements are similar to those in the English and Welsh Regulations. A written copy of the complaints procedure must be supplied to every resident in the care home or their representative (which includes details of the Care Commission and the procedure to notify the Care Commission of a complaint). The complaints procedure must be appropriate to the needs of the older people, complaints must be fully investigated and a response provided within 28 days or shorter of any action to be taken. At the Care Commission's request the care home is required to provide details of complaints made in the preceding 12 months and the action taken.

National care standards

- 1.29 Section 5 (1) of the 2001 Act requires Scottish Ministers to prepare and publish national care standards applicable to care services. Similar to the national minimum standards in England and Wales, the aim of the Scottish Care Standards is to raise the level of care and support provided to older people in care homes.
- 1.30 Sections 5(3) and 5(4) of the Act provide that these standards and the Scottish Social Services Council's codes of practice must be taken into account by the Care Commission in making any decisions related to registration, inspection and enforcement.
- 1.31 As is the case in the other administrations, it is mandatory for care homes to abide by the Scottish Regulations created under the Act. Indeed, failure to meet the requirements of a regulation may be an offence. In contrast there is no strict obligation to adhere to the Care Standards, except that the Care Commission and the courts will take the

Standards into consideration when deciding any matter arising from the 2001 Act or associated regulations. Hence there is a duty to take into account the standards rather than an obligation to strictly apply them.

1.32 The following care standards are of particular interest for the purposes of this study:

- **standard 1** is aimed at ensuring that older people moving into a home 'have all the information they need to help them to decide about moving into the care home'. This information is to be provided in an introductory pack which will include among other things a brochure of the care home, an explanation of the charges and the services they cover the accommodation and service provided, arrangements that need to be made if private funding runs out and the complaints procedure
- **standard 3** is aimed at ensuring that older people have full information on [their] legal position about [their] occupancy rights in the care home'. This is to be achieved by the provision of a written agreement (in a format which the old person can understand) which clearly defines the service that will be provided, setting out the terms and conditions of accommodation and residence, including older people's rights to live in the home, payment arrangements, and arrangements for changing or ending the contract, and
- **standard 11** deals with the complaints procedure and provides that older people resident in care homes should be encouraged to express their views on any aspects of the care home at any time.

1.33 Older people should be able to freely discuss any concerns with their named worker, other residents or any member of the care home's management. They should know how to make a complaint or comment to the home about the service and be aware of the procedure for making formal complaints directly to the Care Commission. The care home should deal with concerns and complaints quickly and sympathetically, and provide full information about what will happen as a result of the complaint.

- 1.34 The older people resident in the homes should be encouraged and supported to use an independent and confidential advocacy service and care home staff should have information about any service that would help older people in this way. The care home should also make available a copy of each inspection report about the home so that older people and their representatives can look through it in their own time.

Scottish Commission for the Regulation of Care

- 1.35 Part 1, section 1 of the Act establishes the Scottish Commission for the Regulation of Care known as 'the Care Commission', as the regulatory care body in Scotland. The Care Commission registers and inspects all care services against National Care Standards. In a similar way to that of England and Wales these Care Standards are taken into account when the Care Commission makes decisions about registering and inspecting services and in considering whether or not enforcement action is necessary.
- 1.36 The Care Commission works throughout Scotland on both a national and local level. Locally they are required to provide information to the consumer about regional care services which they also examine and report on. At the wider national level the Care Commission must ensure that regulation is applied consistently across regions, have regard to the care standards in decision-making, keep Ministers informed of social care trends and consult with the Scottish Social Services Council at all times.

Northern Ireland

Introduction

- 1.37 The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 ('the Order') is the primary legislation in Northern Ireland governing the registration and inspection of residential and nursing homes and replaced the Registered Homes (Northern Ireland) Order 1992. It brings into effect care service arrangements equivalent to those already in place in Scotland and in England and Wales. The Order introduces a statutory duty of quality on the services provided by (HSS) Boards, HSS Trusts and some special

agencies, and creates a common system of regulation based on minimum standards set out by the Department of Health Social Services and Public Safety (DHSSPS).

- 1.38 Draft standards were issued (on 4 April 2005) for a period of public consultation, which will run for 3 months. The standards will apply to all Health and Personal Social Services (HPSS) organisations and will also be used by the new HPSS Regulation and Improvement Authority to assess the quality of care provided across Northern Ireland. Similar to the position in England, care homes in Wales and Scotland will not be strictly obliged to adhere to the standards (as they are to the requirements of the Order or associated regulations). However, the Health and Personal Social Services Regulation and Improvement Authority and the courts will take the standards into consideration when deciding any matter arising from the Order or associated regulations.
- 1.39 Article 10 of the Order defines a 'residential care home' and includes 'any establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of old age and infirmity'. A nursing home is also defined in Article 11 of the Order and includes 'any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any illness, injury or infirmity'.
- 1.40 The primary regulations governing residential care homes and nursing homes in Northern Ireland are the Residential Care Homes Regulations (Northern Ireland) 2005 and The Nursing Homes Regulations (Northern Ireland) 2005 respectively. These regulations came into force on 1 April 2005 and set out requirements which providers of residential care services and nursing services must comply with.
- 1.41 The requirements in these regulations which we are primarily concerned with for the purposes of this study are contained in regulations 3 (Statement of purpose), regulations 4 (Resident's guide/Patient's guide), regulations 5 (Information about fees), and regulations 24 (Complaints) and are similar in scope to equivalent requirements in the Care Homes

Regulations 2001 (England) and the Care Homes (Wales) Regulations 2002.

- 1.42 Residential and nursing homes are required to compile and make available to every resident (in the residential home) or patient (in the nursing home) and the Health and Personal Social Services Regulation and Improvement Authority (HPSSRIA) a statement of purpose setting out various information about the home.¹⁵ Care homes are required to produce a 'Resident's guide' to the home and nursing homes are required to produce a 'Patient's guide'.¹⁶
- 1.43 These written guides must contain information on the terms and conditions of accommodation provided, including the amount and method of payment of fees, a standard form of contract for the provision of services, a summary of the complaints procedure, and information on the HPSSRIA. The residential and nursing homes are required to provide copies of this guide to every resident or patient and the HPSSRIA. In addition, on request, the residential and nursing homes must provide a copy of the most recent inspection report and information on how to access earlier inspection reports.¹⁷
- 1.44 Information on fees must be provided to residents and patients by not later than the day on which he becomes a resident or patient. This information must specify the fees payable the resident or patient in respect of the accommodation and personal care or nursing, except where a single fee is payable for those services. At least 28 days notice of any increase or variation in fees must be given to the resident or patient. In respect of residential homes where a HSS Trust has made arrangements for the accommodation and the charge made exceeds the fee paid the care home must record (in an individual written agreement)

¹⁵ Regulation 3 of the Residential Care Homes Regulations (Northern Ireland) 2005 and regulation 3 of the Nursing Homes Regulations (Northern Ireland) 2005.

¹⁶ Ibid regulations 4.

¹⁷ Ibid Regulations 4(2).

the reason for the additional charge, by whom it will be paid and list the services if any provided for it.¹⁸

- 1.45 Residential care homes and nursing homes are required to establish a complaints procedure (regulation 24) and provide a written copy of this to every resident or patient, to any person acting on their behalf and also to the HPSSRIA. The procedure must be appropriate to the needs of residents or patients and complaints must be fully investigated. Within 28 days (or shorter) after the date complaints are made, the complainant must be informed of the outcome and action (if any) which is to be taken. The residential and nursing homes are also required to supply to the HPSSRIA, at its request, a statement containing a summary of the complaints made during the preceding 12 months and details of action taken in response.

Health and Personal Social Services Regulation and Improvement Authority (HPSSRIA)

- 1.46 The HPSSRIA is a new independent organisation which is expected to commence operation on a phased basis from April 2005. Previously, the registration and inspection of care services in Northern Ireland was carried out by four separate units attached to each of the four HSS Boards. The new HPSSRIA has been designed to incorporate the functions of the existing units and in addition it will have its own more extensive powers of registration, regulation and inspection designed to ensure greater independence for the new authority. The HPSSRIA will have two main functions:¹⁹

- inspection of the services provided by the HPSS in Northern Ireland, and
- regulation of specified health and social health and social care services provided by the HPSS and independent sector.

¹⁸ Regulation 5(3) of the Residential Care Homes Regulations (Northern Ireland) 2005.

¹⁹ See Article 35 of the Order for a detailed description of the Role of HPSSRIA.

- 1.47 Once the formal consultation process is completed the HPSSRIA, in conjunction with HPSS organisations, residents in care homes and carers, will agree how the standards will be interpreted to assess service quality. Specific tools will be designed to allow the HPSSRIA to measure that quality and assist HPSS organisations to assess themselves. It is envisaged that these tools will not only assess structures and processes, but will also assess clinical and social care outcomes.²⁰

Registration and inspection standards

- 1.48 Article 38 of the 2003 order establishes the power for the DHSSPS to issue minimum care standards, to create a consistent standard for care homes throughout Northern Ireland in relation to registration, inspection, complaints investigation and enforcement.
- 1.49 A consultation document titled '*Best Practice, Best Care: The Quality Standards for Health and Social Care*' was published for formal consultation on 4 April 2005 and consultation closes on 4 July 2005. Following public consultation, the standards will be issued in final form, and will apply to all HPSS organisations. They will be used by the new HPSSRIA to assess the quality of care provided by the HPSS organisations. The development of the Quality Standards for Health and Social Care, as outlined in this document, is intended to complement standards already issued or currently in development (including the specific standards discussed further below which are being developed in respect of residential and nursing homes).

Draft registration and inspection standards 2004

- 1.50 Consultation documents published in September 2004 by the DHSSPS entitled '*Residential Homes Registration and Inspection Standards*' and '*Nursing Homes Registration and Inspection Standards*' outline the proposed care standard for residential and nursing homes in Northern Ireland. In respect of the focus of this study, these draft residential and nursing standards are similar to each other and they are also very similar

²⁰ See www.dhsspsni.gov.uk/hss/governance/quality_standards

to the national minimum standards and care standards already implemented in England, Wales and Scotland.

- 1.51 **(Residential and Nursing) Draft Standard 1** Admission to the Home (Information) includes a requirement that prospective residents, and/or their representatives when appropriate, are given an information pack that provides comprehensive up-to-date information about the home. The information should be made available in a format and language suitable for intended residents or their representative. The information pack must include information on the general terms and conditions of living in the home, a copy of the complaints procedure.
- 1.52 **(Residential and Nursing) Draft Standard 2** (Contracts) requires that there is a written agreement between the home and each resident or their representative regarding the services and facilities to be provided. The written agreement must include the following: identify the services and facilities provided by the home (these are those services and facilities agreed through contracting arrangements with HandSS Trusts plus an itemised list of all agreed services and/or facilities over and above the standard services), the charges for the services and facilities and arrangements for the payment of all charges, the respective rights and responsibilities of the resident and the registered provider, the period of notice (if any) for terminating the agreement.
- 1.53 Furthermore, each resident or their representative must be given written notice of all changes to their agreement and these will be agreed in writing by the resident or their representative and where the resident cannot or refuses to sign, this is recorded. A minimum of one month notice should be given for the introduction of new charges for services and facilities.
- 1.54 **(Residential and Nursing) Draft Standard 9** (Complaints) All complaints whether written or otherwise are taken seriously and dealt with. There should be a written policy and written procedures in place for dealing with complaints which defines the investigative process with specified timescales for action. A copy of the complaints procedure must be given to those who use the service and their representatives and available in a range of formats if required. Complaints should be investigated within

the agreed timescales and when this is not possible complainants are kept informed of any delays. Written records should be kept of complaints and include all communication with complainants, the results of investigations, action taken and the level of each complainant's satisfaction with the outcome.

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 local 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 provider 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. 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 inspecting 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 region 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 Scotland 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 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.

4 BIBLIOGRAPHY

Advocacy Safeguards Agency 2004

'A Map of Independent Advocacy Across Scotland, edition 2003-2004',
Advocacy Safeguards Agency

Age Concern 2004

'The Age Agenda 2004', Public policy and older people', *Age Concern*

Argyle, C., Bright, L. & Clarke, A. 2000

'The Choice is Yours? An account of the pressures faced by older people looking for care homes', *Counsel and Care*

Burden, R. 1998

'Vulnerable Consumer Groups: Quantification and Analysis', *OFT*

Care Commission 2004

'A Review of the Quality of Care Homes in Scotland 2004', *Scottish Commission for the Regulation of Care*

Clements, L. 2004

'Community Care and the Law', *The Legal Action Group*

Coleman, V., Regan, D., & Smith, J. 1999

'Who Cares Plans; A guide to care planning in homes for older people', *Counsel and Care*

Commission for Local Administration in England 1995

'Good Administrative Practice; Guidance on good practice 2', *The Local Government Ombudsman*

Commission for Social Care Inspection 2004

'Leaving Hospital – the price of delays', *CSCI*

Commission for Social Care Inspection 2004

'Vision for Adult Social Care, A contribution from Commission for Social Care Inspection', *CSCI*

Community Care Conference 2004

'The Best Care Possible? A CCC Policy Healthcheck', *CCC*

Department of Health, 2003

'Care Homes for Older People – National Minimum Standards', *Department of Health*

Department of Health, Social Services and Public Safety, 2004

'Residential Homes Registration & Inspection Standards, A Consultation Document', *DHSSPS*

Fair Rate for Care Coalition 2004

'From Rhetoric to Resolution; A discussion paper on solutions to the care home question', *Fair Rate for Care Coalition*

Heer, B. 2004

'Building Bridges for Health; Exploring the potential of advocacy in London', *The Kings Fund*

Laing & Buisson, 2004

'Care of Elderly People; UK Market Survey 2004', *Laing & Buisson*

Local Government Ombudsman 2003

'Digest of Cases 2002/3', *Commission for Local Administration in England*

Local Government Ombudsman 2004

'Annual Report 2003/4', *Commission for Local Administration in England*

Mickelborough, P. 2004

'Extra Care Housing Markets 2003/4', *Laing & Buisson*

Netten, A. et al 2001

'Care Homes for Older People', Volumes 1 & 2, *PSSRU*

Netten, A. et al 2004

'Performance and Quality: User experiences of home care service', Discussion paper 2104/3, *PSSRU*

Nuffield Community Care Studies Unit, University of Leicester 2002

'Nothing Personal; Rationing Social Care for Older People', *Help the Aged*

Pearson, N. 1990

'Putting People First: Consumer Consultation and Community Care', *Welsh Consumer Council*

Pratt, H. J. 1993

'Gray Agendas: Interest Groups and Public Pensions in Canada, Britain and the United States', *University of Michigan Press*

Quinn, A., Snowling, A., Denicolo, P. 2003

'Older People's Perspectives – Devising information, advice and advocacy services', *Joseph Rowntree Foundation*

Ridout, P 2003

'Care Standards; A Practical Guide', *Jordan Publishing Limited*

Royal Commission on Long Term Care 1999

'With Respect to Old Age', *The Stationery Office*

Scottish Executive, 2003

'National Care Standards, Care homes for older people', *Scottish Executive*

Watkins, T. & Pearson, N. 1996

'Residential Homes: Quality of Life and Quality of Service', *Welsh Consumer Council*

Welsh Assembly Government, 2004

'National Minimum Standards for Care Homes for Older People', *Welsh Assembly*