

Care homes for older people in the UK

A market study

May 2005

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1 EXECUTIVE SUMMARY

Introduction

- 1.1 This market study looks at how well the care homes market serves people over 65 in the UK.
- 1.2 In 2004, an estimated 410,000 older people lived in residential and nursing homes across the UK. There are about 15,700 private, voluntary and Local Authority (Authority) care homes in the UK, providing care at an estimated annual value of more than £8 billion per annum.
- 1.3 For most older people, moving into a care home is usually a lasting decision taken under very difficult circumstances. They may often be in poor physical or mental health, under pressure to make a decision quickly, and typically have little previous experience of choosing a care home. In this situation, even with help from friends and relatives, it can be difficult to make a considered decision on care. Yet entering a care home is a major decision that will have an on-going effect on the older person's daily quality of life; and for some older people and their families, it will require a large financial commitment.

Background

- 1.4 This study was launched on 29 June 2004. It was initiated by a super-complaint made by Which? in 2003. It looks at how well the care homes market is serving older people, within the context of government policies on care for older people. Although the large majority are privately owned, care homes operate in an environment closely controlled by government. In particular, under government policy, all older people in care homes have a right to care at a certain minimum standard. Older people's access to care is means tested on the basis of government criteria and their personal resources taken into account according to regulation set by the government. The government also specifies the minimum care standards and determines the level of public funding available for care.

- 1.5 By providing security, company, warmth, regular food and assistance with daily tasks as necessary, a caring and well-run home provides a vital service, both for older people themselves and for their relatives. Such a home offers frail and vulnerable older people a safe and supportive place to live, allowing them to continue their life without being dependent on relatives or friends for their care.
- 1.6 Nevertheless, few older people move into a care home because they prefer this to living in their own home. The reality is that the process of moving into a care home is often very distressing for the older person and frequently also for their families. The older person may be coming directly from a hospital stay, as is the case for about half of those moving into a care home, and will normally have suffered some kind of loss that necessitates the move. The loss could be in physical or mental ability or could be the loss of a partner or relative who may previously have cared for them. Additionally, the move often has to be arranged quickly, with all the stress that time pressure adds, and the older person and their representatives may not have much, if any, experience of arranging care. Once settled in a care home, very few older people choose to move to another home.

Findings

- 1.7 Under these difficult circumstances it is very important that older people entering care homes are given the best chance of making a good initial decision, with effective safeguards in place for preventing and remedying problems during their stay. Good quality information about the rights of the older person and the obligations of the Authority, fair and clear contract terms, and the ability to make a complaint are complementary mechanisms for the protection of this group of older people.
- 1.8 However, we found cause for concern in the following areas:
- **information about moving into a home** – there is a lack of awareness among older people and their representatives about sources of information on the process of moving into a care home. There is a confusing multitude of different sources of information, and no single clear reference point for people to consult

- **Authority obligations** – there is confusion about what advice and support Authorities should be providing to older people and their representatives. In particular, there appears to be a lack of clarity about when additional third party payments (which can be used to pay for more expensive accommodation) are appropriate. There also appears to be some variation in what different Authorities offer to older people who are not eligible for Authority funded care
- **price transparency** – many older people and their representatives lack information about care homes' fees and services offered, and about terms and conditions for living in a care home. Older people and their representatives need this information quickly, prior to making a decision about moving into a care home, and in an easily accessible and high quality format
- **contracts** - we have identified a large number of contracts that are potentially unfair or have unclear fee related terms, giving care homes scope to introduce arbitrary fee increases. We also found that many contracts are unnecessarily complex or unclear, making it difficult to assess the true rights and obligations of the older person and of the care home under the contract, and
- **access to making complaints** – older people and their representatives face particular difficulties in making complaints, including low awareness of the avenues of redress open to them and a lack of support for people wishing to complain.

Information about moving into a care home

- 1.9 When choosing to go into a care home the older person and their representatives need to understand the various steps in the process, and should get clear, up-to-date, and timely information at each stage. Our research shows that there are significant gaps in the information being provided to people at almost every stage of choosing a care home. Therefore, we make a number of recommendations to the key institutions involved in the care homes sector.

- 1.10 First, we have found that people lack information about the availability and range of care homes. Authorities provide directories of the care homes in their area. These should contain enough good information on the care homes to enable older people and their representatives to choose an appropriate home. However, despite some examples of best practice, our research found that Authority directories often lack important information, sometimes containing no more than the name of the care home manager and contact details of the care homes in their area. This is not enough to allow older people and their representatives to determine which care homes would be suitable for their assessed needs, and therefore which they should contact. They also need information about the levels of funding that their Authority generally makes available for care home places for older people, about the services and facilities offered by relevant care homes, and about when homes require an additional payment over and above what the Authority would usually be prepared to pay to accommodate the older person.
- 1.11 **We recommend that Authority care home directories cover all care homes for older people in their area, that they list services offered by the care homes, state the levels of funding that their Authority generally makes available for care home places for older people, and that they identify all care homes that require additional payments above the amount the Authority is usually prepared to pay (so-called 'top ups'). Care home regulators and inspectorates should monitor that Authorities provide this information.**
- 1.12 The care home regulators in the four administrations of the UK produce inspection reports that provide an independent assessment of the standard of services in care homes. Potentially these could help people reach an informed decision when choosing a care home. However, not all of these reports are currently accessible on the internet, and many could be made easier to read and understand.
- 1.13 To ensure that this source of information is made as useful as possible **we recommend that all care home regulators should make their care home inspection reports available online, and make them more user-friendly, for example by including a short summary at the beginning. Care home regulators and Authorities should support and encourage**

older people and their representatives to use these reports. Care homes should provide new residents with a copy of the latest inspection report when moving into the home and inform residents when a new inspection report is available.

- 1.14 Alongside the gaps in the information available to people engaged in choosing a care home, there is also confusion about where they should turn to get the information they need. While there are many sources of good quality information, in particular provided by voluntary organisations, there is no single, clear and authoritative point of reference with comprehensive information for people choosing a care home.
- 1.15 **Therefore we recommend that government should establish a central information source or 'one stop shop' for people to get information about care for older people. This could, for example, be an internet site supplemented by a telephone helpline or a one stop shop with information about care for older people.**
- 1.16 The information source should contain information such as how to have a needs assessment done, local care options, funding of care and the use of top ups, what to look for in a care home and how to use care home inspection reports, advocacy schemes for older people in care homes and also the complaints information, discussed later under 'Making complaints'.

Authority obligations

- 1.17 The Authorities play a key role in helping older people and their representatives to navigate through the process of choosing a care home, and have certain legal obligations that they must meet. For example, Authorities are required to carry out an assessment of the care needs of any person who it appears may need care services. Where an older person meets the means testing criteria for eligibility for publicly funded care, the Authority must provide them with a care home place suitable to their assessed needs. This support in finding a suitable place is an important part of the service Authorities provide to older people and their representatives.

- 1.18 However, we have found that there is some confusion about what services Authorities are obliged to provide to older people prior to them going into a care home. In particular, some Authorities may not provide support in finding a suitable home to older people who do not qualify for Authority funded care, so-called 'self funders'. The vulnerability of older people entering a care home is not limited to those with low financial assets, and given the importance of the initial decision in choosing a care home it is vitally important that no one is barred from sources of help.
- 1.19 **We recommend that government should clarify the guidance to Authorities on the Choice of Accommodation Directions to make it clear that self funded older people with an assessed need should have access to the same advice, guidance and assistance on choice as older people receiving public funding. We also recommend that Authorities ensure that self funded older people with an assessed need get advice after the test of their financial assets and entitlements and are guided during the whole process of setting their care needs if they so wish. Care home regulators and inspectorates should monitor that Authorities do this either through their own social services departments or through 'out-sourcing' the task of guiding self funders.**
- 1.20 Another area where there appears to be confusion with regard to Authority obligations is the use of additional payments by third parties, so-called 'top ups'. Top ups can give older people receiving Authority funding a wider choice of care homes and of facilities within a home. The use of top ups should be voluntary and to the older person's advantage. The guidance from the Department of Health and the devolved administrations states that top ups are intended to be used solely when the older person wishes to enter a more expensive home than the Authority would normally fund for someone with their level of assessed needs. The English guidance makes it clear that individual residents cannot be required to secure a top up because of market inadequacies or commissioning failures.
- 1.21 Our research suggests that an increasing number of people are paying top ups, and 40 per cent of the Authorities that we surveyed suspected

that more top ups are being paid in their area than they know about. We also believe, based on our analysis of Authority information leaflets about top ups, that some people are likely not to get all the necessary information on top ups. This means in some cases where an older person is entitled to Authority funding of a care home place they and their relatives may mistakenly believe that a top up is required before a care home place can be found.

- 1.22 To address this, **we recommend that Authorities ensure their advice and information materials to older people and their representatives state very clearly that an older person with an assessed need, who is entitled to Authority funding, does not need to secure a top up in order to find a care home place that is suitable for their needs.**

Price transparency

- 1.23 People engaged in choosing a care home should be able, as far as possible, to compare services and fees offered by different care homes. We found that more than one in 10 care homes failed to provide basic price information to our researchers, even after persistent prompting. Other care homes did not provide information on what was included in the fees, extras services available and simple contractual information.
- 1.24 **We recommend that care homes should provide the price in writing of accommodation and residential or nursing fees promptly and prior to the older person making the decision to enter a home.**
- 1.25 To ensure that price transparency improves, **we also recommend that government amend the relevant regulations to include this as a requirement.**

Written contracts or statements of terms

- 1.26 Older people resident in care homes often stay in their initial choice of home for the rest of their life. As this may therefore be a lasting decision, it is important that older people have a written contract or statement of terms from their care home that is clear about the responsibilities of the care home to the older person, sets out fair terms

for when fees and additional charges may be altered, and is easy to read and understand. The contract or statement of terms should protect the older person from unfair price increases or alterations in service levels, and should provide a written statement of what would happen in the event of a change in the circumstances of either the older person or the home.

- 1.27 A previous study by the OFT found that older people in care homes had very low awareness of whether they had a contract in place with the care home. This report similarly finds that many older people do not know if they have a written contract or statement of terms, or if it meets their needs. Our consumer survey found that many of the older people interviewed did not recall either themselves or their family receiving a contract prior to moving into a care home. This is backed up by our mystery shopping research which showed that in about a third of cases our researchers were unable to get the care home to provide them with a contract or statement of terms and conditions. This is a concern, as it could leave older people vulnerable to an unfair price increase or without information about the consequences of a change in their circumstances.
- 1.28 **We recommend that care homes for older people ensure urgently that all their residents are provided with written contracts or statements of terms and that care home regulators and inspectorates monitor this to ensure that significant improvements are delivered in the shortest possible time.**
- 1.29 We found that although Authorities are responsible for the full cost of a care home place they are in many cases not involved in the contractual arrangements for payment of the third party top up contribution, when placing an individual in care. This means there currently is no system in place for Authorities to understand increases in top up fees being charged and let them inform their commissioning strategy. The third party contributor therefore loses a significant safeguard in an area where there is potential for detriment through unjustified increases in top up fees.

- 1.30 **We recommend that the Department of Health and, as far as it is within their power to do so, the devolved administrations, amend relevant legislation and guidance so that Authorities are responsible for contracting and paying for the full costs of accommodation, including any top up fees. (The Authority will recover the top up fee from the third party).**
- 1.31 The final contract issue we looked into was care home contracts for self funders. We examined unfair fee related terms and the absence of fee review terms which give care homes scope to introduce arbitrary fee increases. Complaints received by the OFT suggest that terms about fees, and in particular, changes to fees post-contract, are the cause for the greatest concern.
- 1.32 Under the Unfair Terms in Consumer Contracts Regulations 1999 unfairness can arise wherever a standard term in a consumer contract gives powers [or safeguards] to the care home that could be used to the detriment of the older person, whether or not actual detriment or harm is currently being caused. Standard terms in consumer contracts can also be considered unfair if they are not drafted in plain and intelligible language. Unfair terms in consumer contracts cannot be enforced against the older person or their representatives. Where there is a dispute between a care home and an older person or their representative it will ultimately be for a court to decide if a term is unfair.
- 1.33 Our analysis of care home consumer contracts found problems in the majority of such contracts for older people funding their own care. In particular, nearly three-quarters of the contracts we analysed had fee related terms that were either unfair or unclear, and in 47 per cent of the contracts it was unclear who should pay what amount.
- 1.34 **We are therefore alerting care homes to our general guidance on the Unfair Terms in Consumer Contracts and also our guidance on unfair terms in care home contracts. We will continue to take enforcement action against potentially unfair terms in care home contracts where appropriate.**

- 1.35 We also encourage trade associations for care homes to draw up model consumer contracts or model terms for such contracts so that their members can adopt these. We would be happy to work with them to achieve this aim.
- 1.36 During our study, we also examined a number of contracts governing the relationship between Authorities and care homes. As these are not business-to-consumer contracts there is no legal obligation for them to be consumer friendly. However, these contracts are about the health, accommodation and care needs of an older person. They should be clear enough to allow the older person and their representatives to understand whether their statement of terms and conditions fairly reflects their rights under the contract between the Authority and care home.
- 1.37 It is therefore our view that they should be clear, simple and drawn up in the spirit of fairness and plain intelligible language required by the Unfair Terms in Consumer Contracts Regulations 1999 that apply to business-to-consumer contracts. We consider that the current efforts by the Department of Health and by the devolved administrations to develop guidance and model terms will help address the care homes' demand for simpler and more standardised contracts and support this work.
- 1.38 **We support and are contributing to the guidance and model terms for Authority contracts currently being developed by the Department of Health and by the devolved administrations.**

Making complaints

- 1.39 We looked at whether older people and their representatives face difficulties in accessing complaints procedures that stop them from voicing and resolving problems they have regarding their care. The number of complaints received by the care homes in our business survey appeared low. Similarly the older people we surveyed expressed high levels of satisfaction, with 79 per cent saying that they would definitely recommend their care home to a friend.

- 1.40 We did, however, encounter difficulties throughout our study in obtaining data on complaints and their outcomes. This makes it difficult to assess whether there are sources of significant dissatisfaction among older people in care homes. In particular, the complaints data collected by the care homes regulators is often too highly aggregated to discern the levels of complaints about care homes for older people or which areas give the most cause for dissatisfaction.
- 1.41 **Therefore, we recommend that the care homes regulators across the UK should improve their collection and use of complaints data in respect of older people in care homes so that they can quickly recognise any significant rise in complaints, whether local or in aggregate, and make an efficient and targeted response appropriate to the problem.**
- 1.42 There does appear to be a significant minority of care home residents who encounter problems. In our survey, 28 per cent of older people said that they had had cause to be dissatisfied at some point in the past, and a small proportion said they had decided not to go on to make a complaint.
- 1.43 We also received a large number of comments on this issue from the consumer groups, charities and other organisations that we consulted during our study. Most agreed that older people and their representatives were often reluctant to complain, which may mean that the data on complaints understates the true extent of problems. The reasons cited for this reluctance included:
- low awareness of complaints procedures
 - lack of support in making a complaint, and
 - fear of repercussions for the older person.
- 1.44 While we cannot be sure of the true scale of the problem, considering the vulnerability of older people in care homes it is clear that access to complaints procedures is a vital safeguard for them. There is already a great deal of information available about complaints mechanisms but it appears that many people are not aware of it or do not know where to access the information. Half of the residents in our survey said that they

had received no information about complaints procedures, and of those who said that they did receive information, many said that they did not get any written information or guidance. This is clearly of concern, since if people are not aware of their rights they may be less likely to make complaints.

- 1.45 **Therefore, we recommend that care home regulators should produce an easy-to-understand document that provides practical information to all older people living in care homes and their representatives about the redress avenues open to them. This should include information about when and how they can complain to the care home, the Authority, the regulator, the Local Government Ombudsman and the Parliamentary Ombudsman, or seek judicial review. Regulators should provide care homes with this information and monitor that homes include it as an annexe to the older person's contract or statement of terms and signpost it in suitable places in the care home. Department of Health and the devolved administrations should amend the relevant regulations to include this requirement.**
- 1.46 Older people in care homes are in a vulnerable situation, and many will not enjoy the support of friends and relatives. Even for those who do, making a complaint can be a daunting prospect. We believe that the provision of advocacy services would enable older people to voice their concerns more easily and obtain appropriate redress. Through the provision of advocacy services older people would be supported by an individual who would provide them with a one-to-one source of help and support, and would be able to represent the older person throughout the process of resolving complaints.
- 1.47 Advocacy services may have significant benefits for older people in care homes and also for care homes and Authorities if complaints are resolved faster and more effectively through the use of advocacy services. However, providing such services will also carry a cost for government.

1.48 **Therefore, we recommend that the Department of Health and the devolved administrations should run pilot projects to measure the benefits to older people, care homes and Authorities of advocacy services being provided to older people entering or living in care homes as well as the costs of providing such services.**

1.49 Information about substantiated complaints is potentially an important tool for helping older people and their representatives assess the quality of individual care homes. It may also demonstrate that it is possible to pursue complaints successfully. **Therefore we recommend that care home regulators should make public the outcome of non-trivial substantiated complaints about care homes by including a short summary with key information in inspection reports.**

Paying for care

1.50 Throughout this study and the OFT's initial response to the super-complaint, the issue of the level of government funding has been raised by a range of stakeholders. In particular, people have told us that the fees paid by Authorities to care homes for older people do not cover the full costs to the care home of providing care, plus a reasonable profit margin. Their concerns about the consequences for older people of low levels of funding are that:

- excessively low prices paid to care homes may force care homes out of the market and lead to a shortfall in capacity in some areas, and
- care homes may be charging higher fees to self funders in order to cross subsidise publicly funded residents.

1.51 Our focus in this study has been on how well care home services work within the framework and objectives set by government. Issues such as the service required and the levels of public funding provided to care homes are for the government to decide. It is for the OFT to assess whether, given the policy objectives, the market is working efficiently.

Excessively low prices

- 1.52 The policy objectives set by government in this respect are clear. Authorities are under an obligation to ensure that older people in need of care receive this, if necessary, in a care home. In some parts of the UK, Authorities are fined if they fail to quickly provide a place for older people moving from hospital into a care home. Authorities will need to use effective procurement practices to ensure that there are enough care homes, offering the necessary mix of services, to meet their obligations. This means that Authorities cannot sustainably offer care homes fees that do not cover the cost of care.
- 1.53 It is important, however, that publicly funded older people and their representatives are made aware of their rights to a care home place without a top up being required. Our recommendations for a central information source and improved information about top ups will assist older people in claiming their entitlement.

Cross subsidy

- 1.54 People have stated that some care homes charge self funders more in order to 'subsidise' the costs of caring for Authority funded older people.
- 1.55 As discussed above, Authorities cannot offer care homes fees that do not cover the cost of care in the long term as it would mean that they could not meet their obligations.
- 1.56 We recognise that it can be seen as unfair when older people are charged different prices for the same standard of accommodation and level of care. Our research shows that around one in five homes charge self funders more than Authority funded residents for a similar room and similar care. This means that the majority of homes do not discriminate between residents according to their source of funding.

1.57 Where care homes do charge self funders more for care the key issue is how they are able to do this. Their ability to raise prices to self funders will be limited if older people and their representatives have enough information to identify and avoid homes that do this. Our recommendations of increased price transparency and the provision of advice and assistance to self funders with an assessed need should help self funders avoid homes that they think charge excessive prices.

2 INTRODUCTION

- 2.1 This market study, launched on 29 June 2004, has been carried out under the Office of Fair Trading's (OFT) function contained in section 5 of the Enterprise Act 2002.
- 2.2 We launched the study in response to an informal super-complaint¹ from Which?² on behalf of most of the organisations in SPAIN, the Social Policy Ageing Information Network.³ Our scope was to look at conditions for consumer choice when going into a care home, transparency of price information, price variation clauses and redress.
- 2.3 We have looked at how effectively the supply of key information about care homes is working for older people and their representatives. In particular, we looked at:
- the information being provided to older people and their representatives by care homes, Authorities and others
 - care home contracts, and
 - redress for older people in care homes and their representatives.

¹ The right to submit super-complaints was created by section 11 of the Enterprise Act 2002. A super-complaint is defined under section 11(1) of the Enterprise Act 2002 as a complaint submitted by a designated consumer body that 'any feature or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers'. Which?'s application for designated consumer body status was being considered by the Secretary of State when the super-complaint was submitted and had yet to be determined. The OFT agreed, nevertheless, to treat the complaint as a super-complaint as if Which? had been a designated consumer body and to respond accordingly.

² The super-complaint was received on 5 December 2003 and at the time, Which? was known as The Consumers Association.

³ For a complete list of those of SPAIN's members that were signatories to the super-complaint, see Annexe M which lists the stakeholders we consulted.

2.4 In carrying out this study we have carried out wide ranging research into the care homes sector. These pieces of research are reported in full in the annexes to this report, and include:

- a survey of older people living in care homes to get their experiences of moving into and living in care homes for older people
- a survey of care homes to establish sound factual information about care homes and their business strategies with regard to issues such as information provision, contracts, complaints handling, and relationship with their Authority
- a mystery shopping exercise to gauge how easy it is for older people and their representatives to obtain key information from care homes, including contracts and prices. We also tested the experiences of older people looking for a care home without any support from relatives or others, and
- a survey of Authorities across the UK to clarify their behaviour in this market, their support of older people and their relationship with care homes, asking questions ranging from information provision over data collection to commissioning strategies.

2.5 We also consulted with:

- care homes and trade associations for care homes
- consumer groups and charities with an interest in this sector
- central and local government departments
- regulatory bodies, and
- organisations undertaking research and statistical analysis of the care homes market.

2.6 A list of consulted parties is included in Annexe M.

- 2.7 During our study, many older people and their representatives contacted us and told us about their own personal experiences. We are extremely grateful to all those individuals who took the time and trouble to do so.
- 2.8 Additionally, we wanted to hear directly from a large and representative group of older people living in care homes so we commissioned a survey of residents. We are grateful to all the homes that made it possible for our researchers to interview their residents and to the older people themselves (and their representatives) for participating in our survey. Finally, our sincere thanks to the care home owners and managers who let our study team visit their homes and showed us around. We were impressed with the enthusiasm of the staff; seeing care homes from the inside and talking to people was invaluable to us.
- 2.9 The following chapters provide background on this sector, the issues we have considered, the problems we found and proposed remedies where we think they are appropriate. Chapters 3 and 4 set out the broad picture, looking at the older people living in care homes and the care homes themselves, Chapter 5 considers the conditions under which the older person and their representatives select a care home, Chapter 6 looks at contract issues and Chapter 7 considers the older person's access to making a complaint. We have also included a glossary and list of acronyms.
- 2.10 Details of our methodology, research and relevant legislation can be found in the Annexes to this report. The studies we commissioned are the responsibility of the authors concerned and any views expressed in them are those of the authors and not necessarily of the OFT. The views of the OFT are expressed in this report, which has drawn on those studies.

2.11 In 1997-98, we undertook an inquiry into care homes under section 2 of the Fair Trading Act. Its primary objective was to examine what information was provided to residents about their future home, what contracts were used, how the financial affairs of residents were handled and what mechanisms existed to address complaints from residents or their representatives. Our findings and recommendations were published in the report 'Older People as Consumers in Care Homes. A report by the Office of Fair Trading'.⁴

⁴ October 1998. See www.offt.gov.uk/nr/rdonlyres/09b30a60-d556-42e5-8de2-574bc3000ec9/0/oft242.pdf

3 CARE HOME RESIDENTS

Introduction

- 3.1 This chapter focuses on older people in care homes,⁵ and those entering residential care for the first time. It looks at the characteristics of older people resident in care homes, and the processes that older people go through in order to access care.
- 3.2 The average care home resident is 84 years old. There are considerably more women in care homes than men, and many are disabled. People enter care for a number of different reasons, but all will have problems carrying out some of the everyday tasks necessary for independent living.
- 3.3 The demand for residential and nursing care home⁶ places is influenced by two key factors: demographics and government policy. In an ageing population, it is reasonable to expect that demand for care home places will increase. However, this has to be set against changes in government policy that place more emphasis on providing alternative forms of care in people's own homes in order to enable people to carry on living independently for longer.
- 3.4 Access to residential and nursing care is largely administered by Authorities in England, Wales and Scotland, and Health and Social

⁵ For the purposes of the report, the term 'care home' refers to residential and nursing care only.

⁶ Residential homes differ from nursing homes in that residential homes provide assistance with personal care such as dressing and washing if required, staff can care for residents during short periods of illness whilst nursing homes are better suited where more constant medical attention is needed.

Part I, Section 3 of the Care Standards Act 2000 defines a care home as any home which provides accommodation together with nursing or personal care for any person who is or has been ill (including mental disorder), is disabled or infirm, or who has a past or present dependence on drugs or alcohol.

Services Trusts (HSS Trusts) in Northern Ireland.⁷ The actions and policies of Authorities are particularly important in shaping the experience of the majority of older people entering care for the first time.

- 3.5 The rest of this chapter sets out in more detail the characteristics of care home residents and the reasons why older people enter long term care. It looks at current and estimated future demand for long term care, and the policies on care for older people. Next, we describe the role of Authorities in helping older people to access residential and nursing care, including policies aimed at increasing the choice of care homes available to older people.

Profile of care home residents

- 3.6 In April 2004 an estimated 410,000 older people lived in care homes in the UK.⁸ According to the Health Survey for England 2000 (The Health Survey), most care home residents are over 85 years old.⁹ Female care home residents tended to be older than male residents, at an average age of 85.6 years for women compared to 83.2 years for men. Women are also more likely than men to be severely disabled, although a high proportion of both sexes have health problems; 75 per cent of all care home residents are severely disabled.¹⁰
- 3.7 There are clear differences in age and health concerns between men and women in care homes. Our own analysis of census data in our 'General

⁷ We will for the purposes of this report refer to Local Authorities and Health and Social Services Trusts as Authorities.

⁸ OFT estimate based on administrative and regulators' data. See also Annexe C: General research findings.

⁹ Annexe K: Consumer behaviour and care homes - a literature assessment. (*Bajekal, M. (2002) Health Survey for England 2000: Care homes and their residents, The Stationary Office, London*).

¹⁰ Ibid.

research findings' Annexe supports these findings.¹¹ Older people going into care will also have differing levels of personal care needs,¹² family circumstances, as well as differing spiritual, religious and language needs.

- 3.8 The Health Survey also identified the dependency levels of care home residents. It found that 57 per cent of women and 48 per cent of men needed help with one or more 'self care' tasks. Researchers from Nottingham University's Personal Social Services Research Unit (PSSRU) carried out a survey in 1999-2000 and found that Authority funded residents and self funded residents differed in their dependency levels and age when entering care; self funded residents tended to be older and less dependent than publicly funded individuals.¹³

Reasons for admission into a care home

- 3.9 While older people living in care homes have different reasons for entering care, they do have one particular characteristic in common - the inability to perform certain activities of daily living. People entering care homes generally do so because they are no longer able to live independently.
- 3.10 However, there is no one typical condition that triggers the need to enter care, and the approximately 410,000 people in care homes for older people are there for a variety of reasons including mental impairment as well as physical health problems.¹⁴ Table 3.1 illustrates this using data taken from a PSSRU report.

¹¹ Annexe C: General research findings.

¹² Part I, section 3(34) of the Care Standards Act defines personal care in the context of care homes as: including assistance with bodily functions where such assistance is required. This may include for instance, assistance with bathing, dressing and eating for people who are unable to do this without help.

¹³ Annexe K: Consumer behaviour and care homes - a literature assessment.

¹⁴ Annexe C: General research findings.

Table 3.1 - Reasons for admission into care

| <u>Reasons for admission</u> | <u>Percentage</u> |
|--|-------------------|
| Physical health problems | 69 |
| Mental health problems | 43 |
| Functional disablement | 42 |
| Stress on carers | 38 |
| Lack of motivation | 22 |
| Present home physically unsuitable | 15 |
| Family breakdown (including loss of carer) | 8 |
| Need for rehabilitation | 6 |
| Fear of being the victim of crime | 4 |
| Abuse | 2 |
| Loneliness or isolation | 2 |
| Homelessness | 1 |

N.B. More than one reason may be given

Source: PSSRU, *Care Homes for Older People: Volume 2 - Admissions, Needs and Outcomes*. The 1995/96 National Longitudinal Survey of Publicly Funded Admissions, Andrew Bebbington, Robin Darton and Ann Netten.

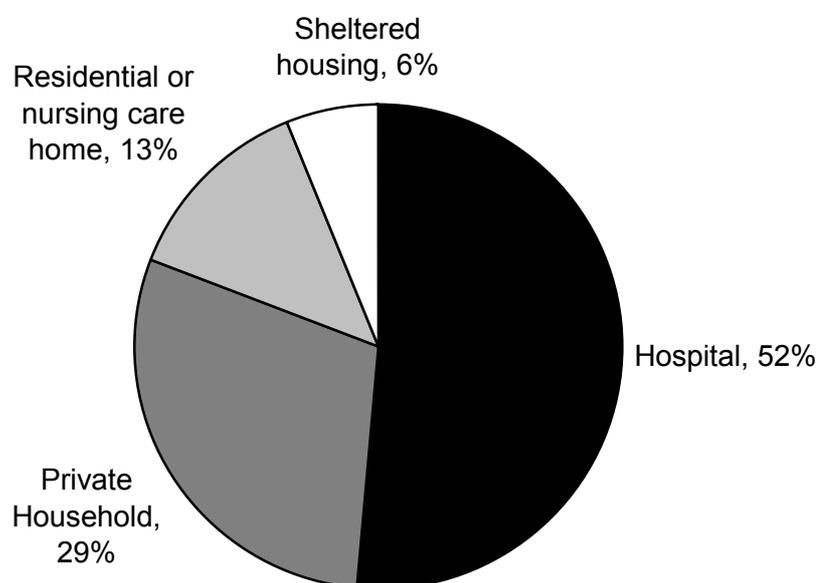
3.11 For many older people in care homes, their need for care may have become apparent only gradually, perhaps through slowly progressing chronic disease. Others may enter care as the result of a sudden crisis due to an accident or acute disease, or the loss of a carer.

3.12 The sources of admissions of older people to residential care also vary widely. In 1995/1996, PSSRU researchers found that roughly half of all residents moved into care from hospital, about three in 10 from a private household. Some older people may be moving from another form of care or nursing home. Among this group one-quarter transferred from a short-stay placement, and approximately 50 per cent of those moving care

homes were transfers following a reassessment of their care needs.¹⁵

Chart 3.1 illustrates this using data taken from a PSSRU report.

Chart 3.1 - Sources of admission



Source: PSSRU, *Care Homes for Older People: Volume 2 - Admissions, Needs and Outcomes*. The 1995/96 National Longitudinal Survey of Publicly-Funded Admissions, Andrew Bebbington, Robin Darton and Ann Netten.

3.13 The Commission for Social Care Inspection, which regulates care homes in England, estimates that the average life expectancy of an older person who goes into residential care is three years and 18 months in nursing homes. Researchers from PSSRU found that on average publicly funded residents were in care homes for longer periods of time than self funded residents. The same researchers found in another study that the median

¹⁵ Sources: Personal Social Services Research Unit (PSSRU) *Care Homes for Older People: Volume 2 Admissions, Needs and Outcomes*, The 1995/96 National Longitudinal Survey of Publicly-Funded Admissions.

length of stay for publicly funded residents in nursing homes was one year and in residential homes it was over two years.¹⁶

Demand for long term care

3.14 Among older people, the demand for community care increases sharply with age.¹⁷ On the basis of the 2001 Census of the UK population, we estimate that for older people between the ages of 60 and 64 years only about three in every 1000 are living in nursing and residential care homes. This grows to roughly seven in every 1000 for those aged between 65 and 74, but after this increases rapidly to around 250 per 1000 for those aged 90 and over.¹⁸ In the higher age ranges especially, the rates for women considerably exceed those for men.¹⁹ This is illustrated in Chart 3.2.

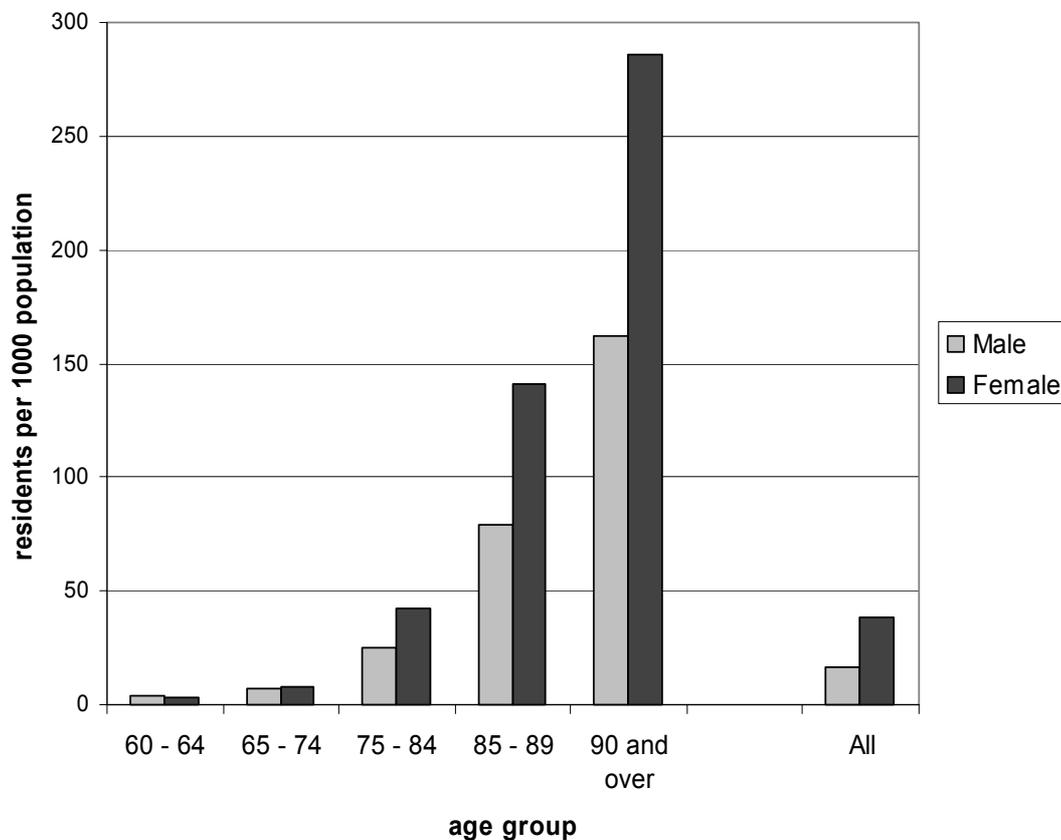
¹⁶ Annexe K: Consumer behaviour and care homes - a literature assessment.

¹⁷ Laing & Buisson: Extra –Care Housing Markets 2003/4 – Researched and written by Philip Mickelborough – 'Community care services include: home help, respite care, day care, night sitting services and residential or nursing home care. In addition to residential care homes there are alternative forms of care commonly known as extra care housing which are self contained (either flat or bungalow), full property maintenance, some communal facilities and services, providing support, practical and personal care, and sometimes also nursing care, when and as required 24 hours a day and is a home for life and security of tenure. The variations of extra care housing are: Private Retirement Housing, Sheltered Housing, Abbeyfield Societies ('very sheltered housing')'.

¹⁸ Source: 2001 census data on persons that are resident in communal establishments.

¹⁹ This is in part the direct result of women living longer than men, but also partly an indirect effect. There is a tendency for single older people to move into care more often than older people living as couples, and it is more frequently older women that are left to cope alone and without the help of a partner.

Chart 3.2 - Residents in medical, nursing and care establishments per 1,000 population of people aged 60 and over



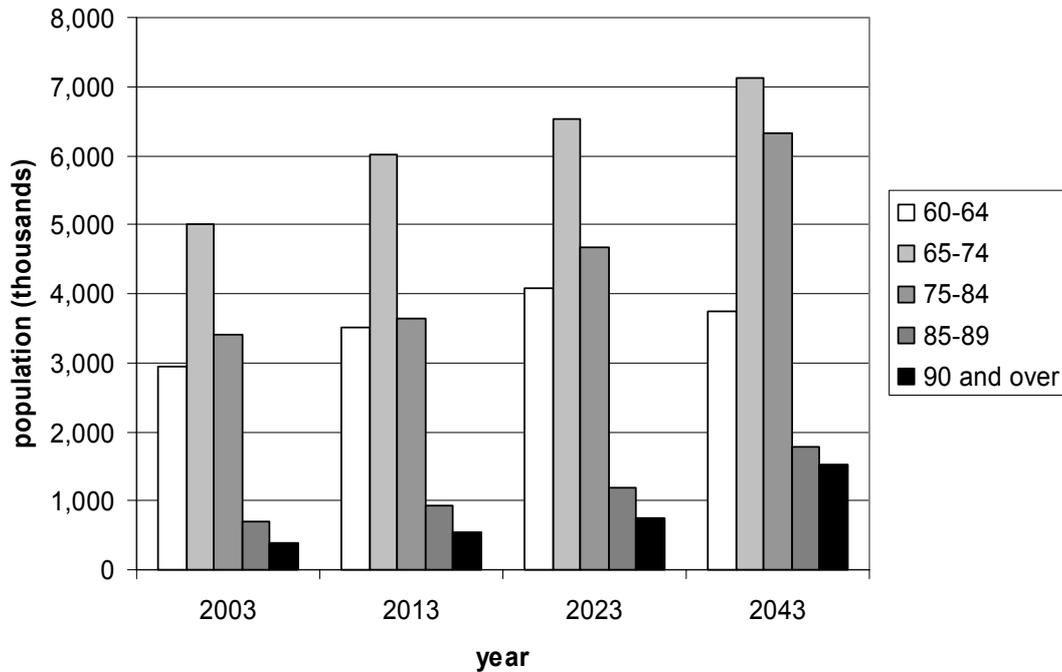
Source: Census 2001: Persons resident in communal establishments.

3.15 The proportion of older people entering care homes might be substantially changed by different social care policies or developments in health care and the treatment of certain diseases of old age. Information published by the Government Actuary²⁰ projects that the UK population will see considerable growth in the number of people aged 75 years and

²⁰ Annexe C: General research findings. The Government Actuary Department produces the official national 'population projections' for the United Kingdom 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.

older.²¹ Chart 3.3 sets out the estimates for the proportion of older people up to 2043.

Chart 3.3 - Population projections for the UK (persons aged 60 and over)



Source: Government Actuary's Department: see also the general research Annexe C, section 5.

3.16 However, while the proportion of older people in the population is likely to increase, it is difficult to predict the demand for long term care in the future. It seems likely that demand will increase significantly in the next few decades, but the actual level will be influenced by different social care policies, people's general state of health and developments in health care and the treatment of certain diseases of old age.

²¹ Annexe C: General research findings. It is not intended that these figures should be taken as reliable projections. It is highly probable that the aging population will generate increasing demand for care needs of various types in future years, but it is also probable that the age at which older people enter care may also increase.

Government policy and access to long term care

- 3.17 This section looks briefly at government policy on care for older people before describing how older people access long term care, and particularly the part played by Authorities.
- 3.18 Central government sets policy on eligibility for publicly funded care, levels of funding, and minimum care standards. As care of older people is a devolved matter, these policies may vary across the UK. The Authority is responsible for assessing care needs, determining eligibility for Authority funding of care, and administering older people's rights under the Choice of Accommodation Directions ('Choice Directions').²²
- 3.19 The care homes sector has undergone substantial regulatory and policy changes over the last decade. Currently, government policy across the UK is moving towards supporting older people to stay in their homes for longer. In Northern Ireland the policy focuses on maintaining independence and promoting domiciliary alternatives to institutional care. In England, the policy vision for adult social care is to enable older

²² The Choice Directions are issued under differing legislation for the four policy departments: England Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1992, Welsh Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1993, Scottish Guidance - Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 and Community Care (Additional Payments)(Scotland) Regulations 2002 (issued under Community Care and Health (Scotland) Act 2002) and In Northern Ireland Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972. The Choice of Accommodation Directions allow for individuals to expect a certain level of choice of a home that meets their assessed need and to choose more expensive accommodation if they wish to do so and have a third party willing and able to pay.

people to maintain their independence and provide alternatives to care homes in the form of extra care housing.²³

- 3.20 In setting out the new vision for adult social care, the English Parliamentary Under Secretary of State for Community has emphasised that adult services should be person centred and tailored to the individual's needs, proactive and helping older people maintain their independence, and seamless (co-ordinated and accessible).²⁴
- 3.21 For an older person in need of care, the first stage is to go through an assessment of their care needs. Authorities have a legal duty to assess an individual's care needs where their circumstances have come to the knowledge of the Authority and he or she may be in need of community care services,²⁵ regardless of the person's financial situation.²⁶
- 3.22 Having completed the needs assessment, the Authority must decide whether the person qualifies under their eligibility criteria for publicly funded care services, which include residential or nursing care.²⁷ To do

²³ Laing and Buisson Extra Care Housing Markets report 2003/4: Extra Care Housing is the term used to describe flats, bungalows or cottages for older people that are self contained and would enable someone to live independently of the communal facilities if they so wished. This type of housing would contain communal facilities as well as providing support, practical and personal care as well as nursing when and as required for 24 hours per day.

²⁴ SCIE consultation from 2004 spring/summer and 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.

²⁵ Section 47(1) National Health Service and Community Care Act 1990.

²⁶ According to the Fair Access to Care (FACs) guidance in England an individual's financial circumstances should have no bearing on whether a council carries out a community care assessment or not. Department of Health LAC (2002)/13 Fair Access to Care Services: Guidance on Eligibility Criteria for Adult Social Care, section 70 of Guidance to be implemented by 7 April 2003.

²⁷ In Scotland, the nursing element of care is free regardless of means and personal care is also provided free regardless of means to those over 65 who are assessed as needing it.

this, the Authority carries out a financial assessment to determine the level of the person's financial assets. This section describes this process briefly.

3.23 England and Wales have issued guidance for Fair Access to Care Services (FACS)²⁸ which promotes fairness and consistency in setting the criteria for the needs assessment process.²⁹ In England, the government has introduced a Single Assessment Process for Older People (SAP)³⁰ under which consumers' care needs are assessed, whereas in Wales there is a unified assessment process and care management system for older people.³¹ 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.³² In Northern Ireland, a comprehensive assessment of health and social care

²⁸ Department of Health – Fair Access to Care Services – Guidance on Eligibility Criteria for Adult Social Care – 2002 issued under section 7(1) of the Local Authority Social Services Act 1970; NHS Cymru Wales – Creating a Unified and Fair System for Assessing and Managing Care Guidance issued under section 7(1) of the Local Authority Social Services Act 1970, 1 April, 2002.

²⁹ FACS guidance - local eligibility criteria to be implemented by Councils in England by April 7 2003 and Wales from October 2002.

³⁰ Department of Health England - SAP guidance – Single Assessment Process 2004 – issued under section 7(1) of the Social Security Act 1970.

³¹ NHS Cymru Wales: Creating a Unified and Fair System for Assessing and Managing Care: Health and Social Care for Adults: Fair System for Assessing and Managing Care – Guidance for Local Authorities and Health Services 1 April, 2002 issued under section 7(1) of the Local Authority Social Services Act 1970.

³² Scottish Executive: Single Shared Assessment– Guidance Circular no: CCD 8/2001. The guidance is issued under section 5 of the Social Work (Scotland) Act 1968.

needs takes place within the context of an integrated health and personal social services.³³

- 3.24 Once the Authority has determined the needs and appropriate care for the individual's circumstances it will carry out a financial assessment. This will 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.
- 3.25 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; this may comprise income from their pension or any other benefits.
- 3.26 In Scotland, following a care needs assessment eligible people aged 65 or over are entitled to a weekly payment towards their care homes fees. This is known as Free Personal and Nursing Care Payments (FPNC) which entitle an eligible person to £145 for personal care and £65 for nursing care which is not subjected to means testing. The limits in each nation are set out in Table 3.2.³⁴

³³ The assessment would be carried out by virtue of Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No. 1265 (N.I. 14)). Department Guidance published in 1991- Care Management: Guidance on Assessment and the provision of Community Care.

³⁴ Income is also assessed and a contribution from income is payable by service users with minimal capital.

Table 3.2 - UK means testing criteria

| | England£ | Wales £ | Northern Ireland £ | Scotland ³⁵ |
|--|-------------------------------------|---------|-----------------------|------------------------|
| Upper Limit | 20,000 | 20,500 | 20,000 | 19,000 |
| Lower Limit | 12,250 | 13,500 | 12,250 | 11,750 |
| Personal expenses allowance (per week) | 18.10 | 18.40 | 18.10 | 18.10 |
| Nursing care (per week) | 40 ³⁶ , 77.50, 125 | 105 | 100 | See 3.26 |
| Personal care (per week) | | | | See 3.26 |

Source: Charges for Residential Accommodation Guidance (CRAG) for England, Scotland, Wales and Northern Ireland.

3.27 After the financial assessment has determined the level of public funding for which the older person is eligible, they should then have a choice of which home they enter, according to the Choice Directions.³⁷ The Choice Directions set out the Authorities' obligations towards the older person, and state that Authorities should not deny anyone their preferred choice of accommodation without good reason. See Annex A for a more detailed explanation of the Authorities' role and obligations under these provisions.

³⁵ Some of the rates will be updated after April 2005 – Scottish Executive.

³⁶ England has three different rates for nursing care which is means tested.

³⁷ See footnote 22.

- 3.28 In particular, the Choice Directions³⁸ state that Authorities are required to help make the necessary arrangements for an older person to move into a care home of their choice as long as:
- the preferred accommodation appears to the Authority to be suitable for the individual's needs as assessed by them
 - the preferred accommodation is available
 - the provider of the preferred accommodation is willing to provide it subject to the Authorities usual terms and conditions, and
 - the cost of the preferred accommodation is not more than the Authority would usually pay for accommodation for the individual's assessed need – unless the difference can be funded via a contribution from a third party.
- 3.29 The Choice Directions define a third party contribution or top up as the difference between the rate the Authority would usually expect to pay for an individual's assessed need, and the rate charged by the care home (which is a more expensive home chosen by the resident). It is the additional cost an individual or their relative is willing to pay to secure more expensive accommodation.³⁹
- 3.30 In Wales, England, Scotland and Northern Ireland the top up can be paid by a relative, friend or any other party, with Northern Ireland specifying that a charity may make a grant towards a top up as well. In England

³⁸ In Northern Ireland, this is contained in the Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

³⁹ Choice of Accommodation Guidance England: section 2.5.4 & 3.2; Wales: section 4.1 and 4.2; Scotland: section 7.4 & 8; Northern Ireland: section 8 & 13.

and Wales, a resident can make top up payments for more expensive accommodation in limited circumstances.⁴⁰

3.31 The 'Choice Directions' guidance states that Authorities should not require a top up payment to be made in cases where the Authority places an individual in more expensive accommodation in order to meet their assessed need.⁴¹ The English guidance states that people should not be required to pay top ups because of market deficiencies or failures in the Authorities procurement process.⁴²

3.32 A key element of the guidance in England, Wales and Scotland and Northern Ireland is that the Authority is financially responsible for the entire cost of the accommodation for the duration of the contract. Therefore, the guidance suggests that Authorities must assure

⁴⁰ In England section 3.2 of the Guidance on the National Assistance Act 1948 (Choice of Accommodation) Directions 1992 and Wales section 4.2 of the National Assistance Act 1948 (Choice of Accommodation) Directions 1993.

⁴¹ English Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 section on More Expensive Accommodation 3.4; Welsh Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1993 section on More Expensive Accommodation section 4.4 ; Guidance on Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 section on More Expensive Accommodation 8; Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 section on more expensive accommodation 14.

⁴² English Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 section on cost (b) 2.5.5; Guidance issued in Northern Ireland (section 15) and Scotland (section 10) does not explicitly state that authorities cannot charge people because of market deficiencies or poor commissioning practices, however they do state that the guidance is not intended to mean 'that Boards may set an arbitrary ceiling on the amount they are willing to pay for residential or nursing home care before requiring third parties to make up the difference. If challenged the Boards would need to demonstrate that its usual cost was sufficient to allow it to provide people with the level of service they could expect in the absence of a top up'. The Welsh Guidance states that when setting its usual cost an authority must be able to demonstrate that this cost is sufficient to provide most residents with the level of care services that they could reasonably expect to receive if the option for third party or resident top up did not exist (section 4.3).

themselves that the third party is able to pay the top up for the duration of the contract.⁴³

3.33 This chapter has provided a portrait of the residents of care homes, and the processes for accessing care. The next chapter looks at the other side of the equation: the providers of care home services.

⁴³ English Guidance: Section 3.5.1:3.54 Responsibility for costs of accommodation
Welsh Guidance: Section 4.6:4.10; Scottish Guidance: Section 11.1:11.6; Northern Ireland
Guidance: Section 16:19.

4 CARE HOME PROVIDERS

- 4.1 This chapter looks at the provision of residential and nursing care homes for older people. It describes the current situation and recent trends in the number of care homes, the type of care provided, and the profile of organisations running care homes. It also looks at the sources of funding on which care home providers rely.

Care home provision in the UK

- 4.2 This section sets out the trends in the capacity and occupancy rates of care homes in the UK and looks briefly at regional differences in total supply. It then looks at the types of care provided, and the mix of organisations offering residential and nursing care for older people in the UK.

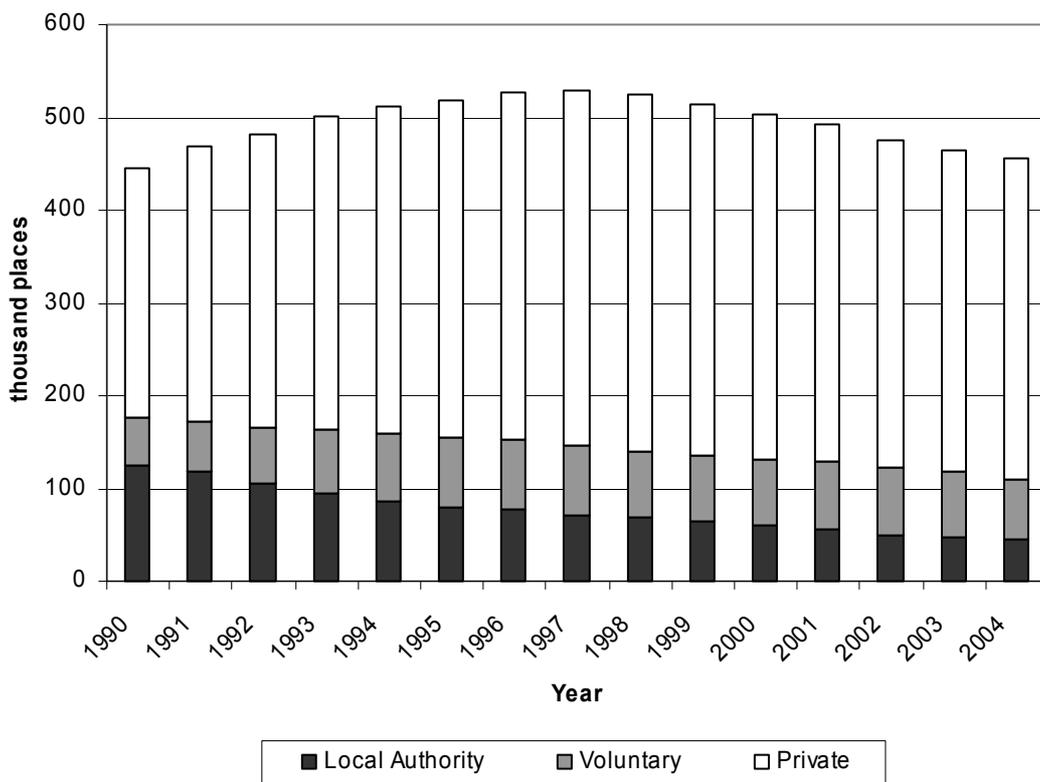
Capacity and occupancy of care homes

- 4.3 In 2004 there were around 15,700 care homes for older people, providing roughly 450,000 places across the UK for 410,000 residents. This excludes NHS provision of care for older people at long stay medical facilities, which adds approximately 30,000 more places.
- 4.4 There have been observable changes in capacity and occupancy rates in the UK care homes sector in recent years. Chart 4.1 shows that, over the past fifteen years, total capacity increased to a peak around 1996, before falling back. Overall, capacity has fallen by 15.5 per cent from its peak in 1996, while demand has fallen by a similar magnitude (12.4 per cent).⁴⁴ The recent reduction in capacity has corresponded with changes in demand, as measured by the number of places filled at care homes for older people.
- 4.5 In the period covered by the chart, there are nine instances of increases or decreases of more than 10,000 places in a single year and one

⁴⁴ Laing & Buisson Care of Elderly People UK Market Survey 2004, capacity table 2.2 (includes NHS provision), demand table 5.1 (breaks out NHS provision).

instance of an increase of 20,000 places in a single year. This is evidence that the market is responsive to changes in business circumstances, with entry and exit both taking place. For example, the recent fall in capacity could be a correction in response to the relatively low occupancy rates seen in 1992, as the market adjusts by lessening to increase occupancy.⁴⁵

Chart 4.1 - Nursing and residential care places for the care of older people by type of provider, UK 1990 - 2004



Source: Laing and Buisson: Care of Elderly People: UK Market Survey 2004, Table 2.2.

4.6 Data from Laing and Buisson shows that average occupancy rates have followed the opposite path. Peaking in 1992, occupancy rates fell to a historical low in 1997 before climbing again towards the end of the

⁴⁵ Laing & Buisson Care of Elderly People UK Market Survey 2004, see figure 5.6.

decade. Occupancy rates fell slightly to 92.1 per cent in 2004, still below their 1992 peak.⁴⁶

4.7 The total supply of care home places varies considerably across the UK, as shown in Table 4.1. For example, London has only two-thirds of the number of places that would be expected if it had the average UK capacity for the proportion of older people in its population. By contrast, Northern Ireland has nearly a quarter more places than would be expected.⁴⁷ The table also demonstrates that the direction of change in capacity differs across regions; in some places, such as East Anglia, capacity actually rose over the period covered.

Table 4.1 - Regional changes in places, April 2003 to April 2004

| <u>Region</u> | <u>Places April 2003</u> | <u>Places April 2004</u> | <u>% Change</u> |
|------------------------|--------------------------|--------------------------|-----------------|
| North | 24,600 | 24,400 | -0.8 |
| Yorkshire & Humberside | 38,900 | 37,300 | -4.1 |
| North West | 52,900 | 50,800 | -4.0 |
| West Midlands | 34,400 | 33,600 | -2.3 |
| East Midlands | 31,000 | 30,800 | -0.6 |
| East Anglia | 14,800 | 15,200 | +2.7 |
| Northern Home Counties | 30,100 | 30,800 | +2.3 |
| London | 28,900 | 28,500 | -1.4 |
| Southern Home Counties | 50,900 | 49,600 | -2.6 |
| South West | 45,900 | 43,400 | -5.4 |
| Wales | 20,400 | 21,100 | +3.4 |
| Scotland | 33,200 | 33,700 | +1.5 |
| N. Ireland | 12,200 | 12,200 | 0.0 |

Source: Lang and Buisson: Care of Elderly People: UK Market Survey 2004 Table 5.7.

⁴⁶ Laing & Buisson Care of Elderly People UK Market Survey 2004, figure 5.6.

⁴⁷ Ibid, tables 5.6 and 5.7.

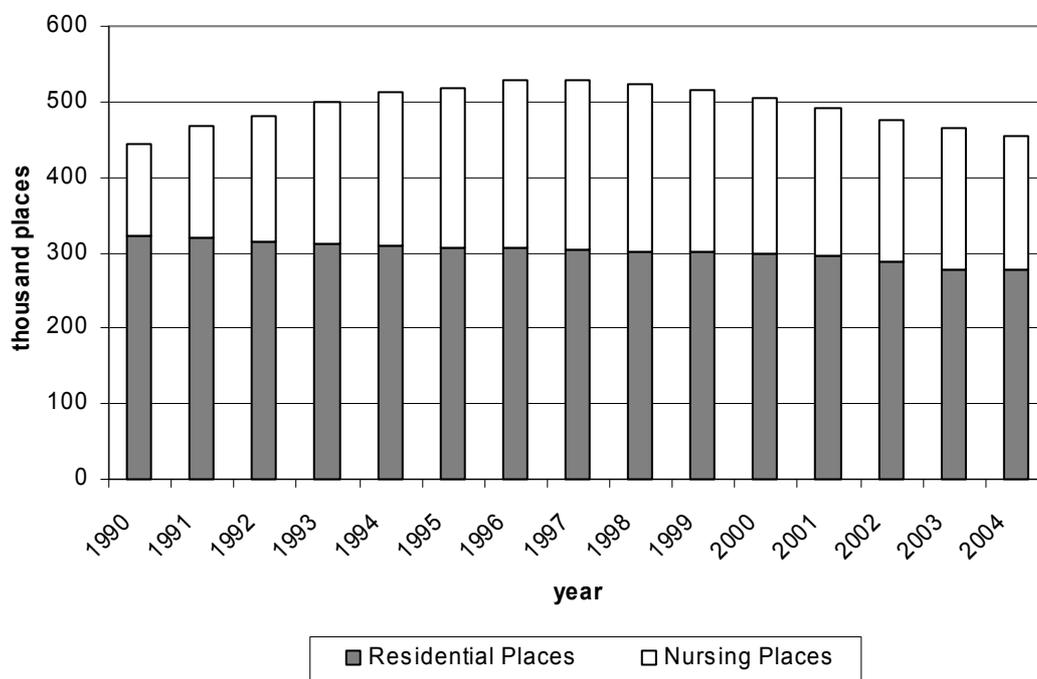
4.8 There are many factors likely to underlie these regional differences, including property and labour cost differences.

Type of care provided

4.9 Care homes for older people provide a range of services. Some will provide residential care, providing a place to stay, meals and laundry services, along with a whole range of personal care, for example, helping people with bathing and eating. Others will provide nursing care in addition to the personal care, helping residents with medical care.

4.10 The proportion of places - rather than homes - providing nursing care rose rapidly from 28 per cent of places in 1990 to 42 per cent in 1996. It has since moderated slightly, but in 2004 still stands at an estimated 39 per cent of places, with 61 per cent of places providing residential care. Chart 4.2 shows the trends in capacity over the last 14 years.

Chart 4.2 - Nursing and residential care places for older people by type of care, UK 1990 - 2004



Source: Laing and Buisson: Care of Elderly People: UK Market Survey 2004, Table 2.2.

4.11 Within these broad types of care, some care homes provide a range of more specialised care services. This is illustrated in Table 4.2, which sets out data from the National Care Standards Commission report 'How do we care?' 2002-2003. The table breaks down information on the types of care provided by nearly 13,000 care homes in England in 2002-2003. There are relatively few care homes catering for some specific care needs.

Table 4.2 - Complex variety of needs catered for by care homes (illustrative table based on registered care homes in England 2002 – 2003)

| Care needs | Number of homes registered | |
|--------------------------------------|----------------------------|--|
| | | |
| Old age | 11,890 | |
| Over 65 but not old age related need | 108 | |
| | | |
| Services for over 65 | | |
| Dementia | 3,307 | |
| Learning disability | 1,330 | |
| Mental disorders | 1,702 | |
| Physical disability | 2,094 | |
| Sensory impairment | 151 | |
| Terminally ill | 254 | |
| Alcohol dependence | 46 | |
| Drug dependence | 27 | |
| | | |

Source: NSCS 'How do we care?' 2002–03, Appendix 1: Table A1.1.

Organisations offering residential care for older people

4.12 The average care home in the UK has around 30 places, although this conceals a wide distribution, from those with only two to three beds to homes with over 100 beds.⁴⁸ There are differences in the average

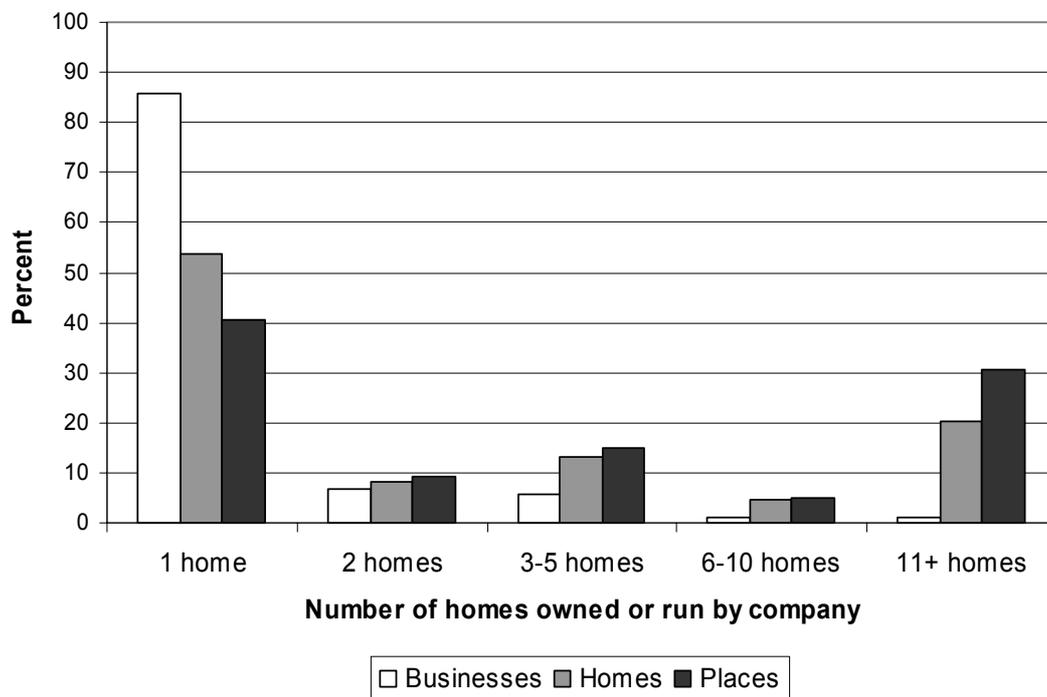
⁴⁸ Laing & Buisson Care of Elderly People UK Market Survey 2004, table 4.3.

number of beds between nursing and residential homes, where the latter tend to be smaller, having on average 24 beds compared to 44 in nursing homes.

- 4.13 Providers of care homes in the UK range from large for-profit companies to small businesses and voluntary sector/charitable organisations. Some Authorities also run care homes. One striking feature of recent trends has been the reduction in Authority run care home places, from over 85,000 in 1994 to only 44,200 in 2004, as shown in Chart 4.1.
- 4.14 The proportion of care home places supplied by major providers has increased over the past decade. Laing and Buisson report that in the 10 year period from 1993 to 2004, the percentage of for-profit residential and nursing beds owned or leased by the top 10 providers rose from about six per cent to about 22 per cent of the total.⁴⁹
- 4.15 However, even with the increasing role of the major providers, ownership in the UK care homes sector is relatively fragmented. In our providers survey 54 per cent reported being single home businesses, and a further eight per cent of homes were part of a small business owning two homes. The results shown in Chart 4.3 clearly illustrate the substantial presence of smaller providers in the sector.

⁴⁹ Lang & Buisson Care of Elderly People UK Market Survey 2004, figure 4.3.

Chart 4.3 - Presence of small providers of care homes for older people



Source: OFT survey of care home providers: Internal analysis.

Sources of funding for care homes

4.16 Residents of care homes for older people can, broadly speaking, be funded in the following ways:

- self funders (private residents paying fees in full themselves)
- private residents where a representative is paying some or all of the fees on their behalf
- residents funded by their own pension and other benefits and partly by their Authority or Health Trust (NI) ⁵⁰

⁵⁰ Individuals funded by the Authority still contribute towards the cost of their care through their pension and other forms of income by way of means testing.

- residents funded by their own pension and other benefits and partly by their Authority or Health Trust (NI) as outlined in the previous bullet point, but who also have a 'top up' fee paid by a third party,⁵¹ or
- entirely NHS funded.

4.17 The vast majority (97 per cent) of care homes for older people accept both self funded and Authority funded residents. The mix of resident funding in care homes is summarised in Table 4.3.

Table 4.3 - Residents' sources of funding

| Type of home | Self funding | Authority funded | | All |
|---|--------------|----------------------------------|-------------------------------|------|
| | | Without third party contribution | With third party contribution | |
| Accepting self funded resident only (3% of all homes) | 100% | 0% | 0% | 100% |
| Accepting self funding and Authority funded (97% of all homes) | 30% | 45% | 25% | 100% |
| All homes | 32% | 44% | 24% | 100% |

Source: OFT survey of care home providers

4.18 Authority funded residents can be divided according to whether or not they receive a contribution towards the cost of care from an independent third party, such as relatives (a 'top up'). Our research shows that 44 per cent of care home residents are solely Authority funded, and 24 per

⁵¹ Individuals funded by the Authority may have additional fees paid by a third party if they (the resident) choose to enter into more expensive accommodation. In limited circumstances residents can top up, however this varies and the guidance on Choice Directions issued by the policy departments should be consulted for further information.

cent are Authority funded topped up by a third party contribution, as shown in Table 4.3.

- 4.19 The results indicate that around 35 per cent (24/68) of Authority funded residents received top ups from a third party. This is reasonably consistent with our consumer survey, where 30 per cent of Authority funded residents said part of their fees was paid by a top up contributed by a third party.
- 4.20 Self funded residents will in general pay no less than Authority funded residents, and in some circumstances will pay more. While we are unable to fully quantify the differences, we can conclude that self funding residents will certainly account for more than a third of the market by value.

5 CHOOSING A CARE HOME

Summary

- 5.1 This chapter discusses how people choose a care home and how the circumstances surrounding their choice may hinder them from making the best decision.
- 5.2 Individuals moving into a care home for older people are often in poor physical or mental health at the time, with many doing so following a stay in hospital,⁵² and are unable to continue living independently. In addition, they may be under pressure to make a decision quickly and typically have little previous experience of choosing a care home. In this situation, even with help from friends and relatives, it can be difficult to make a considered decision that takes account of all the relevant information.
- 5.3 Yet moving into a care home is a major decision that will have a significant effect on the older person's quality of life and, for at least one-third of residents and their families,⁵³ it will require a significant financial commitment.
- 5.4 It is important that the information provided to individuals choosing a care home is clear, complete and provided before they take up residence. For example, older people and their representatives need to know how they can get their care needs assessed, whether they are eligible for funding from the NHS or from their Authority, what care homes are available in their area and what fees and services these offer, and what happens should their medical or financial circumstances change.

⁵² Fifty three per cent of nursing home residents and 31 per cent of residential home resident are admitted to the home from hospital. Laing and Buisson, Care of Elderly People Market Survey 2004, Table 6.6.

⁵³ Annexe E: Survey of provides of residential and nursing care homes for older people. OFT analysis of data on residents' reported financial status.

- 5.5 However, our research shows that there are gaps in the information provided at almost every stage of the decision process, and that there is confusion about where people should go to get information, support and advice. The majority of care home residents interviewed in our survey of older people living in care homes could not recall seeing any booklets or leaflets giving information about care homes.⁵⁴
- 5.6 Authorities in particular are an important source of information and support for older people requiring care. However, we found that the information provided by some Authorities is unclear or incomplete, particularly with regard to the availability of care homes in their areas that do not usually require a 'top up' to be paid by Authority funded residents. Only 14 per cent of Authorities that we surveyed provide this information.⁵⁵
- 5.7 We also received some case studies of Authorities that are not offering information and advice to people who are able to fund their own care, from charities and consumer groups. In our survey of residents in care homes, only 27 per cent of self funders had received information about care homes from their Authority.⁵⁶
- 5.8 It can also be difficult to get basic information on fees and services from some care home providers. In our mystery shopping exercise, 12 per cent of the care homes approached failed to provide information about fee levels, even after persistent prompting.⁵⁷
- 5.9 These information gaps, coupled with the difficult circumstances in which many older people face the decision to enter a care home, can

⁵⁴ Annexe F: Survey of older people in care homes, p17. Seventy one per cent had no recollection of seeing information from such sources.

⁵⁵ OFT analysis of Authority information brochures and leaflets provided in the OFT survey of Authorities (Annexe B).

⁵⁶ Annexe F: Survey of older people in care homes, p17.

⁵⁷ Annexe G: Care homes mystery shopping, p10.

mean that some do not choose the most suitable care home for them, either in terms of the fees they pay or the services they receive.

5.10 This situation can lead to enduring problems because residents of care homes are often very unwilling to leave a home where they have settled. It is relatively unusual for care home residents to move at all and those that do move tend to do so to be closer to friends and family or in response to a change in their health or the closure of their care home.⁵⁸ This means that it is very important that people are, as far as possible, able to make a well informed decision about their initial choice of care home.

5.11 **Therefore, we make recommendations in the following areas:**

- **improving access to information by establishing a one stop shop as a single point of reference for information about the process of choosing a care home**
- **clarifying the guidance to Authorities on their role in helping people through the process of choosing a care home⁵⁹**

⁵⁸ For example, only 22 per cent of the care home residents we interviewed had moved from another care homes, and of these, only 28 per cent had moved because of a problem with their previous home or because they did not like their previous home. The people we spoke to were necessarily those in relatively good mental and physical health. Annexe F: Survey of older people in care homes, p12.

⁵⁹ The Choice of Accommodation Directions, that are issued under differing legislation for the policy departments:

England Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1992
Welsh Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1993
Scottish Guidance - Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 and Community Care (Additional Payments) (Scotland) Regulations 2002 (issued under Community Care and Health (Scotland) Act 2002), and in Northern Ireland Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

- **improving the guidance available to older people and their representatives on top ups**
- **improving the information currently contained in Authority care home directories**
- **increasing price transparency through care homes' information provision, and**
- **making the care home regulators' inspection reports available on the internet and more consumer friendly.**

5.12 We begin this chapter by discussing the characteristics and circumstances of people engaged in choosing a care home. Next, we look at the information we believe that people would need in order to make a considered decision, discuss our research evidence about what they obtain in practice, and identify where there appear to be gaps between the two. Finally, we conclude with a set of recommendations designed to improve clarity for older people choosing a care home.

Who chooses the care home?

5.13 Some older people choosing a care home for the first time, or considering moving between homes, will choose a care home themselves, perhaps with the help of their relatives or other representatives such as their GP. In other cases, the decision may be delegated entirely to these representatives. The characteristics of care home residents, and the circumstances in which they and their representatives choose a care home, are therefore both relevant here.

5.14 Care home residents, and those entering a care home for the first time, are usually older and often in poor physical or mental health. A survey of the 16,000 older people resident in care homes run by BUPA, for example, shows that many face challenging health issues, with more than a third suffering from dementia, and a quarter being described in the paper as frail.⁶⁰ According to the Alzheimer's Society, three-quarters

⁶⁰ Bowman et al, 'A National Census of Care Home Residents', in Age and Ageing, Sept 2004.

of people in long term care will have Alzheimer's disease or another form of dementia.⁶¹ This means that some people will necessarily find it difficult, and a few impossible, to gather and consider the information they should ideally have before choosing a care home.

- 5.15 The circumstances in which the choice is made can also be difficult. The need to move into a care home is often not anticipated or planned for. There will often be pressure to make a decision quickly, particularly where the person is entering care from hospital,⁶² as is the case for approximately half of care home residents.⁶³
- 5.16 Alternatively, deterioration in the older person's health or the loss of a carer may mean that they can no longer live independently. In such circumstances there may be little time to consult multiple sources of information or to gather information about fees and services from a wide variety of care home providers.
- 5.17 Often, neither the older person nor their representatives will have any previous experience of choosing a care home. They will have little knowledge of where to turn for information, or of what information they need and how it should influence their decision.
- 5.18 In addition, the discovery that a move to a care home is necessary creates a stressful and often distressing situation. The older person and

⁶¹ The Alzheimer's Society, 2005, based on (amongst others) Margallo-Lana M et al. 'Prevalence and pharmacological management of behavioural and psychological symptoms amongst dementia sufferers living in care environments', *International Journal of Geriatric Psychiatry*, and Office of National Statistics. *Social focus on older people*. London: Stationery Office, 1999. 2001; 16: 39-44.

⁶² In England and Wales, Authorities must pay a 'bed blocking fee' to hospitals if they fail to provide a care home place for patients moving from hospital into a care home within three days (Community Care (Delayed Discharge) Act 2003).

⁶³ Personal Social Services Research Unit (PSSRU) *Care Homes for Older People: Volume 2 Admissions, Needs and Outcomes*, The 1995/96 National Longitudinal Survey of Publicly Funded Admissions.

their relatives may be confused, anxious and upset. This compounds the already difficult circumstances under which the choice of care home must be made.

- 5.19 Once in care, the vulnerability of the older person manifests itself in other ways. In the care home sector it is relatively unusual for residents to move between care homes once they have settled in a particular home. Some residents develop a long term relationship with staff or other residents at the care home and do not want to leave their friends. Others may be attached to the location. Many will simply not want any more change than they have already been through in finding and entering the home.
- 5.20 In our consumer survey, where we necessarily had to conduct interviews with those older people who were enjoying relatively good physical and mental health, we found that one in five residents had entered their current home from another. But only a modest proportion moved because of a problem or unhappiness with their previous homes. Most had moved because they needed different types or levels of care, their previous home had closed, or to be closer to their preferred location – in effect to be nearer to relatives and friends and other visitors.⁶⁴
- 5.21 The evidence on the health effects of moving between care homes is ambiguous and many relatives believe that it is stressful and even harmful for older people.⁶⁵ Therefore, an older person's family or friends may be reluctant to attempt to persuade them to move. The health of many older people in care homes may be simply too poor for moving to be contemplated.
- 5.22 In most markets, it would be normal for someone who is unhappy with the service they receive to move to a different provider, but for the reasons discussed above this does not often happen in the care homes sector. This may mean that care home residents are potentially

⁶⁴ Annexe F: Survey of older people in care homes, p12.

⁶⁵ See Annexe K: Consumer behaviour and care homes - a literature assessment.

susceptible to price rises and changes in service levels once they have lived in a home for some time. There may also be a lack of willingness to challenge the care home over potentially unfair contract terms and conditions. These issues are addressed in the chapters dealing with redress and contracts.

- 5.23 The vulnerability of many residents in care homes for older people, and those engaged in choosing a care home makes it particularly important that barriers to making an informed choice are reduced as far as possible. This needs to happen within the context of the particular needs of older people living in care homes and the difficult circumstances in which the choice must be made.
- 5.24 Actions by care homes, care home regulators, Authorities and the relevant government departments can have a big impact on the clarity and accessibility of information provided to people choosing a care home. The next section discusses the information that would ideally be made available when the choice of a care home is being made.

Information needs

- 5.25 Figure 5.1 illustrates the information that older people and their representatives will typically need access to while they are making their choice of care home, and the primary sources of this information. It looks at the key stages in the decision making process. These are:
- **care needs** – an assessment is carried out by the Authority to determine what type of care is needed, eg: personal or nursing care, and whether this needs to be provided in a care home⁶⁶
 - **financial entitlements** – the Authority also carries out an assessment of the person's financial situation to determine whether they are

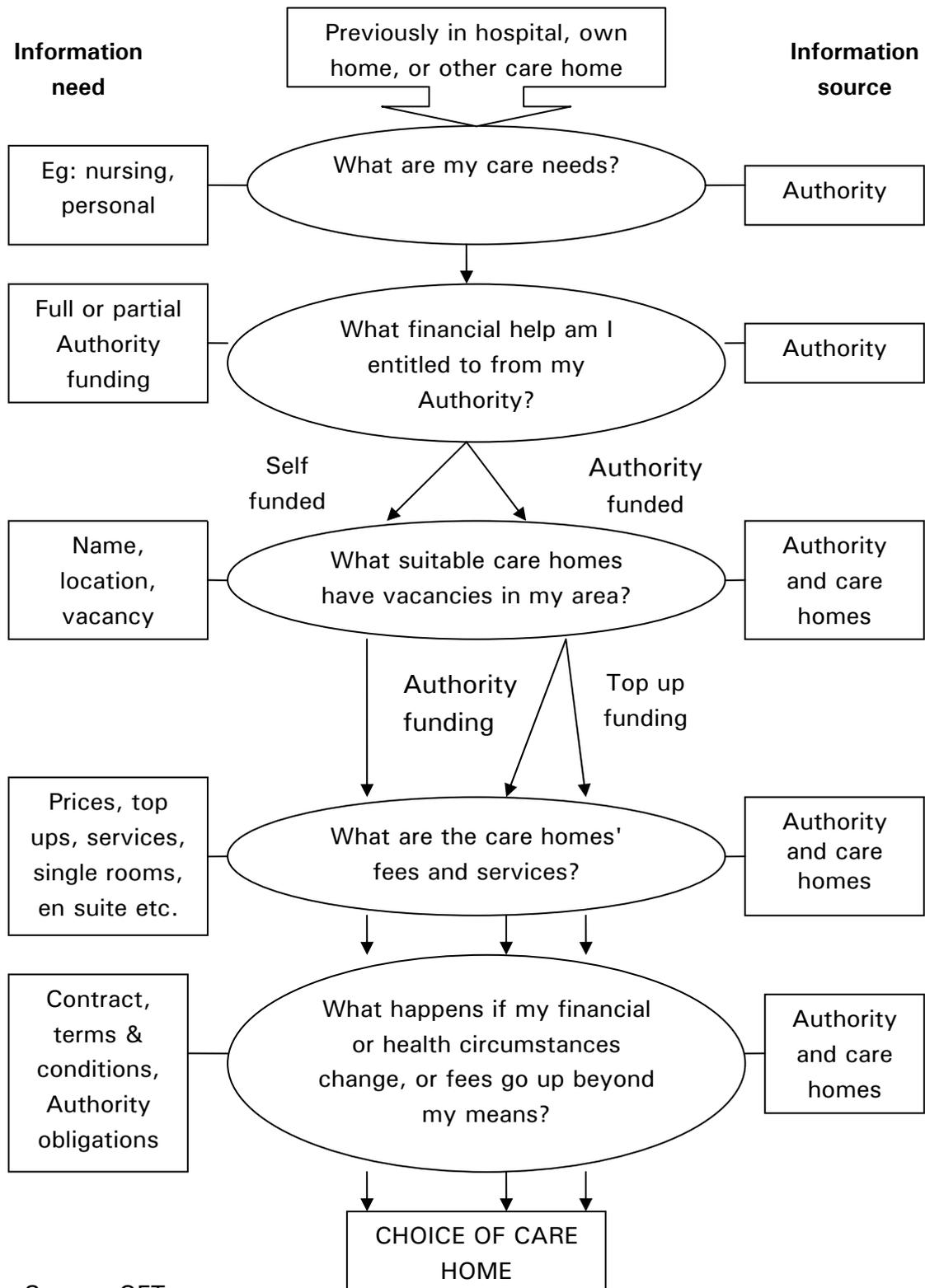
⁶⁶ Other options for care would include increased care in the person's own home or sheltered accommodation with additional care services. See Chapter 3, footnote 17, for a fuller description of the care options available for older people.

entitled to have some or all of their care paid for by the Authority or must fund themselves

- **care home availability** – the Authority should provide fair and balanced information including a list of all the care homes in their area, identifying which are available to people relying solely on Authority funding, and which are likely to require an additional payment (a 'top up')
- **care home fees and services** – care homes should ideally provide information about the prices and services on offer, allowing the older person to compare homes, as well as a copy of the home's most recent inspection reports for an independent expert assessment of the services offered. Authorities should also provide information about the amount of the payment (if any) which the older person will be liable to make in respect of the care services provided by the care home, and
- **policies on changes in circumstances** – the older person should ideally get a statement of the policies of the Authority and of the care home which sets out what will happen in the event of a change in their medical or financial circumstances.

5.26 Each information need is discussed in more detail in the following section.

Figure 5.1 - Information needs when choosing a care home



Source: OFT

Care needs

- 5.27 The first key question is, what type of care is needed for the older person. This will be decided by a care needs assessment carried out by the older person's Authority. Authorities have a legal duty under the National Health Service and Community Care Act (NHSCCA) 1990 to assess a person's needs for community care services where a person's circumstances come to the knowledge of the Authority,⁶⁷ and he or she may be in need of community care services. This duty arises irrespective of there being any prospect of the person actually qualifying for any care services, and irrespective of their financial circumstances. Care assessments are carried out in accordance with the general principles set out in guidance.⁶⁸
- 5.28 In addition, the Community Care Assessment Directions 2004 which came into force in England on 1 September 2004 places existing good practice and guidance on conducting care assessments and care planning by Authorities in England into a legal framework. In assessing the needs of a person an English Authority must consult the older person, consider whether they have any carers and where they think it appropriate consult those carers. The Authority must take all reasonable steps to reach agreement with the person (and their carer) on the care services they are considering providing to meet the person's needs.
- 5.29 The nature of the older person's care needs will determine which care homes will be suitable for them, as different care homes for older people offer different services. Some offer nursing care and may offer specialised services for particular needs, such as for people with sensory impairment or those with some form of dementia, such as Alzheimer's disease. Others will be residential homes without nursing care available.

⁶⁷ Section 47(1).

⁶⁸ See Annexe A for further information. In England and Wales, the relevant guidance is the Fair Access to Care Service (2003). In Scotland it is the Single Shared Assessment (SSA) criteria and 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.

5.30 People with less common care needs, or those who require higher levels of nursing care, will tend to have fewer care homes to choose from. This is illustrated by care home registrations for England, where only 28 per cent of homes registered to provide care for 'old age' also provide services for 'dementia over 65', 14 per cent for other 'mental disorders over 65' and just over one per cent for 'sensory impairment over 65'.⁶⁹

Financial entitlement

5.31 The second key question is, how the care will be paid for. Some older people will pay the whole cost themselves, ie: they will be 'self funders'.⁷⁰ Alternatively, if the older person has a low level of financial assets, their Authority is under a legal obligation to fund the cost of a place in a care home suitable to the individual's care needs.⁷¹

5.32 Many older people, even if not eligible for Authority funding when they make their initial choice of care home, may in time need to call on this source of funding when their own financial capital becomes depleted. The level of entitlement to publicly funded care will be determined by a financial assessment carried out by the Authority, as described in Chapter 3.

5.33 Ideally, at this point, older people and their representatives should understand whether they are eligible for Authority funding and what that

⁶⁹ National Care Standards Commission *'How Do We Care?'* 2002-3.

⁷⁰ Self funders may be eligible for Authority funding for an initial period whilst they sell their property.

⁷¹ The limit of personal financial assets at which someone qualifies for full Authority funding varies across the UK, according to the rates set out in Charges for Residential Accommodation Guide (CRAG). It is currently £13,500 in Wales, £12,250 in England and Northern Ireland, and £11,750 in Scotland. Up to another upper limit, the person will qualify for more limited support. These upper limits are currently £20,500 in Wales, £20,000 in England and Northern Ireland, and £19,000 in Scotland. See Chapter 3 and Annexe A for more detail on eligibility and Authority obligations.

entitles them to.⁷² They should also be aware of the available complaints procedures, both within the Authority and to outside bodies if they feel they want to take a complaint further, in the event that they disagree with the Authority's assessment.

- 5.34 In addition, older people and their representatives should have access to information on the eligibility criteria for Authority funding (and the methods used by the Authority to calculate the older person's level of financial assets) so that they can ensure they receive the correct funding as soon as they are entitled.

Care home availability

- 5.35 Once the older person has been assessed by the Authority to determine their care needs and eligibility for Authority funding, the next step is to find out what care homes that are suitable for their care needs and close to their preferred location have vacancies.
- 5.36 Location is an important factor for older people when choosing a care home. For example, in our survey of residents in care homes for older people, 57 per cent said that they chose their current care home for its location, because it was near to friends or family or their previous home.⁷³
- 5.37 The importance of location can mean that there are a limited number of care homes the individual would be willing to consider. We found that, on average, there are 12 care homes within a three mile radius of a randomly drawn selection of postcodes in the UK, and within a five mile radius 26 homes on average.⁷⁴ However, these figures are heavily influenced by dense urban areas, we also found that 32 per cent of

⁷² This also applies to some individuals already resident in a care home, who may become eligible for Authority funding as their financial assets decline after a period of time spent self funding their care home fees.

⁷³ Annexe F: Survey of older people in care homes, p15.

⁷⁴ Annexe G: Care homes mystery shopping, p3.

postcodes have five care homes or fewer within three miles.⁷⁵ Not all of these care homes will have a vacancy available at any particular point in time. Our survey of care homes found that, on average two-thirds had a vacancy at the time of the survey.⁷⁶

- 5.38 This is an issue that affects some regions more than others. Statistics for Scotland, Wales and Northern Ireland showed that substantially more people live in places where the choice of homes within a reasonable distance is limited. In these areas we found 67 per cent of post codes have five care homes or fewer within three miles, and some 40 per cent have five care homes or fewer within five miles.⁷⁷
- 5.39 Clearly, it is important that older people should be able to draw on the full pool of suitable care homes, and to do this, they must have a way of discovering which homes are available in the vicinity of their preferred location. Eighty five per cent of the Authorities that took part in our survey stated that they provide a list of all the care homes registered in their area.⁷⁸ The older person or their representatives will then need to contact the care homes to find out which have vacancies available.
- 5.40 The choice available to older people who are funded by the Authority may be limited to those care homes willing to accept older people at the usual baseline fee set by the relevant Authority. Authorities set a baseline fee that they would expect to have to pay for care home services in their area. How this fee is set, the level at which it is set and how it relates to the assessed level of care need, varies across the UK.⁷⁹

⁷⁵ Ibid p10.

⁷⁶ Annexe E: Survey of providers of residential and nursing care homes for older people, p18.

⁷⁷ Annexe G: Care homes mystery shopping, p13.

⁷⁸ Annexe B: Survey of Authorities, p7.

⁷⁹ Guidance is provided to Authorities on charging for residential accommodation. Chapter 3 sets out the varying rates in Table 3.2.

- 5.41 However, Authority funded individuals may be able to widen their choices by securing an additional source of money to help pay for their care. This extra contribution generally cannot come from the individual's own savings, capital or income.⁸⁰ It will most often come from an independent third party, such as friends or relatives, and is therefore usually referred to as a 'third party contribution' or 'top up'.
- 5.42 Top ups can allow the older person to choose from a wider selection of care homes, as more expensive care homes may become viable choices. They can also allow the older person to choose more expensive accommodation within a care home that would accept the baseline fee for some rooms, eg: enabling the older person to occupy a single room rather than a shared room.
- 5.43 When considering the availability of suitable care homes, older people and their friends or relatives (who may be called on to pay the top up) should be aware of the option to choose more expensive accommodation if a third party contribution is available. They should also be aware that they must not be expected to secure top up funding in order to find a care home place suitable for their assessed care needs. Rather, it should be a choice on the part of the older people and their advisors to enter more expensive accommodation.⁸¹ This information should ideally be provided by the Authority, and the list of care homes provided by the Authority should also ideally specify those care homes which will usually require a top up to be paid.

Care home fees and services

- 5.44 At this point, the issues of funding and care needs should have been resolved, and the older person and their advisors should know the

⁸⁰ The policy on who may pay top ups varies across the UK. Older people may pay their own top ups in limited circumstances in England and Wales, and in rather more widely drawn circumstances in Scotland. Older people may not pay their own top ups in Northern Ireland. See Chapter 3, paragraph 3.7.

⁸¹ Annex A sets out the legislation and guidance issued to Authorities on top ups in more detail.

availability of care homes with vacancies in their area that would be suitable for their care needs. They will then need to find out about the services offered by the care homes and the prices charged, as well as an indication of the quality of the facilities on offer. This will enable the older person to choose the most suitable care home for them.

- 5.45 Ideally, the information provided by care homes should enable people choosing a home to compare the packages offered by different homes. For example, it should be clear how much the accommodation plus personal or nursing care will cost, and what other services are included in the fees.
- 5.46 Authority funded individuals will also need to know whether the homes accept older people at the Authority rate or require a top up. If a top up is required, then key issues include how much it will be and the arrangements for paying the top up, ie: via the Authority or direct to the care home.⁸²

Changes in circumstances

- 5.47 Finally, as moving into a care home is normally a lasting arrangement for all older people, and the medical or financial circumstances of the older person could change over time, the contract terms and conditions will also be very important. These should explain the circumstances under which fees could be changed, for example. Other important information would include the arrangements for giving notice should the older person want to leave and the charges applied if they are away from the care home for a period of time (eg: in hospital, or visiting family or friends).
- 5.48 Although the Authority contracts with the care home on behalf of Authority funded residents, these individuals will have the same information needs as self funders and should also receive a statement of

⁸² An Authority will be guilty of maladministration if it fails to explain clearly to older people and their carers what their rights are under the National Assistance (Choice of Accommodation) Directions 1992 (as amended), or if it puts the onus on them to find accommodation at an acceptable cost to the Authority.

terms and conditions.⁸³ Contractual issues are dealt with in more detail in Chapter 6.

5.49 The next section sets out the information gaps that we found at each key stage in the decision process.

Information gaps

5.50 We carried out wide ranging research into the care homes sector, and the experiences of older people entering care homes, in order to discover where there may be gaps in the available information. This included:

- a survey of older people resident in care homes, covering those who had been resident for some time and those who had recently entered the home. We asked residents about the factors that influenced their choice of home and their experience of the process of choosing a care home. See Annexe F
- a mystery shopping exercise, in which researchers contacted care homes pretending to be looking for accommodation for an older relative. This looked in particular at the type, clarity and timeliness of information provided by the care homes. Additionally, five mystery shopping case studies were carried out by older people themselves. See Annexes G and H
- a survey of Authorities across the UK, covering their perceptions of the availability of care home places in their areas and their policies on information provision, amongst other things. See Annexe B, and
- a survey of care homes, ranging from single homes to larger chains. We asked for businesses' perceptions of the care homes sector, including the importance of information provision amongst other issues. See Annexe E.

⁸³ See paragraphs 5.28 to 5.30 for an explanation of entitlement to Authority funding, and Annexe A for a fuller description of the legislation applying to Authorities in this regard.

5.51 Our research has identified several significant gaps in the information provided to older people and their representatives at key stages of the decision making process. Using the structure of Figure 5.1, we found that:

- **care needs and financial assessment** – there is confusion about what services Authorities are obliged to provide to people needing residential or nursing care, what funding will be provided and when top ups should be paid
- **care home availability** – older people and their representatives have low levels of awareness of the sources of information about care home availability
- **care home fees and services** – the information provided by care homes varies in quality and completeness and is often not provided within a useful timescale (ie: prior to moving into the care home or at the time the older person needs to make a decision about what care home to enter into), and
- **changes in circumstances** – some care homes do not provide adequate information about their policy in the event of a change in a resident's circumstances. We also found that there are potentially unfair price variation clauses in a number of consumer contracts. This issue is dealt with in detail in Chapter 6.

5.52 Each of these issues is explored in more detail below, followed by a section in which we set out recommendations about the role of the key institutions involved in the care homes sector.

Care needs and financial assessment

5.53 The Authority is often the first port of call for someone looking for help in deciding whether a move to a care home is necessary. This is true not only for those older people who think they might be eligible for Authority funding, but also for some self funding older people looking for help and

advice in choosing a care home.⁸⁴ Where the Authority has a legal duty to carry out an assessment of care needs,⁸⁵ it will need to determine what type of care would be most suitable and whether a move to a care home is necessary. The Authority should then assess the level of the individual's financial assets to determine whether they are eligible for Authority funding.⁸⁶

- 5.54 Our research has shown that there is a lack of clarity about what services the Authorities are obliged to provide to older people needing residential or nursing care. For example, we found that a third of Authorities did not provide information on top ups, and 14 per cent provided no information about the role of the Authority in finding a care home.⁸⁷ Consumer groups also raised this issue, providing us with several case studies where the older person or their family were unhappy with the information and assistance provided by their Authority.
- 5.55 Many of the issues related to the assessment of eligibility for financial help. Others concerned the actual wait for, and the location of, care home places provided for Authority funded residents and the degree of assistance in finding a care home place offered to self funding older people. Figure 5.2 provides some examples of the issues raised.

⁸⁴ Self funders who become eligible for Authority funding after a period of paying for their own care will also need access to information about the services they are entitled to.

⁸⁵ Authorities are under a legal duty under the National Health Service and Community Care Act (NHSCCA) 1990 to assess a person's needs for community care services where a person's circumstances come to the knowledge of the Authority and he or she may be in need of community care services.

⁸⁶ This can be a complex process that is underpinned by a framework of legislation and guidance. See Annexe A for a description of the legislative framework surrounding the provision of residential care for older people.

⁸⁷ OFT analysis of Authority information brochures and leaflets provided in the OFT Survey of Authorities (Annexe B).

Figure 5.2 - Concerns regarding Authority services

Examples of individual problems with Authorities, passed on to us by charities, include:

Alzheimer's Society

'We found that Social Services do not even offer advice to self funders'.

'We were told we had to find somewhere that catered for EMI for my father who had vascular dementia... All cost more than the local Authority was prepared to pay towards the cost of care home fees. We were told the family would have to find the difference'.

Help the Aged

'Once [the individual's father] had been declared a 'self funder' the social worker took a less proactive approach and there was no professional lead in finding the best solution for him, leaving the responsibility with the family and principally with his wife whose own health is poor'.

'Client's father is in hospital; he has been assessed as needing to go into a care home. Social Services have told her that there is no funding available and he would have to stay in hospital'.

5.56 We do not have statistical evidence that Authorities are not meeting their legal obligations with regard to the provision of residential or nursing care, although we have received case studies of problems accessing information and support for self funders, as noted above.⁸⁸

5.57 There are a number of checks on the Authorities' obligations to provide care, in addition to the complaints procedures that Authorities must provide. For example, the care home regulators review the Authority Social Services departments, awarding star ratings as appropriate.⁸⁹ The

⁸⁸ However, there may be case law and decisions of the Local Government Ombudsmen which have found that some Authorities have breached such obligations.

⁸⁹ England – The Commission for Social Care Inspection (CSCI); Wales – Care Standards Inspectorate for Wales (CSIW); Scotland - The Care Commission; Northern Ireland - Health and Personal Social Services Regulation and Improvement Authority (HPSSRIA).

English regulator is shortly due to take up a role as an independent reviewer of complaints against Authorities that are related to care homes. The Local Government Ombudsmen across the UK also investigate and report on complaints to ensure that the Authority has followed due process. It may also be possible to apply to the Courts for a judicial review of an Authority's decision.

- 5.58 We have received case studies where Authorities are not providing information and support to self funders, some of which are quoted in Figure 5.2. Certainly, our own consumer survey found that only 27 per cent of self funding older people had been given information about their care home by their Authority compared to 40 per cent of Authority funded individuals.⁹⁰ This may, to some extent reflect a lower desire for Authority support among self funders. However, in our opinion, Authorities should be providing information to self funders.
- 5.59 There also appears to be a lack of transparency for older people and their representatives on how and when third party contributions, so called 'top ups', may be paid. The use of top ups should be voluntary and to the older person's advantage. The guidance from Department of Health and the devolved administrations states,⁹¹ that top ups are intended to be used solely when the older person wishes to enter a more expensive home than the Authority would normally fund for someone with their level of assessed needs. The English guidance makes it clear that older people cannot be required to secure a top up because of market inadequacies or commissioning failures.

⁹⁰ Annexe F: Survey of older people in care homes, p17.

⁹¹ England Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1992; Welsh Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1993; Scottish Guidance - Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 and Community Care (Additional Payments)(Scotland) Regulations 2002 (issued under Community Care and Health (Scotland) Act 2002) and in Northern Ireland Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

- 5.60 Our research suggests that an increasing number of people are paying top ups,⁹² and over two in five of the Authorities that we surveyed suspected that more top ups are being paid in their area than they know about.⁹³ This may be a concern, if some older people are seeking top up funding in the mistaken belief that it is necessary in order to secure a care home place. There does appear to be some shortcomings in the information available to older people and their representatives. Our analysis of Authority information leaflets showed that 36 per cent did not provide any information about the payment of top ups.⁹⁴
- 5.61 Overall, we have found that there is confusion about what older people and their representatives should expect from their Authority, and what Authorities will actually provide. There is also a lack of transparency concerning top ups.

Care home availability

- 5.62 There are several possible sources of information about the availability and suitability of care homes, but our research shows that these information sources together fail to provide older people and their advisers with the full picture.
- 5.63 There are a number of ways in which older people engaged in choosing a care home can find out about the care homes in their area. In our survey of residents in care homes for older people, 34 per cent of residents found out about their care home through the Authority or NHS. More (40 per cent) relied on family, and a substantial proportion (20 per cent)

⁹² Twenty eight per cent of the businesses we surveyed said that there had been an increase in the last year in the proportion of new residents paying a top up. Annexe E: Survey of providers of residential and nursing care homes for older people, p21.

⁹³ Annexe B: Survey of Authorities, p10.

⁹⁴ OFT analysis of Authority information brochures and leaflets provided in the OFT Survey of Authorities (Annexe B).

knew about their care home anyway, or had friends already in the home (seven per cent).⁹⁵

- 5.64 Our study has also found low levels of awareness of the sources of information currently available. The majority of the care home residents that we surveyed could not recall seeing any booklets or leaflets giving information about care homes.⁹⁶ In addition, the information currently provided is often scant and piecemeal.
- 5.65 There are examples of best practice, although our survey results indicate that not many people are aware of these. In addition, these are generally provided by charities with limited funds, and therefore may have a limited availability. Figure 5.3 discusses two such examples.

⁹⁵ Annexe F: Survey of older people in care homes, p17.

⁹⁶ Ibid, p18. Seventy one per cent had no recollection of such information sources.

Figure 5.3 - Information provided by the Elderly Accommodation Counsel and Counsel and Care

The Elderly Accommodation Counsel

Care Options is an online directory, run by a charity called the Elderly Accommodation Counsel, which provides all the key information required by people looking for care. It is a well established resource covering factual guidance about the different types of care available, choosing and funding the most appropriate care, key questions to ask care providers and a complete list of all UK care homes that highlights the features and services of all homes.

The Care Options lifestyle classification is a new and unique aspect that invites users to select their own personality type (from one of four options) and uses smiley face symbols and simple colour coding to guide users to those homes that might provide the best fit with their personal lifestyle preferences.

The directory is a voluntary sector initiative, led by the Elderly Accommodation Counsel, researched and developed over four years, with involvement of care sector providers and care home regulators. There is a free telephone advice line, with a follow-up personalised report and homes listing, for users who prefer that route.

The Elderly Accommodation Counsel also works with a wide range of third parties, providing multi-media data to ensure that the Care Options information reaches the widest audience. Users benefit from free, impartial and comprehensive information at a time when they are generally severely stressed; feedback from users confirms the benefit, as one user remarked *'It helped to keep us sane!'*⁹⁷

Counsel and Care

Counsel and Care is a charity which gives advice and information to older people, their relatives and carers across the UK.

⁹⁷ Text provided by the Elderly Accommodation Counsel.

They produce a range of fact sheets and brochures designed to help people through the process of entering care, including understanding funding, accessing assistance from the Authority, and a description of older people's rights.

There is also clear guidance on what to do if things go wrong, from making an informal complaint through to taking legal action as well as Authorities' responsibility to pay for a place that meets people's assessed need, contract arrangements if paying a top up and challenging the Authority's decisions.

For example, their fact sheet '*Your right to choose a care home*' sets out very clearly the role of the Authority in assessing needs and funding care:

'The social services department should give you information about homes in their area which will meet your care needs. You can also contact the Elderly Accommodation Counsel for more details. The council should also tell you the amount they will pay for your care in a care home per week. This amount is sometimes called the **standard rate** or the usual rate.

The homes the social services department suggests are usually those which are the council's 'preferred providers', that is, homes which will make a contract with the council at the agreed standard rate. **However, the rate that the council will pay towards your care home fees should be based on your individual needs as laid out in your care plan** (You should be given a copy of your care plan).

The guidance specifically warns councils not to set 'arbitrary ceilings' on the amount they will agree to pay. Councils have the discretion to increase the amount they usually pay if the home you have chosen is the only home with a vacancy that can meet your assessed needs'.⁹⁸

5.66 Most Authorities (85 per cent of those we surveyed) will provide a comprehensive list of the care homes located in their area.⁹⁹ However, information on other issues tends to be limited. Our research into the brochures, booklets and other literature produced by Authorities revealed that information about some features was only rarely provided.¹⁰⁰ For

⁹⁸ Source: www.counselandcare.org.uk/factsheets.htm

⁹⁹ Annexe B: Survey of Authorities.

¹⁰⁰ Collected as part of the OFT Survey of Authorities (Annexe B).

example, only 17 per cent of the Authorities we surveyed specify which of the care homes listed in the area do not usually require a top up, and just 11 per cent make it clear how big a top up is generally charged.¹⁰¹

- 5.67 Care homes themselves are clearly an important source of information and most care homes agree that the quality of the brochures and information they provide is either 'very' or 'fairly' important in attracting new residents.¹⁰² However, older people and their representatives may find relying solely on care homes problematic.
- 5.68 Contacting several care homes can be time consuming and, as discussed above, people often have to make a choice quickly. Also, our mystery shopping survey found that it can be difficult to get clear, timely information about fees and services from care homes. Under half were rated by the researchers as 'informative'.¹⁰³
- 5.69 Overall, it can be difficult for people to find the information that they need. Where information is provided, it is often limited or unclear, and may not be accessible in the time available. This can be a particular problem for older people where, locally there are relatively few suitable care homes to choose from. In our consumer survey, fewer than one in five residents (17 per cent) felt they had had a wide choice, and although for some it was not an important issue, more than a quarter (27 per cent) said their choice was limited and a further (16 per cent) described it as very limited.¹⁰⁴

¹⁰¹ Annexe B: Survey of Authorities.

¹⁰² Eighty eight per cent agreed that the quality of brochures and other information is very or fairly important in attracting new residents. Annexe E: Survey of providers of residential and nursing care homes for older people, p39.

¹⁰³ Annexe G: Care homes mystery shopping, p60.

¹⁰⁴ Annexe F: Survey of older people in care homes, p22.

Care home fees and services

- 5.70 Information about the services offered and prices charged by care homes should be available from the care homes themselves.¹⁰⁵ We investigated the information offered by care homes through a mystery shopping survey, in which researchers played the part of someone trying to find a suitable care home for an older relative. The results of this survey, which are reported in full in Annexe G, show that the clarity and completeness of the information offered by care homes is very variable.
- 5.71 Five case studies were also carried out for us by older people who went through a similar mystery shopping process. A summary of the findings is presented in Figure 5.4.¹⁰⁶

Figure 5.4 - Case studies of an older person choosing a care home

The studies reflected many of the findings of our mystery shopping exercise. There were cases where information was given promptly and openly with the result that the older person was able to make an informed choice. However, there were also cases where the response to enquiries left the older person feeling frustrated and unsupported.

Many of the care homes took a limited but kindly interest in the older person and some tried to give them the benefit of their own experience. As well as information about the care home, they often made other suggestions to the older person such as visiting the home or staying for a trial period, looking at other homes in the area and advice on not selling their own home until they are certain they want to stay in residential care.

- 5.72 Even very basic information about fees and services was in some cases not provided. Only one-third of care homes provided information about the amount of basic fees without being prompted, and even with prompting, the researchers failed to get information about fees from 12

¹⁰⁵ See Annexe J: Regulatory framework.

¹⁰⁶ The full findings of the case studies are presented in Annexe H: Case studies of elderly people choosing a residential care home.

per cent of homes. Similarly, 27 per cent provided no information about when fees were due, and 34 per cent provided no information about the circumstances when fees were subject to change, even after prompting.¹⁰⁷

- 5.73 It is worth noting that where our researchers had to prompt the care home, this was done by phoning again after one week; then if literature was still not received after two weeks, visiting to pick it up. This level of persistence may not be possible for older people choosing a care home in reality, due to lack of time or mobility.
- 5.74 Care homes may also be a good supplementary source of information about top ups, although the primary responsibility for explaining the role of top ups rests with the Authority. For example, care home providers are likely to know whether their fees are generally covered in full by the Authority, or whether a high proportion of the residents in their home pay top ups.
- 5.75 We have already seen that Authorities do not provide much information about top ups, and care homes also often do not provide much additional information. In our mystery shopping survey, researchers playing the part of a relative of an Authority funded individual also asked for information about top up fees. Only 25 per cent were given the information without prompting and 29 per cent were not provided with the information even after prompting.¹⁰⁸ Even then, in 30 per cent of cases the researchers felt that the information was unclear. Over 40 per cent felt that they did not receive adequate information about top ups.¹⁰⁹
- 5.76 There were also shortfalls in information about what happens if the circumstances of the care home or of the older person changes. For example, a significant minority (22 per cent) felt that they had not been

¹⁰⁷ Annexe G: Care homes mystery shopping, p10. These figures relate to the self funded scenario.

¹⁰⁸ Ibid p20.

¹⁰⁹ Ibid p22.

given sufficient information about what would happen if the care needs of the resident were to change.¹¹⁰

- 5.77 We also surveyed care homes and asked about the importance of information provision. Despite the poor findings of the mystery shopping survey, most of the respondents to the business survey said that the quality of brochures and information is important in attracting new residents.¹¹¹ Providing good information is in the care home's own interests and it is not clear why so many failed to do so in our mystery shopping exercise.
- 5.78 In our 1998 report,¹¹² we analysed care home brochures and found that existing brochures frequently did not provide potential residents with adequate information about, for instance, the level of fees and specifically what they included or what factors affected the fees. We recommended that all care homes reviewed their brochures to ensure that they give clear and comprehensive information about care and facilities and the fees for these.
- 5.79 Nevertheless, it appears that today, seven years later, basic information about fees and services is still not provided by some care homes. Some of the information that is provided is unclear or is provided after a delay. This is likely to mean that people choosing a care home, particularly those under time pressure, will find it difficult to make an informed choice between the available care homes.
- 5.80 An independent assessment of the standard of services at care homes can be found in the inspection reports published by the care home regulators across the UK. However, once again we found relatively low levels of awareness of these reports. Only 20 per cent of the residents we surveyed recalled that such a report was seen by them or their

¹¹⁰ Ibid p52.

¹¹¹ Annexe E: Survey of providers of residential and nursing care homes for older people, p39.

¹¹² 'Older People as Consumers in Care Homes, A report by the Office of Fair Trading', OFT, 1998, paragraphs 4.27 – 4.28.

family, although this rose to 30 per cent amongst those residents who had considered more than one care home before making their choice.¹¹³ In addition, these reports are not always written in a user friendly way, from the perspective of those engaged in choosing a care home. For example, many do not include a concise summary written in plain language.

- 5.81 There have been some recent initiatives in this area. The English care homes regulator, the Commission for Social Care Inspectorate (CSCI), has recently published new guidance for care homes inspectors on the format of inspection reports. In particular, they recommend that a summary part is added to the report, targeted at older people looking for care and their representatives. This would set out a brief description of the services offered by the care home, the inspection methodology and the inspector's judgement of the experience of residents of the home, their views and what is important to them. The summary should be written without jargon or technical language.
- 5.82 This is an example of how inspection reports may be made more accessible and user friendly inspection reports. Similar changes are needed across the UK.

Changes in circumstances

- 5.83 Our mystery shopping exercise found that the information provided by care homes on their policies in the event of a change in a resident's circumstances was incomplete. For example, only 18 per cent of the researchers were offered information about the notice period given if the older person was required to leave.¹¹⁴

¹¹³ Annexe F: Survey of older people in care homes, p19.

¹¹⁴ The OFT 'Guidance on unfair terms in care home contracts' (2003) states that 'The care home is required to give the resident a reasonable period of notice and also inform the resident's next of kin'.

5.84 The issues surrounding contracts in this sector are examined in Chapter 6. This subject is therefore not examined further in this chapter.

5.85 The next section looks at the roles played by the key institutions involved in this sector.

Institutions

5.86 There are three key players directly involved in this sector: the Authorities; the care homes; and the care home regulators. The following sections set out recommendations to these institutions to address the information gaps faced by older people and their representatives. The relevant government departments are also important in setting public policy towards care for older people, and are included in some of the recommendations.

5.87 Before looking at each set of players in turn, there is an overarching issue that must be dealt with. We have found that not only is there a lack of information, but there is also confusion about where people should go to get information, help and advice. What is lacking is a single point of reference that tells them what to expect, where to go, and what questions they should be asking.

5.88 There are some information leaflets and websites published by the charitable sector which provide people with a guide to the process of finding a suitable care home. For instance, in addition to the examples in Figure 5.2, Age Concern, Help the Aged and The Alzheimer's Society all provide such material. However, these cannot cover all the differences between Authorities' policies, or fully substitute for clear information from regulators and care homes themselves.

5.89 **Therefore, we recommend that government should establish a central information source or 'one stop shop' for people to get information about care for older people. This could, for example, be an internet site supplemented by a telephone helpline or a one stop shop with information about care for older people.**

5.90 This central information source should pull together all the relevant information that an older person or their representative would need to

understand the process of choosing a care home. The information source should contain information such as for instance how to have a needs assessment done, local care options, funding of care and the use of top ups, what to look for in a care home and how to use care home inspection reports, advocacy schemes for older people in care homes and also the complaints information.

- 5.91 It should provide the information in a format which is accessible to older people and their representatives, making allowance for sensory impairment and language requirements for ethnic minorities. Where we make further recommendations to improve information provision, these should be linked to the one stop shop. For example, the internet site should link seamlessly to the regulators' care home inspection reports and Authorities' care homes directories.
- 5.92 We now look at the role of Authorities, care homes and the care homes regulators in turn.

Authorities

- 5.93 As described above, the Authorities have a vital role in helping people through the process of accessing suitable care services, and are often the first port of call for older people and their representatives. People engaged in choosing a care home should understand the role of the Authority, and the help they should expect to receive from this source, including their entitlement to funding and the placement policies followed by the Authority. This will help to ensure that older people have realistic expectations about their rights and are able to recognise when there is a genuine cause for complaint.
- 5.94 We have found that the quality of information provided by Authorities about their services is variable, although there are examples of best practice. Authorities should seek to bring their information provision up to the level of the best.
- 5.95 Many older people will need help from their Authority to navigate the process of choosing a care home, including some self funding individuals. Some of the complaints passed to us by consumer groups

suggested that Authorities were not routinely providing this service to self funding older people.

- 5.96 The vulnerability of residents of care homes for older people is not restricted to those with limited financial assets. Given the importance of the initial care home choice, and the difficult circumstances under which the decision usually must be made, it is vitally important that older people are not barred from sources of help.
- 5.97 **We recommend that government should clarify the guidance to Authorities on the Choice of Accommodation Directions,¹¹⁵ to make it clear that self funded older people with an assessed need should have access to the same advice, guidance and assistance on choice as older people receiving public funding. We also recommend that Authorities ensure that self funded older people with an assessed need get advice after the test of their financial assets and entitlements and are guided during the whole process of getting their care needs met, if they so wish. Care home regulators and inspectorates should monitor that Authorities do this, either through their own Social Services department or through 'outsourcing' the task of guiding self funders.**
- 5.98 The second issue around Authority information provision is related to the appropriate use of third party payments, or top ups. It appears that, based on our analysis of Authority information leaflets, some older people may not be getting adequate information about top ups. In addition, increasing numbers of people appear to be paying top ups, and there is a lack of knowledge among Authorities of the extent of top ups

¹¹⁵ The Choice Directives, that are issued under differing legislation for the policy departments: England Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1992, Welsh Guidance - National Assistance Act 1948 (Choice of Accommodation) Directions 1993, Scottish Guidance - Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 and Community Care (Additional Payments) (Scotland) Regulations 2002 (issued under Community Care and Health (Scotland) Act 2002), and in Northern Ireland Departmental guidance issued on Community Care – Choice of Residential and Nursing Home Accommodation in 1993 (circular HPSSR(3)1/93 issued by virtue of Article 17(1)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

being paid to care homes in their area. This is a concern if it means that some people are paying top ups because they think that they are necessary to secure a suitable care home place.

5.99 To address this, we recommend that Authorities ensure their advice and information materials to older people and their representatives state very clearly that an older person with an assessed need, who is entitled to Authority funding, does not need to secure a top up in order to find a care home place that is suitable for their needs.

5.100 The final issue regarding Authorities' information provision relates to the care home directories that Authorities provide to older people and their representatives. We found that the information in these directories can be sketchy and often does not include more than the name and address of the care home. It is important that people are able to identify which care homes in their area would be suitable for their assessed care needs, and the Authority directory should help them to do this. Authority funded individuals also need to know which care homes will require an additional top up payment.

5.101 Therefore, we recommend that Authority care home directories cover all care homes for older people in their area, that they list the services offered by the care homes, state the levels of funding that their Authority generally makes available for care home places for older people, and that they identify all care homes usually require additional payments above the amount that the Authority is usually prepared to pay (so-called 'top ups'). Care homes regulators and inspectorates should monitor that Authorities provide this information.

Policy departments may also want to consider making this information available to older people and their representatives through other initiatives, including the one stop shop mentioned below.

5.102 This could be kept as a live document held electronically and printed off when requested. This would make it easy to update when appropriate, eg: after any change in the Authority's baseline rates.

Care homes

- 5.103 It is important that people engaged in deciding on a care home should be able, as far as possible, to compare the services and fees offered by different care homes. However, we found that some care homes failed to provide some basic information about prices, even after persistent prompting. Others did not provide information about what was included in fees, what extras were on offer and simple contract information such as penalties for absence.
- 5.104 **To address this, we recommend that care homes should provide, in writing, the price of accommodation and residential or nursing fees promptly and prior to the older person making the decision to enter a home.**
- 5.105 Care homes should be complying with the information provisions in the relevant National Minimum Standards. However, it is not currently clear that such information should be provided prior to the older person entering the care home and in time for them to make an informed decision about which care home to choose. Therefore, in order to ensure that the situation on price transparency improves, **we also recommend that government should amend the relevant regulations to include this as a requirement.**

Care home regulators

- 5.106 We have already made two recommendations to the four national regulators of care homes for older people in their role of monitoring and enforcing standards of services provided by Authorities. However, the regulators can also have a more direct role to play in helping people to make a choice of care home.
- 5.107 As previously discussed, the care home regulators produce inspection reports which provide an independent assessment of the standard of services at care homes for older people. These could potentially help people to reach an informed decision about a care home. However, not all reports are currently accessible on the internet and many could be made easier to read and understand. Therefore, to ensure that this

source of information is made as useful as possible, **we recommend that all care home regulators should make care home inspection reports available online, and make them more user friendly, for example by including a short summary at the beginning. Care home regulators and Authorities should support and encourage older people and their representatives to use these reports. Care homes should provide new residents with a copy of the latest inspection report when moving into the home and inform residents when a new inspection report is available.**

Conclusion

- 5.108 People engaged in choosing a care home are making a major decision that will impact on the quality of life enjoyed by the care home resident, under very difficult circumstances. The choice must often be made under time pressure, at a time when the prospective care home resident is in poor mental or physical health.
- 5.109 The number of care homes that the older person is willing to consider may be relatively small in many instances, either because there are few homes in the preferred location, the older person has specialised care needs, or there are few vacancies at the time the choice must be made.
- 5.110 In addition, the initial decision leads to a lasting arrangement with the care home as most residents are unwilling to move once they have settled in a particular home.
- 5.111 For these reasons, it is important that older people choosing a care home are given the best chance to make the right decision first time, even under such difficult circumstances. In particular, they should have access to all the information they need, when they need it, in a clear and relevant format.
- 5.112 We have identified a number of information gaps faced by older people choosing a care home that will significantly impede their ability to make an informed choice. In particular, we have found that:
- there is no single coherent source of information about care homes

- there is a lack of clarity over what information and services Authorities are obliged to provide to those assessed as needing a care home place. This relates to help in finding a place, eligibility for public funding and the role of top up payments, and
- the information provided by care homes, even about basic matters such as the level of fees and top ups, can be incomplete and sometimes unclear.

5.113 **Therefore, we make recommendations on:**

- **improving access to information by establishing a one stop shop**
- **clarifying the guidance to Authorities on their role in helping older people and their representatives through the process of choosing a care home**
- **ensuring better information for older people and their representatives about top ups**
- **improving the information currently contained in Authority care home directories**
- **increasing price transparency through care homes' information provision, and**
- **making care home regulators' inspection reports available online, and more consumer friendly.**

5.114 These recommendations should improve the availability of the key information that people engaged in choosing a care home need in order to make a considered decision. The next chapters look at two aspects of what happens once the choice of a care home has been made: contracts and redress.

6 CONSUMER CONTRACTS AND TERMS GOVERNING CURRENT AND FUTURE FEES

Summary

6.1 In this chapter we examine the contracts between care homes and older people resident in care homes (or their representatives). We focus on;

- whether older people and their representatives have written contracts with care homes or, where the resident is Authority funded, whether they are provided with a statement of terms and conditions¹¹⁶
- whether consumer contracts are clear and intelligible
- whether consumer contracts have clear and fair fee related terms, and

¹¹⁶ As required by Standard 2 of the Department of Health Care Homes for Older People: National Minimum Standards 2003 and Standard 5 of the National Minimum Standards for Care Homes For Older People (Wales) March 2004 as introduced under section 23(1) of the Care Standards Act 2000 in England and Wales requires that 'Each service user is provided with a statement of terms and conditions at the point of moving into the home (or contract if purchasing their care privately)'. As introduced by the Care Act 2001 in Scotland the National Care Standards (Care Homes for Older People) standard 3.1 requires that older people in care homes 'receive a written agreement which clearly defines the service that will be provided. It sets out the terms and conditions of accommodation and residence, including your rights to live in the home, payment arrangements, and arrangements for changing or ending the contract'. As introduced by the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 Part VI, Articles 38-44 confers power on the Department(DHSSPS) to introduce Minimum Standards. Northern Ireland issued consultation documents published in September 2004 by the DHSSPS entitled 'Residential Homes Registration and Inspection Standards' and 'Nursing Homes Registration and Inspection Standards' outlines the proposed draft Care Standard 2 for Northern Ireland. As introduced by the Residential Care Homes Regulations (Northern Ireland) 2005 and the Nursing Homes Regulations (Northern Ireland) 2005, part 1 section 4.1.b requires that the terms and conditions in respect of accommodation to be provided for residents (patients), including the amount and method of payment of fees.

- the arrangements that are in place where the resident is Authority funded and a third party is paying a top up contribution to the fees.

6.2 It is important that all parties' respective rights and obligations are clear before entering into any agreement for a care home place and that the agreement is in writing. There should be no surprises, concerning for example the services, accommodation or fees, after the old person has moved into the home. If a clear written agreement is in place between the care home and the older person (or representative) or, in the case of Authority funded residents they receive a copy of the statement of terms and conditions, then disputes are less likely to arise and, if they do, they may be easier to resolve.

6.3 However, our research¹¹⁷ shows that while care homes are of the view that practically all older people in care homes have either a written contract or statement of terms and conditions, only some of the older people and their representatives say they were given these documents.¹¹⁸

6.4 We also found a lack of clarity about contractual arrangements in respect of Authority funded residents where a third party is contributing an amount to the fee. This amount, paid by the third party, is commonly referred to as a 'top up'.

6.5 When an older person receives Authority funding and the written contract is between the care home and the Authority, it is still important that the older person or their representative understands the level of care that the care home is contracting with the Authority to provide and the mechanisms for redress if the care is not supplied, as set out in contract between the care home and the Authority. The resident should therefore always be given a statement of terms and conditions which should include, among other things, details of the overall care and services to be provided, the fees payable and by whom, the rights and obligations of

¹¹⁷ Annexe E: Survey of providers of residential and nursing care homes for older people.

¹¹⁸ Annex F: Survey of older people in care homes.

the older person and the provider and the terms and conditions of occupancy. This is a requirement of the National Minimum Standards.¹¹⁹

6.6 Finally, older people receiving care services should not find themselves disadvantaged by unfair terms in written contracts.¹²⁰ For example, potentially unfair terms relating to price variation can lead to the situation where the older person in care, or their representative, is required to pay unwarranted fee increases. Also, terms relating to fees that are not written in plain and intelligible language¹²¹ may make it difficult for the older person, or their representative, to work out what

¹¹⁹ Standard 2.1 of the Department of Health Care Homes for Older People: National Minimum Standards 2003 and Standard 5.1 of the National Minimum Standards for Care Homes for Older People (Wales) March 2004 which came into force on 1 April 2002 setting basic statutory standards for care homes in England and Wales. They require that older people in care homes are each provided with a statement of terms and conditions at the point of moving into the home (or contract if purchasing their care privately). In Scotland, the National Care Standards (Care Homes for Older People), standard 3.1 requires that older people in care homes receive a written agreement which clearly defines the service that will be provided. It sets out the terms and conditions of accommodation and residence, including your rights to live in the home, payment arrangements, and arrangements for changing or ending the contract.

Northern Ireland issued a consultation document, published in September 2004 by the DHSSPS, entitled 'Residential Homes Registration and Inspection Standards' which outlines the proposed draft Care Standard 2 'Agreements between Residents and the Homes' which states 'there is a written agreement between the home and each resident or their representative regarding the services and facilities to be provided'. The Residential Care Homes Regulations (Northern Ireland) 2005 and the Nursing Homes Regulations (Northern Ireland) 2005, part 1 section 3.1.b requires the home to provide each resident (patient) with a statement of purpose outlining the services and facilities provides and section 4.1.b which requires that the terms and conditions in respect of accommodation to be provided for residents (patients), including the amount and method of payment of fees.

¹²⁰ The Unfair Terms in Consumer Contracts Regulations came into force in 1999. They superseded the Unfair Terms in Consumer Contracts Regulations 1994 and protect consumers against unfair standard terms in contracts they make with business. Regulation 5(1) states that a standard term is unfair 'if contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer'.

¹²¹ The Unfair Terms in Consumer Contracts Regulations 1999, Regulation 7 requires that any written term is to be expressed in plain, intelligible language.

the fees are, who is responsible for payment and what is the mechanism for future changes to the fees.

- 6.7 We found that, where consumer contracts were in place, the majority of them had potentially unfair terms, providing the potential for harm being caused to older people in care homes and their representatives.
- 6.8 This chapter details the evidence on these points and concludes with our recommendations to improve the contractual arrangements for older people in care homes.
- 6.9 The OFT considered similar issues in our 1998 report 'Older People as Consumers in Care Homes'. Our overall conclusion is that little has changed in relation to care home contracts and we make our recommendations in this chapter with that in mind.

The variety of written contracts

- 6.10 We first consider the variety of written contracts in place for older people in care homes focusing on whether older people have the right written contracts.
- 6.11 Older people moving into care homes, their representatives, the care home and the Authority will all have legal rights and obligations when entering into an agreement for a care home place. However, these rights and obligations will differ depending on, among other things, the funding arrangements in a particular set of circumstances.
- 6.12 There are a number of different circumstances that may arise for those seeking a care home place that may each require a different contract. These commonly include:
- self funders (private residents paying fees in full themselves)
 - private residents where a representative is paying the fees on their behalf
 - residents funded partly by their own pension and other benefits and partly by the authority, and

- residents who are funded by own pension and benefits and by the Authority as outlined in the previous bullet point but who also have a top up fee paid by a third party.¹²²

6.13 We have found through our discussions with care homes, organisations representing the interests of older people and also other interested parties that there is no single common approach among care homes for these different contractual situations. Some have a different agreement for each possible contractual scenario, some have a multi party contract to cover all situations and others have a range of contracts to suit a variety of situations with some contracts covering more than one scenario.¹²³

6.14 We have found no evidence to suggest that any particular way of drawing up written contracts to cover the variety of circumstances that may arise is better than the other for older people or their representatives.

6.15 It is, however, clear that what is important is not so much the range of written contracts available, but that whatever contract is signed must be appropriate to the needs of the parties, be written in plain English and must not contain terms that are potentially unfair. The contract should also make absolutely clear the services that are included in the fee payable and those services, commonly referred to as 'optional extras' that will be charged to the resident separately. These 'extras' will often include goods and services such a hairdressing, newspapers and a

¹²² This refers to situations where a third party representative is contractually bound to pay a top up to the care home or Authority as part of the gross fee. It does not cover situations where the third party paying the top up is a charity. In this case, the third party contribution is strictly a grant, given directly to the resident only. As such it must remain outside of any contractual arrangements otherwise its grant status will be lost.

¹²³ It could be argued that the availability and use of a number of different contracts increases the potential for older people in care homes and/or their representatives to find themselves signed up to the wrong one. However, use of a number of contracts can also provide more scope for them to have the choice of the most suitable one. We do not therefore suggest that any particular business model for contracts is more suitable than any other.

private telephone. Older people in care homes or their representatives should also always make sure, before signing a written contract, that they know the rights and responsibilities of all parties involved and that the contract sets these out clearly and provides any protection required.

- 6.16 However, the majority of those entering into care may not be in a position to make the necessary checks before signing a written contract. This may be for a number of reasons including those relating to the particular circumstances surrounding the process of moving into a care home as discussed in Chapter 4. We consider that the recommendations that we have made in relation to better provision of information to those seeking a care home place for older people should increase the number who have written contracts made available.¹²⁴

Availability of written contracts and statement of terms and conditions

- 6.17 In this section we consider whether older people have received written contracts, or statements of terms and conditions, at the point of entering into a care home.
- 6.18 The National Minimum Standards for Care Homes for Older People, introduced by the Department of Health under section 23(1) of the Care Standards Act 2000 in England and Wales require that all older people have a contract if they are privately funded and Authority funded older people are to be provided with a statement of terms and conditions. The National Care Standards for Older People, as introduced by the Care Act 2001 in Scotland, require that all older people in care homes receive a written agreement.
- 6.19 The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 Part VI, Articles 38-44 confers power on the Department (DHSSPS) to introduce Minimum Standards. Northern Ireland issued a consultation document, published in September

¹²⁴ For an overview, see the Executive Summary where these and our other recommendations are set out.

2004 by the DHSSPS, entitled 'Residential Homes Registration and Inspection Standards'. The proposed Care Standard 2 for Northern Ireland, currently in draft form, requires that all older people in care receive a written agreement regarding the services and facilities provided.¹²⁵

6.20 Our UK wide survey of care homes¹²⁶ indicates that care homes believe that:

- 98 per cent of self funded residents have a written contract with the home, and
- 99 per cent of older people in care homes who receive funding from the Authority and from third party contribution are provided with a statement of terms and conditions.

6.21 This would suggest that the vast majority of care homes are complying with the requirement, set out in the National Minimum Standards, to

¹²⁵ Whilst compliance with the National Minimum Standards is not itself enforceable, compliance with the Care Homes Regulations (Care Homes Regulations 2001 (England) and Care Homes (Wales) Regulations 2002 (in Wales); Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003) is enforceable.

Regulation 4 of the English and Welsh Care Homes Regulations makes it mandatory for care homes to make available, on request, their Statement of Purpose to all older people in care homes and Regulation 5 requires them to provide every resident with a service user guide that includes, among other things, the terms and conditions in respect of accommodation to be provided for older people including the amount and method of payment of fees. In Scotland, Regulation 5 requires the provider to prepare a personal plan for each older person setting out how their health and welfare needs will be met. In Northern Ireland, the Residential Care Homes Regulations (Northern Ireland) 2005 and the Nursing Homes Regulations (Northern Ireland) 2005 regulation 3.1.b requires the registered person to provide a resident's (patient's) guide to each user that includes a statement as to the facilities and services which are to be provided by the registered person for patients and regulation 4.1.b requires the terms and conditions in respect of accommodation to be provided for patients, including the amount and method of payment of fees.

¹²⁶ Annexe E: Survey of providers of residential and nursing care homes for older people.

provide older people with a written contract or statement of terms and conditions. However, whilst this may reflect the care homes' policies or views on what should happen, the results from our consumer survey¹²⁷ suggest that there may be a very different picture in practice.

6.22 Our consumer survey (interviews conducted with older people in care homes and/or their representatives) indicates that:

- only 25 per cent recall either themselves or family members receiving a contract prior to making the decision to move into a care home
- 31 per cent had seen written or printed information on terms and conditions before moving into the home
- allowing for overlap, 39 per cent had seen either or both of these
- among self funded residents that had recently moved into a home, 26 per cent could not remember whether they, or someone on their behalf, had ever signed a contract, and
- excluding the above group, who could not remember, 26 per cent reported that neither they individually nor their family had in fact signed a contract.

6.23 There is clearly a considerable difference in the results from our business and consumer surveys. We may allow for some proportion of the older people that were interviewed not remembering correctly whether or not a written contract was signed but even so, it seems unlikely that the situation is as good as reported in the business survey. The truth probably lies somewhere between the two. For something as important and costly as care services provided for an older person we would view even small proportions lacking a signed contract as cause for concern. We therefore looked to our mystery shopping research¹²⁸ as a further

¹²⁷ Annexe F: Survey of older people in care homes.

¹²⁸ Annexe G: Care homes mystery shopping.

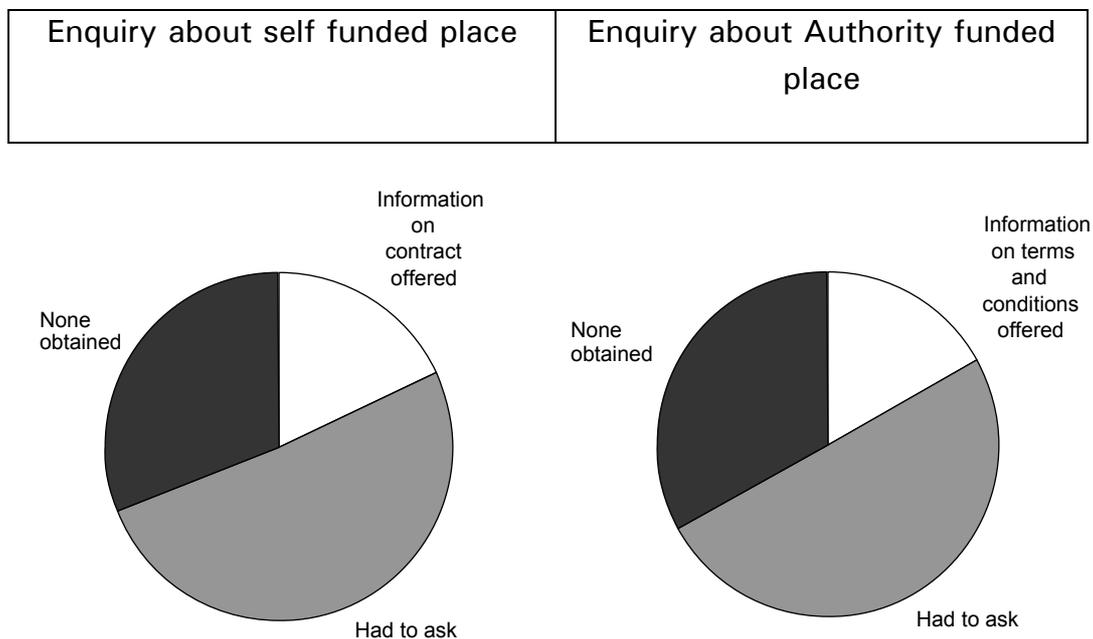
indicator of the situation faced by older people or their representatives when considering contractual terms and conditions of a care home place.

6.24 Our mystery shopping survey showed that:

- for self funding residents, almost one-third of our mystery shopping researchers were unable to get care homes to give them any information about any contract that a resident or their representative may have to sign before entering the home¹²⁹
- for Authority funded residents, similarly, one-third of the researchers were not given any information about the home's terms and conditions that a resident or their representative would be subject to if they entered the home, and
- of those that did receive information about contracts or statements of terms and conditions, only 12 per cent reported it being available in printed form.

¹²⁹ Regulation 5(1)(c) of the English Care Homes Regulations 2001, Regulation 5 (1)(c) of the Care Homes (Wales) Regulations 2002, require all care homes to have a Service User's Guide which should contain a standard form of contract. Regulation 5(2)(A) of the English Care Homes Regulations 2001 makes it a legal requirement to provide a copy of, or allow inspection of, the Service User Guide (in England) to persons other than the service user or regulator who ask to see it (See English Minimum Standard 2 and Welsh standard 5). Regulation 3 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 requires the care home to provide a written statement of the aims and objectives of the care service. Regulation 4.1.c of the Residential Care Homes Regulations (Northern Ireland) 2005 and the Nursing Homes Regulations (Northern Ireland) 2005 requires that all homes produce a residents' (patients) guide containing a standard form of contract for the provision of services and facilities by the registered provider to patients.

Chart 6.1 – Results of enquiries relating to information on contracts and terms and conditions



6.25 It is evident from this survey that older people and their representatives find it difficult to get information about care homes' written contracts, or terms and conditions, that they would be required to sign before entering the home. This reluctance to provide such information to older people or their representative who are considering a care home place, and the evidence in our consumer survey, suggests that written contracts may not be provided in a significant number of instances.

6.26 Our findings are also supported by the National Care Standards Commission's (NCSC) annual inspection report¹³⁰ which states that under half (49 per cent) of care homes in England and Wales met the standards that require them to provide a written contract or statement of

¹³⁰ National Care Standards Commission report: 'How Do We Care?', March 2004, page 10. The English National Care Standards Commission has now been replaced by the English regulator, the Commission for Social Care Inspection (CSCI).

terms and conditions.¹³¹ The report did not provide details as to numbers of residents affected in any one home where the standard was not complied with, so the figure does not reflect the percentage of older people in care homes who do not have a written contract or statement of terms and conditions, but it does suggest that a significant proportion of older people in care homes, in England and Wales at least, may not have a written contract or a statement of terms and conditions.

- 6.27 Following the care home regulator's inspection, where a standard is not met, a warning letter may be sent and an action plan to improve performance drawn up. The NCSC's first (and only, as they have now been replaced by CSCI) report was only produced in March 2004, so it is probably too early at this stage to be seeing a marked improvement in compliance with the requirement to provide a written contract or statement of terms.
- 6.28 It is, however, clear that care homes need to improve greatly in this area so that all older people in care homes have the written contract, or statement of terms and conditions, to which they are entitled and which care homes are required to provide in accordance with the National Minimum Standards.¹³²
- 6.29 The OFT considered similar issues to those identified above in its 1998 report 'Older People as Consumers in Care Homes'. In that report, evidence given to the OFT confirmed criticisms that contracts lacked information about the residents' rights and obligations. A survey of older people in care homes also showed that most of them had no knowledge of any written contract. A number of recommendations were made in our 1998 report that sought to ensure that all older people in care homes and/or their representatives would receive a copy of a clear and comprehensive written contract clearly informing them of their rights and obligations and that care home inspectors should check that copies of contracts are made available to all older people in care homes.

¹³¹ As detailed in footnotes 115 and 118.

¹³² Ibid.

- 6.30 Since the OFT's 1998 report, Care Home Regulations and National Minimum Standards have come into force that specifically require all care homes for older people in England and Wales to provide, as we have noted, a service user's guide and a written contract or statement of terms and conditions to every older person, or their representative, before or at the point of the older person moving into the home.
- 6.31 It is therefore disappointing to note that the evidence of this study suggests that little has changed with regard to care home contracts since our 1998 report. We therefore urge care homes and the care home regulators and relevant inspectorates to take full responsibility and to ensure that older people in care homes do have the written contracts or statements of terms and conditions that they are required to have.
- 6.32 **We therefore recommend that care homes ensure urgently that all their residents are provided with written contracts or statements of terms and conditions and that the care home regulators and inspectorates monitor this to ensure that significant improvements are delivered in the shortest possible time.**

Top up fees paid by a third party in respect of Authority funded residents

- 6.33 Our discussions with stakeholders¹³³ and the results of both our Authority survey¹³⁴ and consumer survey¹³⁵ indicate that one particular area of concern for Authority funded residents and/or their representatives is the payment of top up fees by a third party.
- 6.34 The fees charged by a particular care home are a business decision made by the owner and business manager in response to the costs of running the home, the need to make an element of profit and competition from

¹³³ Annexe M lists the organisations we consulted during the course of the study (although not all will have commented specifically on top ups).

¹³⁴ Annexe B: Survey of Authorities.

¹³⁵ Annexe F: Survey of older people in care homes.

other homes. Where those fees are higher than the amount that an Authority would normally pay for the standard of care that it is obliged to provide, there are two possible outcomes. Residents receiving Authority funding either have to look elsewhere or, if they wish to stay at the home in question, they must find a third party contribution to meet the difference between the level of Authority funding and the care home's fees.¹³⁶ This third party contribution is commonly referred to as the 'top up'.

6.35 However, our research¹³⁷ suggests that there is a lack of clarity about a number of features of top ups, for example:

- the circumstances in which top ups should be paid
- the circumstances in which top ups may be increased, and
- the Authority's responsibilities in respect of payment of those fees should the third party default on the payment.

6.36 In the brochures and other material produced by care homes, top ups are rarely mentioned. In our mystery shopping exercise, even when specific questions were asked, the explanations given were superficial. Some homes suggested that this was really an issue for the Authority rather than the home.

6.37 Brochures and printed material produced by Authorities are better, and a good proportion contains some explanatory material. The examples in Figure 6.1 are typical. While the explanations are helpful they lack depth, given the complexity and importance of the decisions that the older person and their representatives need to take.

¹³⁶ See Annexe A: Authority obligations and guidance.

¹³⁷ Annexe B: Survey of Authorities.

Figure 6.1 – Examples of top up information as included in some Authorities' brochures and printed material

Example 1:

Question: Will other members of my family have to contribute towards the cost of my care?

Other members of your family are not obliged to pay anything. Sons or daughters are not liable for the costs of their parents' care. A relative may agree to help you fund a more expensive care home place than the social work service usually pays for someone with your care needs. However, these funds cannot be used by social services to reduce its own contribution to the fees.

Example 2:

Question: What if I want to move into a more expensive care home?

A third party can agree to make top up payments to fund a more expensive care home place than the social service is prepared to pay for your assessed needs.

Example 3:

The Authority will help you pay for the cost of the home up to a maximum amount. The amount homes charge for the care and services they provide varies. You should discuss this with the manager of the home before you move in so that you are aware of the financial implications. This may involve an additional weekly payment above the rates paid by the Authority. This would require a third party, usually a relative, to agree to pay the top up amount.

6.38 Moreover, from our research it seems that most Authorities do not provide anything more specific about the situation regarding top ups in their area. In most cases, the process of discovering which care homes within a locality will usually accept Authority residents without top ups, or where required the amount of top up needed, is something that the consumer older person or their relatives must undertake for themselves.

6.39 Stakeholders have also told us that their experience of dealing with the concerns of many older persons and their representatives raises issues

about whether top ups are being charged in the right circumstances in many cases.

- 6.40 Since the top up is the difference between what the care home charges and the Authority contribution, increases can also be unpredictable. For example, Authority funded residents in a home charging £400 per week where the Authority provided support of £380 would need to find a top up contribution of £20. However, an increase of five per cent in fees to £420 per week if not matched by a similar increase from the Authority would result in the top up rising to £40, a 100 per cent increase in the third party contribution.
- 6.41 Finally, our research suggests that there is a lack of clarity about the Authority's responsibility in respect of third party top up payments. Our Authority survey¹³⁸ suggests, for example, that many Authorities do not know how many care homes are charging top ups for residents whom the Authority is funding. This calls into question whether the Authority is therefore meeting its obligations in respect of top ups¹³⁹ and whether the proper contractual arrangements are in place between the care home, the Authority and the third party.
- 6.42 The lack of clarity in this area is of particular concern as the answers to such questions are vital to any older person deciding whether or not they wish to pay the top up, or indeed whether they should be expected to do so.
- 6.43 Our examination of Authority contracts also shows that care homes and Authorities deal very differently with top up fees in their contracts. This is not helpful to the third party paying the top up who needs to understand why they are expected to pay the top up, how much they have to pay, what the payment is for and how and when it may be reviewed.

¹³⁸ Annexe B: Survey of Authorities.

¹³⁹ Annexe A: Authority obligations and guidance.

Top ups - responsibility for costs of accommodation

6.44 The Choice Directions guidance sets out that when making arrangements for residential/nursing care under the National Assistance Act 1948¹⁴⁰ an Authority is responsible for the full cost of accommodation. Case law for England and Wales illustrates that the Choice Directions guidance can be deviated from, but only in special circumstances. However, Authorities must not fetter their discretion and cannot, for example, automatically rule out being involved where top up fees are being charged.¹⁴¹

¹⁴⁰ In England, an Authority has power under section 21 of the National Assistance Act 1948 to make arrangements for care, whereas in Wales it is under section 47. In Northern Ireland an Authority (Trusts) makes placements under Article 15 of the Health and Personal Services Order 1972 [Article 15 makes them responsible for the full cost of accommodation]. In Scotland, an Authority makes arrangements under the Social Work Scotland Act 1968 and is responsible for the full price of accommodation under section 26(2) of the Act.

¹⁴¹ See Annexe A: Authority obligations and guidance.

- 6.45 The Choice Directions guidance also provides that where an Authority places a person in more expensive accommodation it must contract with the care home to pay the full amount. The third party contribution for more expensive accommodation can be paid to the Authority, or direct to the home if everyone agrees to this arrangement, but the Authority continues to be liable for the full amount, including the top up fee.¹⁴²
- 6.46 If the Authority is not involved in the contractual arrangements for payment of the third party top up contribution for an older person in care, it will be unaware of the additional costs (the top up) for which it may become liable if the third party contributor defaults on payment of

¹⁴² The Choice Directions guidance states that 'it is open to them (the Authority) to agree with both the resident and the person in charge of their accommodation that, instead of paying a contribution to the council, the resident may pay the same amount direct to the accommodation, with the council paying the difference. In such case, the third party would also pay the accommodation direct on their behalf of the resident', This is done so under the following Acts:

- Section 26(3A) of the National Assistance Act 1948 (as inserted by the NHS and Community Care Act 1990) English Guidance on National Assistance Act 1948 (Choice of Accommodation) Directions 1992 Section 3.5.2
- Section 26(3A) of the National Assistance Act 1948 (as inserted by the NHS and Community Care Act 1990) Welsh Guidance National Assistance Act 1948 (Choice of Accommodation) Directions 1993 section 4.7
- Section 26 National Assistance Act 1948 (as inserted by the NHS Community Care Act 1990) Guidance on Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993, section 11.4 and guidance issued under the Community Care Act (Scotland) 2002. Community Care Circular CCD 6/7002 addresses topping up fees. It states in section 20 that 'the Authority has discretion to either collect top up payments and contract with the care home for the full amount or to leave the resident and/or third party to make top up payments direct to the care home. This discretion reflects existing variations in practice between local authorities in administration and contracting arrangements for top up payments', and
- Article 36(7) of the Health and Personal Social Services (Northern Ireland) Order 1972 (as inserted by the Health and Personal Social Services (Northern Ireland) Order 1991 that a third party contribution can be paid direct to the home. Departmental Guidance section 18 of Community Care – Choice of Residential and Nursing Home Accommodation.

that top up. The Choice Directions guidance states that the Authority has the right to terminate any such agreement in case of a default by a third party¹⁴³ but it may find that, in some instances, it is in fact unable to do so for a number of reasons such as it is not in the interests of the health and welfare of the resident to be moved to another home.

- 6.47 The implication for the third party contributor, where top ups are not contracted through the Authority, is that there is no system in place to monitor increases in fees being charged. In these circumstances an increase may simply be charged by the care home to the third party rather than in discussion with the third party and the Authority where the Authority should consider whether it should meet the extra costs. The third party contributor therefore loses a significant safeguard in an area where there is the possibility of detriment through increases in fees simply being added to the top up required.
- 6.48 Although the Choice Direction guidance states that the Authority is responsible for the full cost of accommodation and must contract with the care home for the full amount, third parties paying a top up may also be included in a multi party written contract with the Authority and the care home. Alternatively, the third party paying the top up may have a separate contract for that part of the fee. Our UK wide survey of care homes¹⁴⁴ shows that the latter is the arrangement in 39 per cent of those cases where a top up is being paid and fees under this type of contract will usually be paid directly to the care home.
- 6.49 In our view, both multi party contracts involving the third party paying a top up, and contracts between the third party paying a top up and the care home, are consumer contracts. These contracts must therefore meet the requirements of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). As such, if they have any potentially unfair fee related terms, for example terms that are not clear about the scope

¹⁴³ Section 23, Northern Ireland; Section 11.10, Scotland; Section 3.5.8 England; Section 4.13 Wales.

¹⁴⁴ Annexe E: Survey of providers of residential and nursing care homes for older people.

for fees to change, then those terms will not be enforceable against the third party paying the top up.

6.50 However, we believe that under the Choice Direction guidance third parties paying a top up should not be contracting directly with the care home for the payment of top up fees. The Authority should contract with the care home for the full cost of accommodation, including any third party top up contribution. The Authority may then allow the third party to pay his contribution to the care home direct or to pay the Authority, which will then pass on the full fees to the care home, but it is the Authority that should remain contractually liable to the care home for payment of the full costs of the accommodation, including any top up amount, and consequently should be party to any negotiation with the care home in respect of any proposed increases to the top up fee.

6.51 **We therefore recommend that the Department of Health and, as far as it is within their power to do so the devolved administrations, amend relevant legislation and guidance so that Authorities are responsible for contracting and paying for the full costs of Accommodation, including any top up fees. (The Authority will recover the top up fee from the third party).**

Authority contracts with care homes and residents' statement of terms and conditions

6.52 In this section we discuss contracts drawn up between Authorities and care homes, focusing on their impact on Authority funded older people in care.

6.53 Contracts for social care between Authorities and care homes generally fall into one of three groups depending on the flexibility they are designed to offer the contract parties:

- **block contracts** - these are contracts where a fixed level of services is purchased at a fixed price over a set period to an agreed written specification

- **cost and volume contracts** - these contracts combine some of the features of block and spot contracts. A certain number of care home places are guaranteed to be purchased in a block arrangement. If care home places are required over and above the agreed number of block places, then additional places can be purchased on a spot basis, or
- **spot contracts** - these are contracts where services are purchased on a case by case basis. This can be done in one of two ways; by using a unique contract for each individual or by using pre-placement or pre-service agreements where the care home agrees to meet a standard service specification and has standard contract conditions for all its care home places, usually at an agreed price. Our UK wide survey of care homes¹⁴⁵ shows that 80 per cent of homes accepting residents funded by Authorities accept residents on 'spot' contracts.

6.54 Our survey of Authorities¹⁴⁶ has shown that there is a wide variety of contracts in use between Authorities and care homes. The clarity of these contracts is also extremely variable. Many appear to be unnecessarily long and complex, some being in excess of 50 pages and many using technical and legalistic language. We have seen, for example, one Authority's written contract that consists of seven separately bound documents running to about 70 pages of quite detailed information.

6.55 However, in sharp contrast, we have also seen a number of clear and easy to understand written contracts of about 20 pages used by Authorities contracting with care homes for older people which indicates that it is possible for those Authorities using contracts that are long and complex to make them clearer and easier to understand.

6.56 Written contracts drawn up by Authorities with care homes for Authority funded older persons are business to business contracts. As

¹⁴⁵ Annexe E: Survey of providers of residential and nursing care homes for older people.

¹⁴⁶ Annexe B: Survey of Authorities.

such, there is no legal obligation for them to be consumer friendly. Whilst that may be acceptable for most commercial contracts, we do not consider it acceptable in this particular market where the contract relates not to goods but to the health, accommodation and care needs of an older person and where, in accordance with the National Minimum Standards,¹⁴⁷ the older person is entitled to a statement of the home's terms and conditions, or (in Scotland) a written agreement that should include, among other things, details of the fee to be paid, by whom and additional services to be paid for over and above those included in the fees.

- 6.57 If the contract between the Authority and the care home for Authority funded residents is long and complex then it will be difficult, if not impossible, for the resident or their representative to know whether the statement of terms and conditions and service user agreement, to which they are entitled, is an accurate reflection of the level of care that the care home is obliged to provide under that contract terms of the contract between the Authority and the care home. It might therefore be difficult for them to know whether they are in a position to complain if, for example, they are asked after moving into the home to find a third party top up or are asked to pay for additional services.
- 6.58 The OFT therefore considers that Authority contracts with care homes should be drawn up so that they meet the needs not only of the Authority and the care home but also the resident. Authority contracts with care homes for older people should be drawn up in the spirit of openness and fair dealing embodied in the UTCCRs. That means the contracts should be concise and written in plain English, avoiding unnecessary technical language and legal jargon.
- 6.59 The legal status of the statement of terms and conditions or written agreement (in Scotland) provided to Authority funded residents is unclear and it is not certain how a court would view it should the resident seek to enforce it through the Courts . However, the Authority will have legal obligations to the resident and the resident will have

¹⁴⁷ Annexe J: Regulatory Framework.

access to alternative redress mechanisms as detailed in Chapter 7 of this report should the care home fail to provide the service that it has contracted with the Authority to provide.

- 6.60 If, however, Authority funded residents or their representatives find that their complaint or difficulty has not been resolved despite exhausting the redress mechanisms available through the care home and the Authority, it is possible that, even where residents are not party to the contract between the care home and the Authority they may have rights under it, or at least the parts of it that are relevant to them, through the courts under the Contracts (Rights of Third Parties) Act 1999.¹⁴⁸ Residents would also have a right to redress through the courts should the care home fail to meet its duty of care to the resident.
- 6.61 Our examination of written contracts provided through our survey of Authorities,¹⁴⁹ shows that the majority of Authorities' contracts are drawn up as multi party contracts between the Authority, the care home and the resident paying a contribution and/or third party paying a top up.
- 6.62 However, despite the resident and/or third party paying a top up being a party to these contracts, many of them are still written as complex business to business contracts using technical jargon and language that is difficult to understand. This is not acceptable as these are, in our

¹⁴⁸ The Contracts (Rights of Third Parties) Act 1999 extends to England, Wales, Northern Ireland (with some exceptions) but not Scotland. In Scotland the common law position will apply. The Act essentially allows a third party, who is not party to the contract, to enforce a term of the contract if either the contract expressly provides for it, or the term confers a benefit on him. The third party must, however, be expressly identified in the contract by name, as a member of a class or as answering a particular description.

¹⁴⁹ Annexe B: Survey of Authorities.

view, consumer contracts and, in the very least, terms that are relevant to the consumer must therefore meet the requirements of fairness and plain intelligible language required by the UTCCRs.¹⁵⁰

- 6.63 Our UK wide survey of care homes¹⁵¹ also indicates that multi party contracts are the most common type of contract for Authority funded residents, being used in 56 per cent of cases.
- 6.64 However, our assessment of fee related terms in multi party contracts between Authorities, care homes and residents, their representatives or third parties paying a top up, shows that more often than not, these contracts contain what are, in our view, potentially unfair fee related terms under the UTCCRs.
- 6.65 The OFT is aware that work is currently being carried out by the Department of Health¹⁵² in relation to English Authorities' written contracts with care homes. It is working on 'Guidelines' for Authorities on creating clear and fair written contracts. These guidelines will set out the core principles of fair contracting and provide examples of terms that should be considered for use by Authorities when drawing up a contract with a care home for older persons.
- 6.66 In Northern Ireland, the difficulties with the variety and complexity of contracts is not so pronounced as there is already one agreed contract for each of the four Regional Health Boards and this is adopted by the

¹⁵⁰ The Unfair Terms in Consumer Contracts Regulations came into force in 1999. They superseded the 1994 regulations and protect consumers against unfair standard terms in contracts they make with business. Regulation 5(1) states that a standard term is unfair 'if contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer'. Regulation 7 requires that any written term is to be expressed in plain, intelligible language.

¹⁵¹ Annexe E: Survey of providers of residential and nursing care homes for older people.

¹⁵² This work is being carried out by the Change Agent Team which since April 2005 has been part of the larger Care Services Improvement Programme.

majority of the Health Trusts within that Board. However, a HPSS¹⁵³ regional working group is currently examining issues such as consistency and transparency in service specifications and contracts for residential and nursing home care placements with a view to improving the contracts.

- 6.67 In Scotland a scoping group has been set up that is looking at the potential to develop a service of core contracts for care homes.
- 6.68 **The OFT welcomes these initiatives and is willing to support and contribute to the guidance and model terms for Authority contracts with care homes that is currently being developed by the Department of Health and by the devolved administrations.**

Contracts between self funded residents and/or their representatives and care homes

- 6.69 In this section we discuss whether written consumer contracts, between care home and self funded older people, and/or their representatives, are clear and intelligible and whether there is a problem with potentially unfair fee related terms.
- 6.70 Standard contracts between care homes and self funded residents and/or their representatives (including separate contracts for the provision of top up fees paid by a third party) are consumer contracts and must meet the requirements of the UTCCRs. In this section we therefore examine

¹⁵³ HPSS stands for the Health and Personal Social Services. Northern Ireland has an integrated service combining the health services and personal social services under a unified structure comprising four Health and Social Services Boards that commission services and under the Boards the HSS Trusts that deliver those services within Board areas. HPSS therefore refers to the totality of the integrated service in Northern Ireland. There are 11 of these Trusts that provide community and social care services in a range of local configurations that sometimes also include local hospitals.

whether fee related terms in care homes consumer contracts are clear and fair.¹⁵⁴

Detriment caused by potentially unfair fee related contract terms

- 6.71 The needs of older people who are resident in a care home may well change during the time that they are in the home. The care home may also legitimately need to make changes to the provision of services and there will often be cost implications in doing this. Fee related contract terms may therefore legitimately be subject to variation throughout the duration of the contract. However, it is vital that terms dealing with fee variation are clear and fair so that the people paying the fees know, as far as possible, what to expect and understand the reasons for any change to the fees they are expected to pay.
- 6.72 Complaints received by the OFT suggest that terms about fees and, in particular, post contractual changes to fees are one of the causes of greatest concern among older persons in care homes and their representatives.
- 6.73 There are two main aspects of terms relating to fees that have potential to cause considerable detriment to older people in care homes and/or their representatives and third parties paying top ups:
- lack of clarity about the ongoing financial liabilities of residents and/or their representatives, and any third party paying top up fees, and
 - potentially unfair price variation clauses and fee review terms.
- 6.74 It is vital to ensure clarity about fees. The consumer must be fully aware of all the costs of the contract before entering into that contract. Whilst terms dealing with the subject matter and the price cannot be considered

¹⁵⁴ We have not considered other terms in the contracts and do not therefore comment on the fairness of those terms.

for fairness under the UTCCRs¹⁵⁵ provided they are in plain and intelligible language, where the language is not plain and intelligible, that is it can be easily understood by an average consumer, enforcement bodies¹⁵⁶ can take action to have them revised or to seek an injunction in the courts to prevent them being used.¹⁵⁷

- 6.75 Price variation clauses and fee review terms are usually standard terms in a care home agreement. The OFT does not object to these terms in principle, but we are concerned where terms allow the care home to increase fees arbitrarily, ie: without reference to clear and objective criteria.
- 6.76 The OFT has seen, for example, standard terms in contracts between care homes and consumers which say simply that 'fees may be reviewed from time to time'. This type of term is, in the OFT's view, potentially unfair as it allows the care home to increase fees at any time and for any reason. The OFT would expect the care home to revise the term to indicate specific circumstances when the fees may be reviewed. The reasons themselves would then be subject to scrutiny for fairness, an acceptable example being in circumstances where the resident's care needs have changed.
- 6.77 Notice periods and a right to exit the contract without penalty are generally a key element to the fairness of standard written contracts. However, as discussed in Chapter 5, our research shows that the care homes market has a high proportion of consumers who do not move from their original care home placement for a variety of reasons. It is therefore extremely important, in this market, that the written contract

¹⁵⁵ Regulation 6(2) of the UTCCRs provides that terms that set the price or describe the main subject matter of the contract, often referred to as 'core terms,' are exempt from the test for fairness in the UTCCRs, provided they are in plain, intelligible language.

¹⁵⁶ The Office of Fair Trading, local Trading Standards Services and the Consumer's Association, among others, can take action under the Unfair Terms in Consumer Contracts Regulations 1999.

¹⁵⁷ Note that only a court can determine that a term is unfair. Unfair terms are not binding on the consumer and cannot be relied on by the business even if they appear in the contract.

sets out current fees and any price variation clauses clearly and legibly and that consumers are given the opportunity to read and understand them before agreeing to them.

6.78 However, it must also be recognised that whilst having terms that meet the test of fairness under the UTCCRs can help to ensure that older people in care homes and their representatives are aware of the circumstances in which fees may be increased and that those circumstances are reasonable, it is not a means to prevent all price increases. Some older people, and their representatives, will therefore still be faced with difficult decisions about whether to pay the increase, seek redress against the home if they consider it appropriate or to move.

6.79 However, having fair and transparent fee related terms available prior to entering into a written contract does assist users in making an informed choice in the first instance. Fair variation clauses, that is those that set out clearly when, and in what circumstances, fees may be increased and subject to those circumstances being reasonable, could also play a role in limiting the care homes' ability to introduce sporadic or unwarranted price increases. This would reduce the potential for older people in care homes, or third party contributors, being required to pay more without clear justification or the resident having to move against their wishes or to the detriment of their health.

6.80 Through our research, we obtained copies of current written consumer contracts used by 152 care homes for self funding older people. Our assessment of these contracts indicates that:

- 66 per cent have one or more fee related terms that are, in our view, potentially unfair
- 28 per cent have fee related terms that are, in our view, fair, and
- six per cent have no fee related terms.

6.81 The main reasons for the potential unfairness, of the fee related terms assessed, were lack of valid reasons given for the right to increase fees or too much discretion available to the care home for fee reviews, creating a significant imbalance in the rights and obligations of the

parties to the detriment of the older person, or representative, paying the fees with the use of phrases such as 'from time to time' and 'at any time' being common. There is also often a lack of detail as to what will happen in respect of fees if the resident's financial circumstances or care needs change.

6.82 Examples of terms that we have seen that we consider to be potentially unfair under the UTCCRs are set out in Figure 6.2.

Figure 6.2 – Examples of unfair terms under the UTCCRs

'The terms quoted are those prevailing on the date of the agreement and are in excess of charges currently payable by existing residents. Charges reflect costs at such date and increases will in future be applied on a % basis to the rate of charge in force for each occupancy immediately prior to such increase'.

In our view, the term is **unclear** as it not written in plain and intelligible language¹⁵⁸ making it difficult, if not impossible, for the average consumer to work out the mechanism for fee increases. It is therefore potentially *unfair*, as it cannot be readily understood but also it is potentially *unfair* because there is no indication of] reasons for or timing of increases.

'Fees will be reviewed annually or at lesser intervals if so determined by the Company. Any increase in the fee will usually be as a result of inflation, for the provision of additional services deemed necessary or as a result of statutory provisions coming into force after the date hereof. The date of introduction of revised fees is at the absolute discretion of the Company. Residents will be given one month's notice of changes, in writing'.

¹⁵⁸ Regulation 7 of the UTCCRs provides that terms are potentially unfair if they are not drafted in plain and intelligible language.

In our view, the term is potentially **unfair** as use of the word 'usually' opens up the possibility of increases for any other reason and the timing is at the absolute discretion of the care home giving scope for them to introduce a fee increase at any time for any reason.

'The Accommodation Charge shall be a week to be paid a month in advance. The Accommodation charge will cover the provision of all services enumerated in Clause 1 hereof. The Accommodation Charge shall remain unaltered until the Proprietors shall give notice to the Person or People Responsible for Payment of any variation'.

In our view, the term is **perfectly clear** but is potentially **unfair** as it provides absolute rights to the care home to change fees at any time, for any reason with no indication of the notice period for such increases.

- 6.83 Residents are left vulnerable in their dealings with care homes if they have problems with increases in fees and the home seeks to rely on potentially unfair terms to their own advantage. Whilst we do not have complaints about the potentially unfair terms identified in our analysis being used to the detriment of residents in the care homes using those contracts, we are concerned that so many consumer contracts do not appear to meet the requirements of the UTCCRs and that those terms may be used to the detriment of the older people in care homes.
- 6.84 We also have examples of case studies from charities representing older people in care and letters from representatives of older people in care that tell us there are occasions when care homes have relied on potentially unfair fee related terms in their contracts. Most commonly these complaints are about fee increases that are requested without clearly identifiable reasons for the increase, making it impossible for the older person or their representative to determine whether the variation to the fees payable under the written contract are in fact reasonable or acceptable.
- 6.85 Of 28 letters received by OFT, directly in respect of this study, between July and October 2004, 10 are about problems experienced with contract terms relating to fees. These include four where there was a fee increase with no reasons given, including in Figure 6.3.

Figure 6.3 – Examples from letters received by the OFT in relation to fee increases with no reason given

An older person's relative could find no clause in the care home's written contract relating to the reasons or method of calculating increases in the care home's fee or notice period that would be given of such changes coming into effect. The contract term stated merely that the care home's tariff changes would be 'subject to annual review in April and further review if the care required changed significantly. Any such changes would be notified to residents'.

The relative says that when he asked the care home about this prior to her father becoming a resident in the care home he was told by them that increases would generally be in line with increases in inflation. However, it appears this has not been the case, as each year for the past four years, the annual increase has been between six and 9.7 per cent. A one month notice period has been given each year but among the reasons given for increases, some appear to be simply repeated year on year and others are specific to increased dependency of some residents which are not necessarily appropriate for an annual review applied to all residents.

An older person's representative received a letter from the care home where the older person was a resident stating that due to an oversight she had not been told of a substantial increase in fees several months earlier for that particular year. Payment was demanded but no reasons for the increase were given. This person had also received letters each previous year stating 'I wish to advise you that with effect from [date] the fees for the above named client will increase to [£] per week'. No reasons for the increase were given in any of these letters.

The written contract term states only that fees would remain unchanged unless two weeks notice was given. No reasons for the possible increase were set out in the contract.

The written contract also has a term stating that amendments take place following consultation with clients, care manager, next of kin and a company representative. No such consultation took place in relation to any of the fee increases required by the care home.

OFT enforcement activity

- 6.86 Following receipt of complaints about potentially unfair terms in certain care home contracts, the OFT has examined written contracts for privately funded residents used by those care homes. Most of these consumer contracts contained fee related terms that we consider to be potentially unfair under the UTCCRs. The OFT has therefore engaged in negotiations with a number of care homes to secure fair contract terms. We have concluded 10 of these cases, including with three of the largest providers in the UK, and we published these cases in March 2005.¹⁵⁹ Details of these, and other cases as they are concluded, will also be published in future editions of the OFT's Unfair Terms Bulletins which are available on the OFT website.¹⁶⁰
- 6.87 The OFT also produced 'Guidance on Unfair Terms in Care Homes Contracts' in October 2003.¹⁶¹ This publication was issued to Local Authority Trading Standards Services and various interested parties such as Age Concern and Help the Aged to aid them in their advice work. However, it did not go out to the care home providers themselves.
- 6.88 Our assessment of written contracts used by care homes, received through our research in this study, shows that 66 per cent of consumer contracts used by care homes, for self funded residents, contain potentially unfair fee related terms. It is therefore apparent that more needs to be done to improve the fairness of such contracts.

¹⁵⁹ Press Notice 51/05. www.offt.gov.uk/newsandpublications/pressreleases/2005.htm

¹⁶⁰ www.offt.gov.uk/newsandpublications/leaflet+ordering.htm most bulletins can also be ordered free of charge from EC Logistics, Swallowfield Way, Hayes, Middlesex UB3 1DQ, tel: 0800 389 3158.

¹⁶¹ In October 2003, following concerns raised by Age Concern and due to the particular vulnerability of consumers in this sector, the OFT published guidance on unfair terms in care homes contracts for use by advisers and carers. OFT also published a consumer leaflet advising those seeking a care home place what to look out for in care home contract terms - OFT 635, Guidance and care homes leaflet. Both available at www.offt.gov.uk

- 6.89 **We are therefore alerting care homes to our general Guidance on Unfair Terms in Consumer Contracts and also our general Guidance on Unfair Terms in Care Home Contracts.**
- 6.90 The OFT, and other qualifying bodies,¹⁶² can also take enforcement action against any care home whose written contract contains potentially unfair standard terms. As detailed above, the OFT has already taken enforcement action in a number of cases, entering into negotiations and securing undertakings¹⁶³ from a number of providers.
- 6.91 **We will continue to take enforcement action against potentially unfair terms in care home contracts where appropriate.**

Self regulation

- 6.92 Self Regulation is an effective means of achieving compliance with regulations. Trade associations can, for example, ensure that members comply with consumer legislation by introducing, and requiring members to sign up to, codes of practice. One aspect of the code of practice can be model contracts or terms and conditions.
- 6.93 In our experience, model contracts, or terms and conditions, are an effective and efficient means of improving consumer contracts generally across markets.
- 6.94 During the course of this study, we have met with a number of trade associations representing care homes, all of whom have so far been receptive to the benefits of developing model contracts or terms for their members.¹⁶⁴

¹⁶² Qualifying bodies with powers to take action under the UTCCRs are defined in Schedule 1 to UTCCRs 1999.

¹⁶³ Undertakings are accepted in lieu of injunctive action under Regulation 10(3) of the Unfair Terms in Consumer Contracts Regulations 1999.

¹⁶⁴ We have discussed model terms with the English Community Care Association, Registered Nursing Home Association and Care Forum Wales.

6.95 **The OFT would therefore encourage trade associations for care homes to draw up model consumer contracts or model terms for such contracts so that their members can adopt these. We would be happy to work with them to achieve this aim.**

Conclusion

6.96 Older people living in care homes are often vulnerable. We therefore wanted to find out if they are protected by sufficient contractual safeguards.

6.97 We found that:

- many consumers did not know whether they had a written contract and could not know therefore whether it met their needs
- only about half of consumers recall either themselves or their family receiving a written contract prior to making the decision to move into a care home
- certain business contracts are lengthy and complex although they are a key element to fully understanding the level and terms of care that should be provided to the older person
- there is a lack of understanding around written contracts for payment of top up fees by third party contributors, and
- many of the fee related terms we analysed were potentially unfair under the UTCCRs.

6.98 **We have therefore taken, or will be taking, action as outlined below to address these issues:**

- **input to guidance/model terms being developed by the Department of Health and devolved administrations for Authority contracts**

- **the OFT to work with trade associations to encourage and support them in developing model terms and model contracts for their members**
- **signpost OFT guidance on unfair terms regulations to care homes, and**
- **continue to take enforcement action in cases where there is clear evidence of significant consumer detriment.**

6.99 We also recommend that:

- **care homes for older people ensure urgently that all their residents are provided with written contracts or statements of terms and that care home regulators and inspectorates monitor this to ensure that significant improvements are delivered in the shortest possible time, and**
- **the Department of Health and, as far as it is within their power to do so, the devolved administrations, amend relevant legislation and guidance so that Authorities are responsible for contracting and paying for the full costs of accommodation, including any top up fees. (The Authority will recover the top up fee from the third party).**

7 ACCESSING COMPLAINTS PROCEDURE

Summary

- 7.1 This chapter considers whether older people in care homes face difficulties in accessing complaints procedures in order to express, and resolve, causes of dissatisfaction. This was raised as a major concern by many of the organisations that we consulted during the course of our study.
- 7.2 Our survey of older people in care homes¹⁶⁵ found that satisfaction overall was extremely high, with 79 per cent saying they would definitely recommend their care home to a friend. Complaints data from the care home regulators, where available, also do not suggest high levels of dissatisfaction.
- 7.3 A minority of people though do express dissatisfaction and make complaints. One in five long term residents¹⁶⁶ we surveyed said they had been dissatisfied at some time and then subsequently made a complaint. We also found that a small proportion, eight per cent, said that despite being dissatisfied they had decided not to make a complaint.
- 7.4 However, consumer groups, charities and other organisations we consulted expressed concerns that the vulnerability of older people in care homes means that many are unable or unwilling to complain when things go wrong. These concerns were also apparent in the correspondence we received from the public.
- 7.5 If this view is right, the complaints data may be understating the true extent of the situation. Any reluctance to complain may stem from a variety of factors, including low awareness of complaints procedures, a lack of support for older people making a complaint, and concerns about the effect on relationships with the care home.

¹⁶⁵ Annexe F: Survey of older people in care homes.

¹⁶⁶ These are people who had been in their care home for one year or more.

- 7.6 While we cannot be sure of the true scale of the problems experienced by older people in care homes, or the obstacles they face in accessing complaints procedures, it is clear that the ability to resolve complaints successfully is a vital safeguard, carrying benefits for all involved.
- 7.7 We know that it is relatively rare for an older person to choose to leave their care home, as set out in Chapter 5.¹⁶⁷ As most complaints relate to issues that affect the older person's quality of life on a day to day basis, such as quality of care and food, or the actions of other residents, problems need to be addressed quickly and effectively without requiring the resident to leave the home.
- 7.8 In addition to the residents of care homes for older people, care home providers could also benefit by dealing with complaints effectively and resolving problems at an early stage.
- 7.9 In many sectors, the collection and analysis of complaints data is an important tool in rating customer satisfaction and subsequently in making improvements to the quality of service provided. Care homes could use the information in this way and also as an indication of the standard of services they provide in order to help attract new residents.
- 7.10 We believe it is essential that all older people in care homes and their families have access to effective complaints procedures and can, if necessary, obtain redress. **We therefore make recommendations to the care home regulators and central government in the following areas, to improve the effectiveness of complaints procedures:**
- **production of a document by care home regulators that brings together the various avenues for complaints**
 - **pilot studies of advocacy services for older people to measure the benefits**
 - **improving the collection of data on complaints, and**

¹⁶⁷ Chapter 5, paragraphs 5.16 – 5.19.

- **publishing the outcomes of substantiated non-trivial complaints.**

7.11 This chapter examines the evidence on levels of complaints and dissatisfaction in the care homes sector, and discusses the barriers to complaining faced by older people and their representatives. It concludes with a set of recommendations designed to raise awareness of the different avenues for complaints, provide better support for older people wishing to make a complaint, and improve the collection and analysis of complaints data.

Complaints data

7.12 We collected data on the levels of dissatisfaction and complaints in the care homes market from our own surveys of older people resident in care homes and of care homes themselves. We also looked at the complaints information collected by the care home regulators and Authorities.

7.13 These data were supplemented by the large number of comments on this issue that we received from the various consumer groups, charities and other organisations that we consulted during our study, and by correspondence from the public.

7.14 The next sections bring together the evidence from each of these sources to build a picture of the nature and levels of complaints and dissatisfaction. This is followed by a discussion of the limitations of the data currently available.

Complaints and dissatisfaction

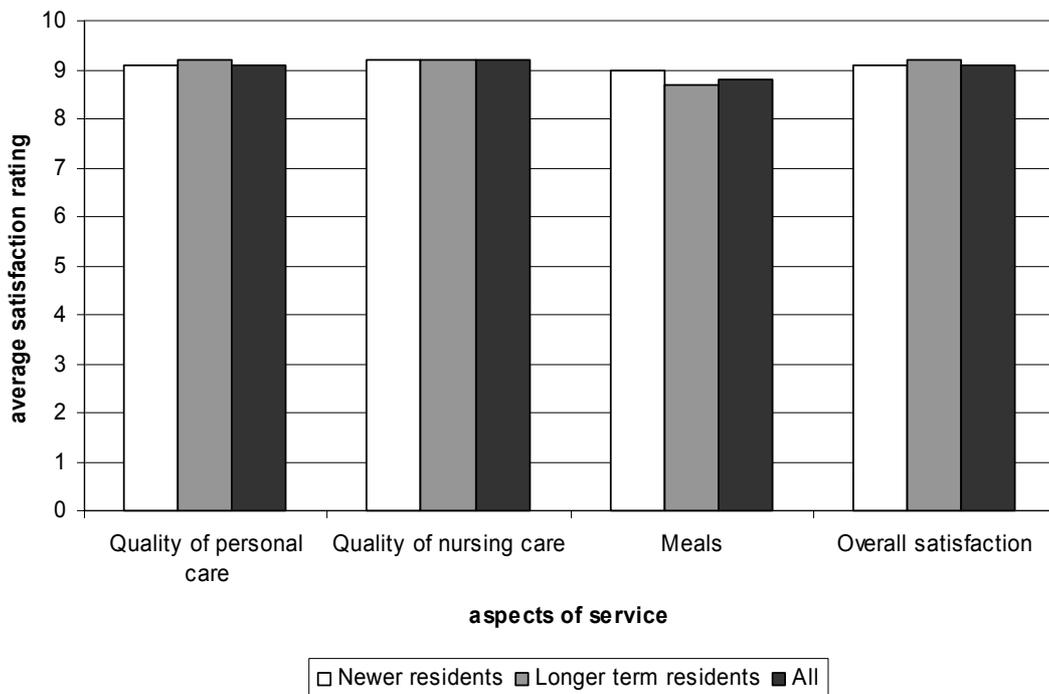
7.15 Our survey of care home residents found high levels of satisfaction, with the vast majority of people being happy with their current home.¹⁶⁸ Of

¹⁶⁸ It should be noted that after making contact with 736 care homes, around 460 chose not to participate in our survey. Many explained that this was due to their residents suffering from some form of mental or physical impairment which would make the interviews impractical. However, a proportion did not give a specific reason for not taking part. While we have sought to have a representative, random sample of care homes, there is the possibility that the homes that chose to participate were more confident that they are providing a high level of service which would be reflected in residents' responses.

those interviewed, 54 per cent gave an overall satisfaction score of '10 out of 10'. Those scoring their home highly said that it was comfortable, they were happy and the staff were kind. Ninety five per cent of all residents said they would recommend their care home to a friend either definitely or possibly.¹⁶⁹

7.16 However, 28 per cent of long term residents said they had been dissatisfied about something in the past; twenty per cent had gone on to make a complaint with the remaining eight per cent choosing not to. A slightly higher proportion (29 per cent) of residents who had moved from another care home had made a complaint at some time.

Chart 7.1 - Average satisfaction rating of various aspects of care and nursing home services



Source: OFT survey of older people in care homes

¹⁶⁹ Seventy nine per cent said they would 'definitely' recommend their home to a friend and 16 per cent said they would 'possibly' do so.

- 7.17 Care homes are required to have internal complaints procedures in place and to record details of the complaints they receive.¹⁷⁰ In addition, these requirements are built upon in the minimum standards relevant to each country.¹⁷¹ However, there is no central source of aggregated data on the total number of complaints received by all care homes.
- 7.18 As a result, we asked in our survey of care home providers how many complaints care homes had received in the past year.¹⁷² On average, individual care homes said they received a total of four complaints in the last year, with one in three claiming not to have received any complaints in the previous year. Of the homes that had received at least one complaint, 61 per cent said they had been able to resolve all complaints without any involvement from an external party, for example the care home regulator.
- 7.19 Table 7.1 gives a summary of these data. Taken together with the findings from our consumer survey, it indicates relatively low levels of complaints, although there does appear to be a significant minority of residents (28 per cent) who have had a reason to be dissatisfied with their care home.

¹⁷⁰ The legislation under which this requirement is made varies according to each country. Annexe J sets out the legislation in detail.

¹⁷¹ In England these are the 'Department of Health Care Homes for Older People National Minimum Standards 2003', in Scotland, they are the 'National Care Standards; Care homes for older people', 2003, and in Wales, the 'National Minimum Standards for Care Homes for Older People'. The Department of Health Social Services and Public Safety in Northern Ireland is currently working on new draft standards which will apply across NI once in force. At present, this is scheduled for implementation during 2005.

¹⁷² Annexe E: Survey of providers of residential and nursing care homes for older people.

Table 7.1 - Complaints received by care homes in the previous year

| | |
|---|-----|
| Average number of complaints per home | 4.0 |
| Average number of complaints per home requiring outside involvement | 0.6 |
| Proportion of homes that received no complaints | 31% |
| Proportion of homes that received no complaints requiring outside involvement | 61% |
| Homes unaware of the number of complaints they received | 9% |

Source: OFT business survey

7.20 Where we were able to get complaints data from the care home regulators, this also pointed to low numbers of complaints. For example, in 2003/4 the Scottish Commission for the Regulation of Care (the Care Commission) investigated 509 cases¹⁷³ which represent less than 1.4 per cent of registered places in care homes for older people in Scotland.¹⁷⁴ During the same period, the Care Standards Inspectorate for Wales (CSIW) reported that, although it experienced a 16 per cent increase in the volume of complaints it dealt with in 2003/4, this amounted to just 165 cases.¹⁷⁵

7.21 Authorities may also receive complaints about care homes. For residents who have their care paid for by the Authority, the contract for care services usually exists between the care home and the Authority. When receiving funding from an Authority, older people and their representatives may therefore choose to ask the Authority to investigate problems experienced with the care provided by the care home.

¹⁷³ Nearly 64 per cent of these complaints were upheld.

¹⁷⁴ This is based on 37,977 places as reported in the '*September 2004 Scottish Care Homes Census*', Scottish Executive.

¹⁷⁵ *Annual Report, 2003-2004*, October 2004, Care Standards Inspectorate for Wales.

7.22 We asked all Authorities in the UK how many complaints relating to care homes for older people they receive annually. Some Authorities who responded to our survey could only provide an estimate rather than an exact figure, and around 60 per cent did not provide any data. Where information was provided, the number of complaints ranged between 0 and 150, with the average being 15.

7.23 Overall, the levels of complaints and dissatisfaction about care homes appear to be very low, although a minority of people may nevertheless be unhappy, and the data are far from perfect. There may also be barriers to complaining or expressing dissatisfaction (see paragraphs 7.25-7.46). The next section looks at the nature of the complaints made.

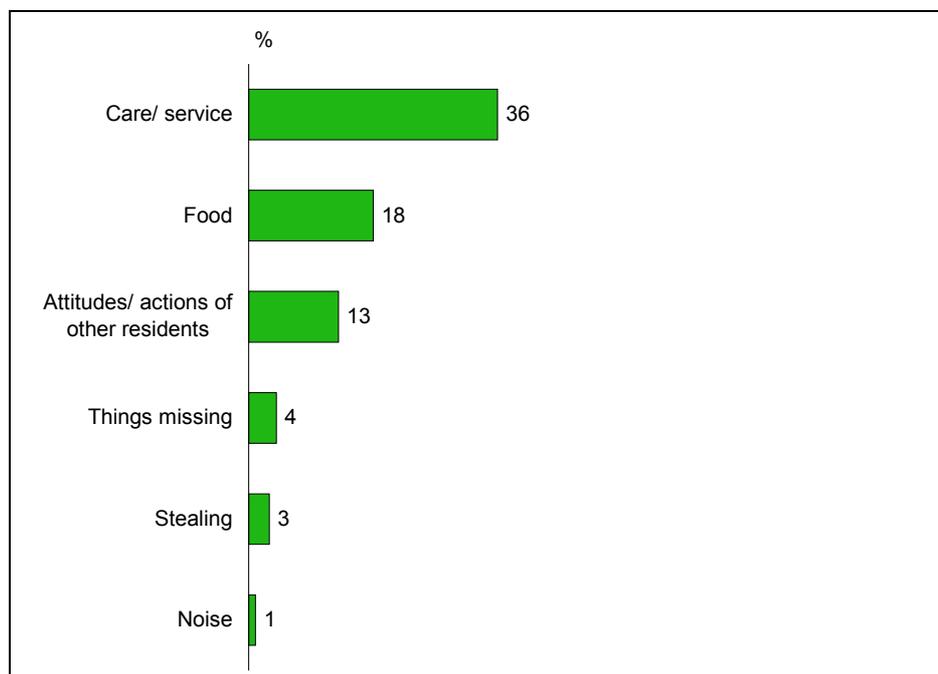
Nature of complaints

7.24 The residents in our survey¹⁷⁶ who told us that they had complained or wanted to complain had a range of issues causing their dissatisfaction, with the most common being complaints about their care and the services provided by the care home. Examples of complaints frequently given regarding the care service included staff not answering buzzers, or not coming quickly enough to take people to the toilet, particularly at night.

7.25 Others related to the standard of the food, and the attitude or actions of other residents. While we were unable to quantify how serious individual complaints were, or the number that were substantiated, these issues will clearly have an impact on the individual's quality of life on a daily basis. Chart 7.2 summarises the reasons for complaints given in our survey of residents.

¹⁷⁶ Annexe F: Survey of older people in care homes.

Chart 7.2 - Most commonly mentioned complaints¹⁷⁷



Source: OFT survey of older people in care homes.¹⁷⁸

7.26 The last two sections have drawn a picture of the levels and nature of complaints and dissatisfaction. It appears that relatively few complaints are made and satisfaction levels are generally high, although the minority of people who do have cause for dissatisfaction should not be overlooked. However, we found it difficult to build up a full picture of the total level of complaints due to shortcomings in the availability and quality of the existing data.

7.27 The regulators that are responsible for inspecting care homes collect complaints data but the data that are currently available vary in their

¹⁷⁷ Other issues were mentioned by 14 per cent of people and a further 14 per cent would either not discuss the matter or were unable to remember the cause.

¹⁷⁸ Excludes a variety of issues mentioned by one complainant only, and some cases where the interviewee could not remember or did not state the reason.

nature and the level of detail. For example, some include complaints about all types of care home in a single category, ie: aggregating complaints about care homes for older people with complaints about care homes for children or those with a mental illness. This makes it impossible to know the total number of complaints about care homes for older people.

7.28 In addition, the data that care home regulators do hold are often not analysed in a way that would enable the regulator or government to identify any problems or trends. For example, in some cases, the care home regulators were unable to tell us the reasons for care home closures. The lack of analysis removes an opportunity to monitor and discover any systemic problems.

7.29 The data on complaints may also understate the true extent of dissatisfaction if there are significant barriers to complaining or otherwise expressing dissatisfaction. This issue is dealt with in the next section.

Barriers to complaining

7.30 In our survey of older people resident in care homes, a small proportion (eight per cent) said that they had chosen not to make a complaint even though they had cause for dissatisfaction.¹⁷⁹ We also received many comments from charities and consumer groups stating that, in many cases, older people and their families are reluctant to make a complaint for a number of reasons. For example, the Relatives and Residents Association¹⁸⁰ told us:

¹⁷⁹ While this was the average, the figure varied considerably by region. For example, just three per cent of people in Wales said they had decided not to make a complaint compared to 19 per cent in the Midlands.

¹⁸⁰ The Relatives and Residents Association is an independent organisation with charitable status. It is made up of a network of 21 groups across England, with one in Northern Ireland, and runs a helpline providing people with information on all aspects of long terms care. See their website www.relres.org for more information.

'The problems people have in making complaints against those who provide their care have been a constant feature of the calls we receive from relatives of people living in care homes'.

7.31 The views of these organisations were largely supported by correspondence we received from the public. One consumer told us:

'We had reason to complain ... at various times during my father-in-law's deteriorating illness but we didn't. We didn't have the time, energy or belief that we would get any redress'.

7.32 Possible reasons underlying a reluctance to complain include:

- poor awareness of rights and complaints procedures
- lack of support available to make a complaint, and
- concerns about the effect of complaining on relationships with care home staff and the possibility of repercussions, including the resident being asked to leave, poor care or abuse.

7.33 We look at each of these in turn.

Awareness of rights and complaints procedures

7.34 Complaint levels may in part be determined by people's lack of awareness of their rights and the correct procedures to use. Although minimum standards and regulations require that care homes provide written information to older people¹⁸¹ and any person acting on their behalf on their complaint procedures at the point of moving into the

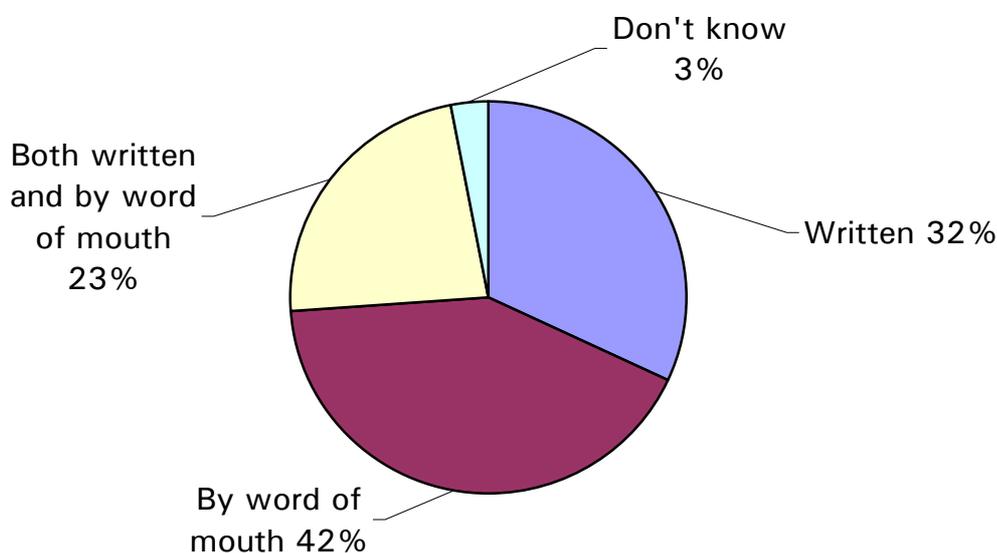
¹⁸¹ England: Care Homes Regulations 2001, Part II, section 22, National Minimum Standards 16-18; Wales: The Care Homes (Wales) Regulations 2002 Part III, section 23, National Minimum Standards for Care Homes for Older People, section 7, standard 31; Scotland: Regulation of Care (Requirements as to Care Services) (Scotland) (Regulations) 2002, section 25, National Care Standards (Care Homes for Older People) Standard 1 & 11; Northern Ireland Health and Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, Part VI, Articles 23, 38-44 Minimum Standards (Consultation document proposed in Standard 9).

home, and also how to refer a complaint to the appropriate regulator, our consumer survey found that not all homes are fulfilling this requirement.

7.35 Over half the people surveyed (52 per cent) said they had not been given any information about their care home's complaints procedure and of those who said that they had, 42 per cent were only provided with oral guidance.¹⁸²

7.36 Chart 7.3 illustrates the way in which complaints information was communicated to older people and their representatives.

Chart 7.3 The form in which guidance on complaints was given



Source: OFT survey of older people in care homes

7.37 A survey by the Care Commission in 2003/4 found that just over half of care home residents were aware of a procedure for dealing with complaints in the home, but 36 per cent were not.¹⁸³ They also found that 67 per cent of people who were given any guidance on complaints

¹⁸² Our researchers noted that complaints procedures were posted on display in two out of five homes (37 per cent).

¹⁸³ 'A Review of the Quality of Care Homes in Scotland', Care Commission, 2004.

procedures were not informed of how the care home would deal with the complaints it received.

- 7.38 These findings are of concern as they show that a large proportion of older people in care homes may not have a reasonable knowledge of how to complain when dissatisfied. Just under half of those we surveyed were not given written information. Many older people in care homes are affected by some form of mental impairment or memory loss which may make remembering complex information difficult. It is important that clear and accessible written guidance is given to all older people and their representatives when entering a care home.

Lack of support

- 7.39 Many older people may need help and support in making a complaint. Some may need encouragement to voice a concern at all, for example if they are reluctant to add to the burden on busy staff. Some of the older people we surveyed said they had not complained because they 'didn't want to make a fuss'. These views are also reflected in the Care Commission's report referred to in paragraph 7.37¹⁸⁴ which found that, although many people felt able to speak up and discuss their views openly, there was evidence that residents 'tried not to be a bother'.
- 7.40 Others may need help to navigate the complaints procedure once they have decided to make a complaint. One person, whose mother was in a care home, told us:

'My mother could not have done this for herself and when it comes to my turn, heaven help me; I do not have younger relatives and will have to negotiate the systems for myself'.

- 7.41 As this quote highlights, many older people will have friends or relatives who can offer them some support. However, a major concern presented

¹⁸⁴ Ibid.

to us by all groups we consulted is that not all older people enjoy the support of family or friends.

- 7.42 Making a complaint without support may be difficult for some older people. Deteriorating mental and/or physical health, combined with a lack of support, can result in an older person being put in a vulnerable position where it is difficult to voice their concerns or act independently. A care home resident who wrote to us in 2004 explained that his fellow residents had difficulties with everyday communication and so were unlikely to make a complaint. In his letter he wrote:

'The other 15 residents in my unit are incapable of really complaining about here. In fact, there is not one with whom I can hold a conversation'.

- 7.43 We believe that it is important for older people in care homes, and their families or other representatives, to have access to independent support to allow them to voice their opinions and ensure they can access complaints procedures if something goes wrong.

Fear of repercussions

- 7.44 Several organisations we consulted during our study¹⁸⁵ said that many older people and their relatives are reluctant to complain because they fear there may be consequences as a result. For example, the Relatives Association in Northern Ireland told us:

'Many relatives and residents are reluctant to raise issues or complain because they are concerned that it will result in a breakdown of relationships with the staff and management in the home'.

- 7.45 We also had letters from the public that supported this view. Comments included:

¹⁸⁵ These included the groups and charities that are members of SPAIN such as Age Concern and Help the Aged.

'I was cautious about complaining about anything in the home as my father was dependent on the staff for his care'.

'I felt unable to make too many comments as I felt there might be repercussions from a few of the staff.'

7.46 Evidence also exists that some people make a complaint but are then unwilling to take their case further if they are unable to remain anonymous. For example, in 2002, Age Concern contacted around 60 people who had made a complaint about a care home and asked for their permission to forward details of their cases to the OFT. Of these, only 17 agreed and eight were conditional on having their anonymity guaranteed.

7.47 The underlying fear appears to be that complaining might result in staff in the care home providing a lower quality of care, or that the home might ask the resident to leave. Age Concern told us that:

'One reason that residents and their relatives are afraid to raise concerns is that they have little security of tenure and can be given notice at any time'.

7.48 Similarly, one consumer described her experience when she tried to get a problem resolved, commenting:

'I did keep on complaining but was told not that they would up their standard, but for me to move my mother!'

7.49 Scottish groups highlighted the threat of being asked to leave a care home as a particular issue as residents in care homes in Scotland do not have a right of tenure. They believe that this has the effect of dissuading some people from complaining, as they do not want to leave their existing care home, thereby artificially depressing the number of complaints made.

7.50 This concern may also be heightened where the resident needs more specialised care, for which there are relatively fewer care home places available. From a survey of their members, the Alzheimer's Society found that 'Carers were acutely aware of the shortage of alternative beds available and did not want to jeopardise the place in the care home by causing trouble'.

7.51 We have no evidence that complaints often result in poorer care or residents being asked to move. Indeed, the Alzheimer’s Society told us that several carers they spoke to had found that their fears about repercussions were unfounded. However, even if these fears are unjustified, the effect of such anxiety in making people reluctant to complain is of concern. In the next section we make recommendations aimed at improving the ability of older people and their representatives to complain.

Recommendations

7.52 While levels of complaints and dissatisfaction appear to be low, there are concerns about the ability of older people and their representatives to access complaints procedures. **We are therefore making recommendations on three key issues:**

- **raising awareness of complaints procedures**
- **advocacy services for older people, and**
- **improving the collection and analysis of complaints data.**

7.53 These are set out in more detail below.

Raising awareness of complaints procedures

7.54 Many of the older people in care homes that we surveyed had received no information about complaints procedures, and of those who did, a substantial number received no written guidance. This occurs even though care homes are required under the relevant minimum standards to provide written guidance. This lack of information may make it difficult for people to pursue their complaint, particularly through avenues outside the care home.

7.55 There are a number of other avenues open to care home residents and their representatives. For example, complaints may also be made to the

Authority, Ombudsman or the care home regulator.¹⁸⁶ However, there is currently no single guide to these various complaints options. This also contributes to the difficulty older people and their representatives can experience in trying to pursue a complaint.

7.56 Overall, while there is a range of information currently produced on complaints procedures, for example, consumer leaflets and internet guidance, it appears that many people are not aware of it or do not know where to access it. If people wish to make a complaint, they are more likely to be able to proceed with it and get the issue resolved if they are fully informed of the various avenues of redress open to them.

7.57 **Therefore, we recommend that care home regulators should produce an easy to understand document that provides practical information to all older people living in care homes and their representatives about the redress options open to them. This should include information about when and how they can complain to the care home, the Authority, the care home regulator, the Local Government Ombudsman¹⁸⁷ and the Parliamentary Ombudsman, or seek judicial review. Care home regulators should provide care homes with this information and should together with relevant inspectorates, monitor that the care homes include it as an annexe to the older person's contract or statement of terms, and signposted in suitable places in the care home. The Department of Health and the devolved administrations should amend the relevant regulations to include this requirement. This recommendation is not intended to take away the responsibility for care homes to meet regulatory requirements to have procedures in place and publicise them.**

¹⁸⁶ Annexe I provides an outline of care homes' and regulators' responsibilities to deal with complaints. It also summarises people's options of complaining to an Authority and how to take their case further if they are dissatisfied with the outcome.

¹⁸⁷ In Scotland, the appropriate body would be the Scottish Parliamentary Ombudsman.

Advocacy services for older people

7.58 We have looked at claims that older people and their representatives may be reluctant to complain due to a lack of support and fear of repercussions. Some charities and consumer groups have expressed concern that older people may lack the ability to make their complaints heard. For example, the Alzheimer's Society told us 'People with dementia can easily be placed in a position in which they have no voice'. Similarly, one person wrote to us saying:

'People in our position are so ground down by the system, and essentially so powerless, that they do not know how to complain or who to complain to'.

7.59 The experience of groups who are involved with advocacy is that older people find complaints procedures more accessible when an advocate is working on their behalf. Advocacy allows them to make their voice heard more easily and they can enjoy support through difficult situations they may not otherwise have had the confidence or ability to address.

7.60 Advocacy can also prevent complaints from escalating by providing a source of mediation between the care home and resident, ultimately resolving issues more quickly to everyone's benefit. By actively demonstrating that they promote and encourage the use of advocates by residents, care homes could develop an advantage over other homes less keen to do so.

7.61 There are many different definitions of advocacy but the basic premise is summed up by the Advocacy Safeguards Agency,¹⁸⁸ an organisation set up by the Scottish Executive to promote and support independent advocacy in Scotland:

¹⁸⁸ The ASA works with advocacy groups and promotes the work of advocates in Scotland. More information can be found on their website at www.advocacysafeguards.org

'Advocacy is about standing up for and sticking with a person or group, taking their side and getting their point across'.

7.62 Existing advocacy services operate using a variety of models. Figure 7.2 gives an outline of the forms advocacy can take and the existing provision of advocacy services.

Figure 7.2 - Advocacy services

There is no single definition of advocacy and the term is used to cover a wide range of roles and services. However, a phrase that is often used to describe the overall aim of advocacy is 'to give vulnerable people a voice'.

Advocacy comes in a variety of forms but is generally based on one of three models:

- **citizen advocacy** – a one to one partnership between a trained, unpaid volunteer and a vulnerable person. This tends to be a long-term relationship
- **professional advocacy** – a paid professional with expert knowledge. These people tend to work with clients on a shorter term basis than citizen advocates and are often 'hired' to assist with one particular issue, and
- **group/collective self-advocacy** – a group of vulnerable people who support each other through individual or common problems.

Regardless of the model used, an advocate works directly with a person to help them achieve a specific goal, for example, to make a choice or assist them to overcome a problem. They do this by providing support, championing the individual's decisions rather than attempting to influence them. As a result, independent advocacy is the norm. The Advocacy Safeguards Agency defines this as a situation in which 'the advocate is not connected with carers or services that have a strong influence on the life of the person being supported'.

At present, advocacy services exist in many parts of the UK but the provision of services is extremely variable. While the Scottish Executive does provide some funding to support its commitment to ensure that everyone who requires it has access to independent advocacy, the majority of advocacy groups in the UK currently rely partly or entirely on charitable donations. Many of the groups we have spoken to say that this constrains the numbers of people they are able to help.

Existing advocacy services often deal with a particular group of vulnerable people, for example, children or people with a learning disability. However, we have found that services specialising in helping older people in care homes are less common.

7.63 Advocacy services currently provide help and support to a wide range of vulnerable people. Some groups such as the Older People's Advocacy Alliance (OPAAL) specifically work with older people.¹⁸⁹ They define their advocacy service as:

'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'.

7.64 Similarly, another group we consulted, the Senior Action Group Edinburgh (SAGE), stated their aim is to:

'Promote the welfare of older people who live in care homes in Edinburgh by enabling residents to identify their needs and concerns and seek ways to meet them, including improving communication between older people and service providers'.

7.65 However, we found that across the UK as a whole, the existing provision of advocacy services is variable, particularly in terms of services for older people in care homes. In addition, with the exception

¹⁸⁹ See www.opaal.org.uk for further details.

of Scotland where some funding comes from the Scottish Executive via individual Authorities, projects are funded solely by charitable donations and grants, for example, from the Lottery Fund which limits their scope and the number of people they can assist. Providing all older people with access to an advocate, particularly those people without friends or relatives would give them a source of help and support in navigating through the complaints procedures.

7.66 While we were unable to obtain comprehensive financial information on the costs of operating existing advocacy services, we are aware that providing a specialist service to older people in care homes would incur a cost to policy departments¹⁹⁰ and therefore it would need to be demonstrated that these costs were outweighed by the benefits.

7.67 **Therefore, we recommend that the Department of Health and the devolved administrations should run pilot projects to measure the benefits to older people, care homes and Authorities, of advocacy services being provided to older people entering or living in care homes, as well as the costs of providing such services.**

Improving complaints data

7.68 Throughout our study we encountered difficulties obtaining data on complaints and their outcomes. This makes it difficult to discover the full extent of complaints and dissatisfaction among older people resident in care homes and their representatives. It also means that the care home regulators and governments are failing to utilise a tool for monitoring the sector and picking up on any systemic problems.

7.69 **Therefore, we recommend that the care home regulators across the UK should improve their collection and use of complaints data in respect of older people in care homes so that they can quickly recognise any**

¹⁹⁰ By policy departments, we are referring to the Department of Health, Scottish Executive, Welsh Assembly and the Department of Health Social Services and Public Safety in Northern Ireland.

significant rise in complaints, whether local or in aggregate, and make an efficient and targeted response appropriate to the problem.

- 7.70 For example, we consider that complaints data should be disaggregated so that complaints specific to care homes for older people can be identified. We would also consider it desirable for the statistics to record the nature of the complaint.
- 7.71 Care home regulators also have a role to play in enabling older people and their representatives to make an informed choice of care home, as discussed in Chapter 5. Part of this role should include publicising complaints data as providers have no incentives to make the data available themselves. By including the outcomes of complaints in regulators' inspection reports, people will have more transparent information about care homes, allowing them to make an informed choice.
- 7.72 Complaints data could also be used by care homes themselves both to demonstrate the quality of service they provide and as a tool to improve standards. In addition, with 97 per cent of providers in our business survey saying that reputation was a 'very important factor in attracting new customers' this information could also be used to promote their reputation either at a local level or nationally in the case of a larger chain.¹⁹¹
- 7.73 **Therefore we recommend that care home regulators should make public the outcome of non-trivial substantiated complaints about care homes by including a short summary with key information in inspection reports.**

Conclusion

- 7.74 This chapter has looked at the evidence on whether older people and their representatives are experiencing difficulties in making and resolving

¹⁹¹ Our survey of care homes found that 97 per cent of providers said that reputation was a 'very important' factor in attracting new customers.

complaints. We have drawn together data from our own surveys and statistics collected by the care home regulators, as well as considering the large number of comments we received on this subject from consumer groups, charities and the public.

7.75 We have found that overall complaints levels appear low, although a substantial minority (28 per cent) of residents in our survey said that they had had cause for dissatisfaction. However, the complaints data may be understating the true extent of dissatisfaction, as older people and their representatives face barriers to complaining, such as low awareness of complaints procedures, lack of support, and fears of repercussions.

7.76 Older people in care homes are a particularly vulnerable group. They are typically unable or unwilling to move homes, yet their complaints often concern factors that will impact on their daily quality of life. In these circumstances, complaints procedures are a vital safeguard.

7.77 **Therefore, we have made the following recommendations to the care home regulators and central government aimed at improving the effectiveness of complaints procedures:**

- **production of a document by care home regulators that brings together the various avenues for complaints**
- **pilot studies of advocacy services for older people to measure the benefits**
- **improving the collection of data on complaints, and**
- **publishing the outcomes of substantiated non-trivial complaints.**