

Commission
for Social Care
Inspection

CSCI

Making Social Care
Better for People



A fair contract with older people?

A special study of people's experiences
when finding a care home

October 2007

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Commission for Social Care Inspection

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A fair contract with older people?

Executive summary

About this study

Older people who are seeking care and support face a number of crucial decisions about who will provide this assistance, where and at what cost. Some people will be looking for help at home, some will want to move to housing where regular care is provided and others may opt to go into a care home. This report focuses on the experiences of older people who decide to move into a care home.

We examine whether older people, carers and relatives get the information, advice and support needed at every stage of their move into a care home and whether they are provided with clear contracts or agreements about what the care home will provide and who pays for what. This study draws upon the experiences of over 1,700 older people and their carers to describe how far they had a 'fair contract' in the business of choosing, paying for and moving into a care home.

Older people and their relatives are consumers in a care market where local councils commission services for their local population and it is estimated between one-quarter and one-third of care home places are wholly privately funded.¹ Given demographic pressures on the current care system and the increasing shift of responsibilities to find and fund care on to individuals and families, the Commission was keen to look in more depth at people's experiences in the care home market.

1 Wanless D (2006) *Securing good care for older people. Taking a long-term view*. London: King's Fund.

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A study published in May 2005 by the Office of Fair Trading (OFT)² found that many older people are poorly served by the care home market and concluded that people needed much better and easier access to information when choosing a care home; more transparency about the price of care, services offered and terms and conditions; and improved complaints processes. As a consequence all those involved in the workings of the market – the Government, the Commission for Social Care Inspection (CSCI), councils and care home providers – took a number of actions to improve matters.

The Commission has now conducted this special investigation in the light of growing concerns about the experiences of people who fund their own care and the numbers of older people seeking care and support.

This investigation includes findings from:

- a special independent study in 10 councils involving interviews with older people and their carers, staff in care homes, council care managers and commissioners
- a ‘themed inspection’ where CSCI inspectors conducted 110 inspections focusing on care home performance against relevant National Minimum Standards (NMS)³
- 396 full inspections in care homes over a two-week period
- an online survey completed by 188 relatives and carers of older people who had moved into a care home or were considering doing so
- a mystery shopping exercise with 150 councils with social services responsibilities.

Key findings

1 Making a decision about going into a care home

- 1.1** Older people who are likely to fund their own care are at a disadvantage at the first step in considering going into a care home. Whilst people who approach their council about care services are entitled to an assessment of their care needs before their financial needs are considered, 50% of people who funded their own care responding to our survey did not have a care assessment.

2 Office of Fair Trading (2005) *Care homes for older people in the UK. A market study*. London: Office of Fair Trading.

3 Department of Health (2003) *Care homes for older people. National minimum standards and the care home regulations (third edition)*. London: Stationery Office.

NMS are not legally enforceable but they do identify what a care service needs to do in order to meet its legal obligations. See Appendix 1 for a description of standards.

- 1.2 Four out of 10 councils in our study acknowledged that people who fund their own care receive less support than other older people. Assessments were not well publicised for people likely to fund their own care and little more was offered than a list of care homes following any 'assessment'.
- 1.3 Older people who do get an assessment and whose care is funded by the council appear to find the process largely satisfactory. Two thirds of the older people we interviewed who had moved into a care home and were council funded were generally satisfied with the assessment of their needs and the outcome.
- 1.4 Councils vary in the information they provide about entitlements and support to older people and carers during and after the assessment process. Fully co-ordinated multi-disciplinary assessments are not yet commonplace, even where health and social care staff share offices.
- 1.5 By contrast, care homes **are** undertaking assessments prior to people moving in: 83% of the 396 homes inspected met or exceeded the relevant National Minimum Standards.

2 Information when choosing a care home

- 2.1 Older people and their carers taking part in the study said that the most powerful sources of information are social workers, friends and relatives, and through visits to care homes. They emphasised that information given face to face is more personal and relevant than written information.
- 2.2 People were generally critical of the written information they received from councils and care homes, which ranged from a list of names and addresses to comprehensive guides. Of the people who responded to our online survey, 63% said the written information did not tell them what they wanted to know. Our mystery-shopping exercise found councils answered calls and provided oral information promptly, but the provision of written information was inconsistent.
- 2.3 Choice of homes was restricted in a number of ways. One in three people in our study in 10 councils had been in hospital immediately before moving into a care home and felt that the process would have been better if they had had more time to make considered decisions. Older people in two of the 10 councils visited felt they were being influenced to choose council-run care homes or homes where the council had block contracts designed to lower the

unit cost of places. People are also not prepared that a care home may not be 'a home for life' and they may have to move from one residential home to another if there is a re-assessment of their needs.

- 2.4** Four out of 10 councils studied were actively trying to develop the local care market to offer increased choices of care to older people.
- 2.5** From our inspection of 396 care homes, the majority are adequately meeting National Minimum Standards governing the information that care homes should provide (a statement of purpose and service user's guide), but there are still significant gaps in the information being provided by 20% of homes.
- 2.6** However, there were also good examples of homes providing comprehensive information packs, DVDs and guides in a range of formats for prospective residents.
- 2.7** Knowledge of local care homes by care managers in councils was highly variable, as was their understanding of their role in advising people on choosing a home. Of these care managers, 42% simply gave limited advice or signposting whilst 21% supported people throughout the whole process.
- 2.8** Two of the 10 councils in our study had introduced extra support services for people going into care homes, including staff appointed specifically to support people who pay for their own care.

3 Information about care home fees and the funding system

- 3.1** People are not being given explicit and transparent information about the costs of their care and how the funding system works. Whilst 90% of care homes are meeting the National Minimum Standard to give people personalised fee information by the moving-in date, homes do not usually provide this information until the very last moment, sometimes on the day the person moves in. Care homes rarely provide a detailed breakdown of what the fees cover and only publish a broad range of fees.
- 3.2** Whilst 87 out of 90 people funding their own care who responded to our survey received information, only 54 (60%) found this information helpful. People lacked information about what the fees would cover; how often the care home would increase its fees; and the help people might get from the NHS towards nursing costs or towards meeting the full costs of NHS continuing care.

- 3.3** Of the survey respondents who had had a financial assessment, 45% said it did not clarify entitlement to funding and how to proceed. Seven out of 11 interviewees highlighted the length of time taken to sort out who would pay for what and poor communication with their council.
- 3.4** Professionals acknowledged that they found the funding system confusing, particularly given different contributions from the council, the NHS and third parties.
- 3.5** Older people lack good information about the ‘top-ups’⁴ they or their families may have to pay. Half of the councils in our study produce good general information explaining top-ups, but the other councils say they are constrained by a lack of information from care homes on whether top-ups will be required and at what level. Care homes say they experience delays in decisions about different funding streams so are unable to respond promptly. In a small number of cases, apparently arbitrary decisions are being made by care home owners on the level of top-ups which individuals are charged.
- 3.6** The prevalence of top-ups appears to be closely related to the local care market in our study of 10 councils and ranged from 5% to 75% of homes that the council dealt with charging a top-up. Where there was no shortage of care home places and/or alternative appropriate services, top-ups were rare. In areas where care home places were more limited, we found examples of three-quarters of council-funded residents also paying top-ups.
- 3.7** Twenty-two out of 38 homes (58%) visited in the study of 10 councils charged different rates for people funded by their council compared with those who paid for their own care. However, people paying these higher rates did not get a substantially different service. Both commissioners and providers report resource pressures on the system that lead to this situation – a problem reflected in other studies.^{5,6} Council purchasing staff feel constrained to keep fee rates as low as possible in order to fund the greatest number of places; and providers in turn resort to ‘cross-subsidy’ to compensate for the prices paid by councils which providers claim do not properly fund the cost of care.

4 A topping-up arrangement should only arise where a person chooses a more expensive care home place than the council would usually expect to pay for someone with that person’s needs. If a person’s needs can only be met in a home that is more expensive than the rate the council will usually pay, then the council should meet the full cost of that home, as it is not a question of choice but one of paying to meet a person’s assessed needs.

5 Wanless D (2006) *Securing good care for older people. Taking a long-term view* London: King’s Fund.

6 CCC (2007) *Paying for care: third-party top ups and cross subsidies* London: CCC.

4 Knowing what you will get for your money

- 4.1 People do not always have the contracts or statement of terms and conditions they should expect when moving into a care home. Shortcomings were noted in a quarter of the 396 homes inspected over a two-week period.
- 4.2 The most common failings were people who were paying for their own care not having a contract to sign until after moving in to the care homes, and people funded by the council having no statement of terms and conditions.
- 4.3 Four out of 10 councils in our study had contracts with care homes for the gross costs of placements, including contributions from councils, the NHS and third parties. Councils report that this helps to address confusion around contracts and statements of terms and conditions with individuals and offers better safeguards for residents and their families against unfair terms.

5 The right to make comments and complaints

- 5.1 Procedures for making complaints and people's awareness of them were generally good. Of the homes inspected, 82% met or exceeded the National Minimum Standard on complaints.
- 5.2 It is less evident that people actually feel confident about complaining. Three in four relatives interviewed were wary of complaining "*in case of repercussions*" for their relatives.
- 5.3 People funding their own care and responding to our survey indicated their feelings of being powerless, having no one to go to and no rights of redress, beyond the care provider, throughout the whole process of moving into a care home.

Conclusions

There have been some positive steps to improve older people's experiences in choosing and moving into a care home since the OFT published its report in 2005.

There are examples of good practice where some councils are taking action to ensure that people who fund their own care have the information, advice and support needed; and some are actively developing the local care market to increase the care options for people.

Care homes have been developing good quality guides and leaflets. There have also been some improvements in the quality of written contracts being provided by care homes to their residents since the OFT study.

However, fundamental difficulties remain about the information provided to people on the cost of services and what people might expect for their money. Whilst various procedures have been improved, older people and their families are still at a considerable disadvantage and with little power in the care market. In summary:

- People who are expected to pay for their own care are particularly disadvantaged by a lack of information, support and advice at every stage in making a decision about going into a care home.
- People have limited choice and it appears the statutory directions on choice⁷ are not being met in some cases. Older people taking part in this study stressed that they want standardised, reliable local services of a good quality rather than having to shop around a wide range of homes for the best deal. Choice of care homes is restricted for many by the pressures to make quick decisions to move out of hospital, lack of good information, the limited range of local services and the practice of substantial top-up payments in some areas.
- People are seeking expert, impartial one-to-one advice. It is still doubtful whether older people, particularly those without previous experience of care services, know where to go as a first port of call to get information. There is more and clearer written information available than was the case two years ago but the CSCI mystery-shopping exercise suggests that more needs to be done to make this accessible and relevant. The CSCI continues to develop its website to provide clear and accessible information. However, people emphasise they are looking for one-to-one advice and obtaining this can be difficult, given the different interpretations by councils of their role. This is particularly true for those people who fund their own care.
- People are placed in a powerless situation where there is no transparency about payments, in particular about the payment of top-ups and differential charges.

⁷ If it appears that the best option for a person is for their needs to be met in a care home and even if the council is involved in making the arrangements, people should be able to express a preference about which home to move to, provided that:

- it is suitable to meet assessed needs – this will in most cases include the care home’s own assessment or ability to carry out the care plan
- it has a place available
- it is willing to enter into a contract with the council
- it does not cost more than the council’s ‘usual rate’.

Where a home costs more than the council’s ‘usual rate’, a placement may still go ahead if a third party is willing to make up the difference.

Choice of Accommodation Directions 1992 and guidance in LAC[2001]29).

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- People are confused about who pays for what, and contracts and statements of terms and conditions issued to them do not always explain this satisfactorily.
- People also do not understand that, because of the different sources of funding, if a re-assessment of their situation identifies a significant change in their care needs, they may be faced with a move from their care home to a nursing home, or vice versa.
- People do not feel confident about complaining once in a home and people who fund their own care feel particularly vulnerable throughout the whole process of deciding, choosing and moving into a care home. These concerns have been highlighted following a recent ruling by the House of Lords (June 2007) that a private care home did not perform functions of a public nature and, consequently, was not required to comply with Convention rights under the Human Rights Act 1998.⁸ Thus people who fund their own care in private or voluntary care homes have no enforceable rights of redress under the Human Rights Act.

What needs to happen?

As increasing numbers of people have to find and fund their own care, it is crucial that they are provided with the necessary information and support to make decisions about their care. The findings of this study suggest that actions are required by all those involved with the workings of the care market, locally and nationally. Urgent action is needed to ensure older people and their carers, whether they pay directly for their care or not, have:

Access to expert, impartial advice and information on a one-to-one basis

There is clearly a cost attached to this but government and councils need to respond to the demand from older people and carers for high quality information and advice services, ranging from good one-to-one advice over the phone to expert brokerage services available across the country. Potential brokerage models are discussed in an earlier CSCI publication.⁹

8 House Of Lords Session 2006-07 Opinions of the Lords of Appeal for judgement in the cause YL (by her litigation friend the Official Solicitor) (FC) (Appellant) v. Birmingham City Council and others (Respondents), 20 June 2007.

9 Commission for Social Care Inspection (2006) *Support brokerage: a discussion paper* London: Commission for Social Care Inspection.

Good comprehensive assessments of their needs

Councils need to ensure that all older people have opportunities during an assessment of their care needs to consider the range of available options for support, including the use of direct payments or individual budgets. This should apply whether people are at home or in hospital. Councils should work with their local NHS trusts and primary care trusts to ensure that proper assessments of needs are carried out when people are being discharged from hospital, regardless of their financial circumstances.

Clarity about what people are paying for and who pays for what

The current system bears down unfairly on some groups of people and there needs to be far greater transparency about price, funding and the links between quality and cost, so that older people and their carers know what they are getting for their money.

Others have commented that the current practice of top-ups has “*evolved by stealth*” and are “*symptomatic of the chronic under-funding of care*”.¹⁰ The Wanless Review¹¹ on the future funding of social care for older people and the work of the Joseph Rowntree Foundation¹² have contributed important evidence towards the debate on the funding of social care. The CSCI has also highlighted the increasing shift of responsibilities from state to individuals and families without accompanying debate or the necessary support being in place.¹³

The findings of this report contribute to the debate that the Minister, Ivan Lewis MP, has said should seek “*a new consensus, a new settlement in terms of the funding of social care between the state, the family and individuals.*”¹⁴

Whatever the outcome of the 2007 Comprehensive Spending Review, people should only have to pay top-ups to fees when they have genuinely exercised choice. The fee charged by homes should be based on the cost of running a home and meeting a person’s assessed needs, not on how or by whom a person is funded. This will require councils to work closely with providers to ensure block and other contracts are allowing for the costs of provision of proper quality.

10 CCC (2007) *Paying for care: third-party top ups and cross subsidies* London: CCC.

11 Wanless D (2006) *Securing good care for older people. Taking a long-term view* London: King’s Fund.

12 Joseph Rowntree Foundation (2006) *Paying for long-term care: moving forward* York: Joseph Rowntree Foundation.

13 Commission for Social Care Inspection (2006) *The state of social care in England 2005-06* London: Commission for Social Care Inspection.

14 <http://news.bbc.co.uk/1/hi/magazine/6277944.stm>

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Councils and care homes also need to produce written material that is explicit about top-ups and clearly states what is included in the price of a care home place. The merits of a standard contract and statement of terms and conditions should be considered.

Government will need to ensure that, from October 2007, implementation of the recent guidance on NHS continuing care¹⁵ genuinely addresses the current confusion felt by people about who is eligible for free NHS care as against means-tested social care.

More choice

Councils have a key role in developing the local care market and commissioning for all the communities they serve – not just for those people whose care they expect to fund. If they do not consider the supply of services for their whole population, this could result in shortages and higher fees. They should be closely involving older people from all communities to develop a portfolio of services to offer genuine choice for people, both in innovative alternatives to residential care and in high quality local care homes.

Full and authoritative information from the regulator

The CSCI has already taken a number of steps to address criticisms about difficulties in finding inspection reports on its website and providing better information for the public. It has also recently launched a new website for professionals, providing links to other sources of guidance and information. Further action is needed to raise the CSCI profile with care managers and other staff working with people who are considering moving into a care home. This work will need to be continued by the new regulator, OfCare, after 2009.

The Commission will be publishing quality ratings for care homes that will be a significant step to empowering older people and their families. This will provide quick and easy information for the public about the quality of local care homes.

However, the third reorganisation of the social care regulator (from CSCI to OfCare) in the last six years inevitably challenges progress in establishing public confidence and recognition of the regulator's role as a key provider of information.

¹⁵ Department of Health (2007) *The national framework for NHS continuing healthcare and NHS-funded nursing care* London: Department of Health (<http://www.dh.gov.uk/publications>).

All older people have their complaints dealt with effectively

People can make a complaint direct to a care provider irrespective of whether they fund their care or not. However, if they are not satisfied and want to take their complaint further, remedy and redress depends upon the individual's funding status.

People who are placed through local council's care management or NHS continuing care arrangements are eligible to use statutory mechanisms and can get their complaints considered by the local government or health service ombudsman. People who arrange and fund their own care fall outside of these procedures and cannot access independent public service ombudsmen.

The Department of Health is currently consulting on an integrated health and social care complaints procedure for implementation by 2009 and there are opportunities to debate solutions to this gap in the process. Some people have suggested the establishment of a Care Services Ombudsman as one possible way of providing improved remedy and redress.

1



Introduction

1.1 Aims of this report

Older people who are seeking care and support face a number of crucial decisions about who will provide this assistance, where and at what cost. Some people will be looking for help to come to their own homes, some will want to move to special housing where there is 24-hour care provided, and others may opt to move into a care home. This report focuses on the experiences of older people who move into a care home. We examine whether older people, carers and their families get the information, advice and support needed at every stage of their move into a care home and whether they get clear and unambiguous contracts and agreements about what the care home will provide and who pays for what.

Whilst this report focuses on older people who move into care homes, these issues apply to people of all ages using every type of social care service. Good, timely information and advice about what is available and clarity about who pays for what are fundamental for anyone looking to use social care.

It is also important to acknowledge that there are disabled younger people who share the same concerns as older people. Moving into a care home is as momentous a decision. The rights of younger people to information and fair contracts are equally crucial.

1.2 Context to this report

Government policy has sought to develop support and care for older people in a way that helps people to live independently and at home. The emphasis has been on developing alternatives to residential care services and care ‘closer to home’.

The Green Paper on adult social care – *Independence, well-being and choice*¹⁶ and the health and social care White Paper – *Our health, our care, our say*¹⁷ emphasise the importance of personalised services that are focused on meeting individual needs and preferences, whether in the community or communal settings, and on maintaining good health and well-being through preventative approaches.

Whilst there is an emphasis on preventative services and support for people in their own homes, residential care is being used by substantial numbers of people (see Box 1).

16 Department of Health (2007) *Independence, well-being and choice: our vision for the future of social care in England* London: Department of Health.

17 Department of Health (2006) *Our health, our care, our say: a new direction for community services* London: Department of Health.

Box 1. Care homes – places and expenditure

The number of registered places for adults and older people at 31 March 2007:

- 178,888 places in 4,048 nursing homes
- 262,826 places in 14,515 residential care homes
- a total of 441,958 places in 18,577 care homes of all types.

Total number of people supported by councils to live permanently in care homes: 259,175, of which 200,055 were aged 65 and over – at 31 March 2006 (*source: SR1 – Department of Health*).

Council expenditure on supporting older people in care homes increased from £3.9 billion in 2001-02 to £4.5 billion gross in 2004-05 and £4.6 billion gross in 2005-06. In 2005-06, the net cost to councils (ie taking off income from residents and from NHS) was £3.28 billion (*source: PSS EX1 – Department of Health*).

In 2005-06, the £3.28 billion spent on care homes by councils accounted for 56% of their total expenditure on services to older people (£5.84 billion net). So over half of their expenditure supported some 200,000 older people in care homes, compared with some 652,000 older people receiving community services.

The proportion of wholly privately funded care home places is estimated at between one-quarter and one-third.¹⁸

Residential, homecare and other care services operate within distinctive local care markets where individuals and public bodies buy services from the private, voluntary and statutory organisations that provide them. The care market is distinctive from some other markets in that many older people rely on their local councils (and primary care trusts) to obtain services on their behalf and on the regulator to ensure that services are safe and that standards are raised. Older people, however, may have little, if any, real influence on the services councils choose. The introduction of direct

18 Wanless D (2006) *Securing good care for older people. Taking a long-term view* London: King's Fund.

payments and individual budgets is attempting to shift control to people so that they can find and manage their own services, and so influence the local market.

The challenge for councils commissioning care services is to address the needs of all their population, whether people fund their own care or not, and to develop local care markets that offer the range and diversity of care services that genuinely meet those needs and offer the choice that government policy promotes. Recent Department of Health guidance on commissioning underlines the importance of engaging people in shaping local services.¹⁹ The Government's vision is of well-informed and empowered consumers driving the quality changes that will meet rising public expectations and demand.

There are other challenges, not least that rising public resources for social care are not keeping pace with demographic pressures on the system. This has seen an increasing shift of responsibilities to find and fund care on to individuals and families.²⁰

Good information is thus crucial to assist people to make well-informed choices at all stages of their lives, particularly when they need support and care. This includes reliable and timely information about what is available, how it might help and, increasingly important in the context of limited eligibility for public support, what it might cost.

It is in this context that the Commission was keen to see how the care home market is operating for older people and to find out about their experiences when finding a care home.

1.3 The care home market

In May 2005 the Office of Fair Trading issued their report of a study about the operation of the care home market and how well it served older people.²¹ The study was launched in June 2004 following a 'super-complaint' made by the Consumers' Association, supported by the Social Policy Ageing Information

19 Department of Health (2007) *Commissioning framework for health and well-being*
London: Department of Health.

20 Commission for Social Care Inspection (2006) *The state of social care in England 2005-06*
London: Commission for Social Care Inspection.

21 Office of Fair Trading (2005) *Care homes for older people in the UK. A market study.*
London: Office of Fair Trading.

Network (SPAIN), a network of mainly voluntary organisations with a shared aim of improving the lives of older people, in particular those who may require care.

The super-complaint identified a number of difficulties for people in finding out about, choosing and securing a care home place of their preference and highlighted a number of issues relating to costs and consumer rights.

The OFT market study paid particular attention to the fact that older people often had to make choices about their future support and care at difficult times and in upsetting circumstances. It concluded that people needed much better and easier access to information when choosing a care home and more support once they moved in. They also concluded that care homes needed to ensure that terms used in their contracts relating to fees were fair and transparent.

The study highlighted concerns about:

- the confusing multitude of different sources of information
- inadequate support from councils for older people and their carers, particularly relating to top-up payments and where people were funding their own care
- lack of transparency in the price, services offered and terms and conditions
- large numbers of contracts that were potentially unfair, too complex or unclear, giving scope for unfair fee increases
- poor support with complaints processes and avenues of redress.

A series of recommendations were made to address these concerns, amongst which were changes to the law requiring:

- care homes to provide details of fees in writing to residents before they decide to move in
- councils to contract and pay for the full costs of accommodation (although this recommendation was not accepted by government)
- regulators to produce guidance on redress avenues and to make this available via care homes.

A key recommendation was that government should establish a central information point or ‘one-stop shop’ where older people could get clear information about care.

Government welcomed the OFT recommendations as being in line with its “*vision to support the personal dignity of older people by providing them with information and support to enable genuine choice and greater security in their living arrangements*”.²² It fully endorsed the recommendation for a central information source as dovetailing with its plans to bring together a number of information channels through DirectGov, an online, cross-government one-stop shop and Link-Age, networks of services for older people. Government commented that “*to provide full support to all older people who are funding their own care would represent a significant expansion of the statutory role of social services*” but a commitment was given to look at different models for assessment, including self-assessment, the role of local call centres and care brokerage. The Government also planned to consult on the most appropriate way to create a clear requirement for care homes to provide information about prices prior to the individual choosing a care home. Work was also planned to ensure guidance on the Choice of Accommodation Directions was fully implemented. This guidance made clear that councils are responsible for meeting the full costs of accommodation, including any top-up fees.

1.4 The Commission’s response to the OFT report

The CSCI responded to the OFT in August 2005.²³ In 2006 the Commission noted its progress to date on meeting the recommendations, including:²⁴

- developments in providing care home information to people who use services; new publications providing guidance for people who use services; and a relaunch of the CSCI website
- improved, easier-to-read inspection reports
- guidance for providers on the care home regulations
- a 24-hour CSCI enquiry service

22 Department for Business Enterprise & Regulatory Reform (August 2005) *Government response to the Office of Fair Trading care homes study*

23 Commission for Social Care Inspection (2005) *Response from the Commission for Social Care Inspection to the Office of Fair Trading’s market study of care homes* London: Commission for Social Care Inspection.

24 Commission for Social Care Inspection (2006) *Responding to the Office of Fair Trading’s care homes market study* [Commission Paper 06(06)118]. London: Commission for Social Care Inspection.

- inclusion of explicit questions on contracts in the questionnaire completed by care home providers (Annual Quality Assurance Assessment – AQAA)
- further questions to prompt councils on their actions to support people who fund their own care in the annual self-assessment survey
- reforms in dealing with complaints and allegations about care services.

1.5 Structure of this report

This report examines whether people get a ‘fair contract’, in its broadest sense, and goes beyond investigating legal contracts. We define a ‘fair contract’ below and present the findings in this report with reference to five key steps:

- helping people to make a decision about the best form of care
- choosing a service (a care home in this study)
- getting information about the costs of the care and who pays
- having a proper agreement or contract with the service provider
- making a complaint.

We examine the evidence against this ‘fair contract’:

A fair contract

(i) People’s care needs are carefully considered and they know about the options for care suited to them and what financial support they are entitled to.

- Everyone knows they can have an assessment of their needs, regardless of financial circumstances.
- Assessments enable people to make choices about the type of support that best meets their needs.
- The financial assessment, following the needs assessment, enables people to understand at an early stage what support they would be entitled to.

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(ii) People who decide to move into a care home get full information about local care homes.

- People know where to go for authoritative information.
- Information on care home availability, quality, services offered and fees is readily available and easy to understand.
- All homes make clear their policies on what would happen if a resident's financial or other circumstances changed.

(iii) To help in deciding which home to choose, people are informed about care home fees and how the funding system works.

- There is clarity about who pays for what and people know this before choosing a home.
- Councils make clear the amount they are normally prepared to pay and when they pay above this, and are able to show there are a range of suitable homes at the price they normally pay.
- All care homes make their prices and rationale for any differential charging transparent. People who are paying more than others understand exactly what they are getting for their money.

(iv) Individuals enter into contracts with care homes or receive a statement of the terms and conditions of their stay.

- Everyone has a written statement of the terms and conditions of their stay when they move into a home; this should be in the form of a contract where a person funds their own care.
- Statements and contracts are clearly written and, ideally, in a standard form with space to include personal information.
- Statements and contracts do not contain unfair terms and are understood by the older person and their representatives.
- Statements and contracts always include information about the fees that will be charged and who is expected to pay them; and when, and why, fees may increase.

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(v) If things go wrong, people are able to complain.

- All homes have clear complaints procedures.
- Procedures are publicised and residents encouraged to complain where necessary.
- Support is available for people who want to complain.
- There is evidence of care homes taking action to put things right in response to complaints.
- The public is informed about complaints and allegations from residents in care homes.

1.6 Methodology

Investigating the experience of moving into a care home for older people presents a number of challenges. For most older people and their relatives, the move is a stressful experience and recalling the details of the information they received and the contracts they signed may not be easy. We were concerned to understand how far the policies of care homes and councils might differ from what actually happens in practice.

To address these issues, this study drew on evidence from a wide range of sources:

- **In-depth case studies** independently conducted in 10 councils involving interviews with 36 older people who have recently moved or were moving into a care home and their carers (30), 33 care home managers and care home workers, 28 social workers (care managers) and 13 commissioners.
- **A 'thematic inspection'**, where CSCI inspectors undertook 110 inspections of care homes for older people across England, focusing specifically on the National Minimum Standards relating to information, contracts, assessment and complaints. (See Appendix 1 for detail about the NMS.)

- **Focused inspection work** which ensured that during the course of 396 planned inspections of care homes for older people undertaken between 27 November 2006 and 8 December 2006, the key areas of enquiry (information, contracts, assessment and complaints) were investigated and specific comment made in the inspection reports.
- **An online survey** completed by 188 relatives and carers of older people who had moved into care homes or were considering doing so.
- **A mystery-shopping exercise** with all 150 councils with social services responsibilities focusing on the information given to people about social care services at the first point of contact.

In total, this report is based on the experiences of over 1,700 older people and their relatives who took part in the interviews, responded to the online survey, or spoke to inspectors in the course of their work. Older people and carers also took part in a reference group that advised on the study design, fieldwork and findings.

A workshop was held with care home providers, commissioners, voluntary organisations, members of SPAIN and representatives from government bodies to discuss early findings.

Further details on the methodology are in Appendix 2.

2



Making a decision about going into a care home

Key findings

(i) Of the people funding their own care who responded to our survey, 50% did not have a care needs assessment from their local council. People are thus put at a disadvantage in deciding about the most appropriate form of care and support.

(ii) Older people who do get an assessment and whose care is funded by the council appear to find the process largely satisfactory. Two-thirds of the older people we interviewed who had moved into a care home and were council funded were generally satisfied with the assessment of their needs and the outcome.

(iii) Councils acknowledge that support to people funding their own care may not be as good; four out of 10 councils identified that the level of support was lower for people who fund their own care than for other older people.

(iv) There are variations in practice by councils concerning:

- the extent to which councils publicise both assessments and criteria explaining who is eligible for care services
- the level of support offered during and after the assessment process, particularly for people funding their own care
- inconsistent approaches taken by care managers within and between councils.

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(v) Fully co-ordinated multi-disciplinary assessments are not yet commonplace, even where health and social care staff share offices.

(vi) By contrast, care homes **are** undertaking assessments prior to people moving in. Of the 396 homes inspected in November and December 2006, 83% met or exceeded the relevant National Minimum Standards.

2.1 Introduction

This section looks at people's experiences of having their care needs, entitlements to care and financial support assessed.

Councils have a legal duty to assess a person's needs where their circumstances come to the attention of the council and they may be in need of community care services that the council has the power to arrange. This duty applies regardless of the person's entitlement to services or financial circumstances. Overall, therefore, there are three components – the assessment of needs and circumstances, a decision about entitlement (ie what will be provided under the council's eligibility criteria), and a financial assessment of what the person will be expected to contribute to the costs of support and care provided.

Local councils are also responsible for undertaking assessments of carers' needs, independent of the community care assessment of the cared-for person.²⁵

The purpose of the needs assessment is to get a full understanding of a person's needs and circumstances in order to support decisions about what help or care might be required and how it might best be provided – by informing a suitable and comprehensive care plan.

As part of the needs assessment, councils are obliged to involve housing or health partners when it appears that other support or care might be required.

²⁵ *Carers and Disabled Children Act 2000* London: Stationery Office

This should include people with significant health needs who may be entitled to NHS continuing care, or who require regular nursing support.²⁶ Guidance²⁷ makes it clear that the process should ensure that people are actively involved in the assessment and that it should be carried out as far as possible in a way that supports people to:

- gain a better understanding of their situation
- identify the options that are available for managing their own lives
- identify the outcomes required from any help that is provided
- understand the basis on which decisions are reached.

The decision about eligibility – entitlement to services – is taken following assessment of needs. Councils are required to set and make available local eligibility criteria that comply with national guidance – Fair Access to Care Services (FACS) – based on the degree of risk to independence in four ‘bands’: critical, substantial, moderate and low.

The financial assessment. People entitled to services and choosing to go into a care home face a nationally based means-test of capital and income. Some people will be expected to pay in full. However, the costs of any registered nursing care provided in the home should be met by the NHS until October 2007 in one of three bands (moving to one band in October 2007) unless they qualify for fully funded NHS continuing care – in which case the NHS will meet the costs of the care home in full.²⁸

Choice of home

If it appears that the best option for a person is for their needs to be met in a care home and even if the council is involved in making the arrangements, people should be able to express a preference about which home to move to, provided that the care home:

- is suitable to meet assessed needs – this will in most cases include the care home’s own assessment or ability to carry out the care plan

26 “The LA must also notify the relevant PCT if, in carrying out the assessment, it becomes apparent to the authority that the person has needs which may fall under the National Health Service Act 2006.” Department of Health (2007) *The national framework for NHS continuing healthcare and NHS-funded nursing care* London: Department of Health.

27 Department of Health (2002) *Fair access to care services (FACS)* (LAC (2002) 13) London: Department of Health.

28 Department of Health (2007) *The national framework for NHS continuing healthcare and NHS-funded nursing care* London: Department of Health.

- has a place available
- is willing to enter into a contract with the council
- does not cost more than the council's 'usual rate'.²⁹

Where a home costs more than the council's 'usual rate', a placement may still go ahead if a 'third party', or in limited circumstances the resident, is willing to make up the difference (pay a 'top-up'). The issue of 'third-party top-ups' is explored further in section 4 on care homes fees and the funding system.

Some people who fund their own care either choose not to involve the council or do not know that they are entitled to a care assessment. There are potential advantages for people who know they will pay for their own care to involve care managers. They should get a holistic assessment and help to look at all the care options. Some councils also said they had negotiated with care homes on behalf of people who pay for their own care and had been able to agree a lower fee than the person would have been charged if they had made an approach on their own.

These older people are also likely to be in a better position because they should have been advised of the level of fees the council will pay should their funds run out. They should also have been warned to contact the council when their capital is being run down to the point where the council will pick up the cost, and that this limit changes each year. They should have been told that a move might be necessary should they choose to move into a home that charges a fee above the level the council will usually pay.

2.2 Experiences of older people and their relatives

- **Understanding people's needs**

More than half of the 36 older people interviewed in our study of 10 councils (both council funded and residents funding their own care) who had moved into a care home were unable to recall an assessment taking place. However, those who could remember said they understood the process and why it was being done. In the case of people who could not recall an assessment, relatives were usually able to confirm whether an assessment had taken place.

²⁹ Department of Health (2004) *Guidance on: National Assistance Act 1948 (Choice of Accommodation) Directions 1992; National Assistance (Residential Accommodation) (Additional Payments and Assessments of Resources) (Amendment) (England) Regulations 2001* LAC(2004) London: Department of Health.

Over half of these people we interviewed (20 of the 36) were already receiving services, for example home care, before they considered moving to a care home. In most cases, too, people told us that moving to a care home was the only option considered at this point, but they did say that other options had been considered at an earlier stage.

On the whole, people who had had an assessment were satisfied with the process and the outcome. Two in three interviewees said that the advice they got from the council following assessment was helpful or very helpful in understanding care options. For example, one relative commented:

“Wonderful system... the process was perhaps a bit long but as her daughter I felt the thoroughness was necessary.”

However, three of the 36 people interviewed, two of whom had arrived as emergency admissions, told us they had not had any sort of assessment, either from the council or from the care home, until after they had moved into the home. The relative of one person funding their own care told us she had had to “hassle” the social worker for a meeting to take place.

- **Different experience for people funding their own care**

Indeed, the experience appears rather different for people who fund their own care:

- Half of the 90 people who funded their own care said they did not have a needs assessment (survey respondents).
- The four people of the 36 interviewed in the case studies who said they had not had an assessment by the council or the care home all funded their own care.

Shortcomings described by survey respondents included:

“We were very confused whether to choose residential or nursing and two years later the staff nurse said Dad shouldn’t be in a nursing home. Why didn’t we know how to get an assessment?”

“My father at 89 was very frail, blind, almost unable to walk with very poor balance. He was to be discharged from hospital following a chest infection. My mother at 88 was no longer able to care for him at home. We were just given a list of homes and told to find one. It was very lucky that I was living locally and could help my aged and not very mobile mother trawl around the homes and find something suitable. We had no advice or direction, as it was assumed my father would be self-funding. In the end we found a less than perfect place that he could afford.”

In only three of the 10 councils in the case studies did everybody receive a written copy of their assessment and care plan.

- **Delays in financial assessments**

Over half of those interviewed (19 out of 36) said they had had difficulty in understanding how the care assessment related to the financial assessment: “The financial implications took longer to digest”. People did not understand the financial implications, in particular that some homes would charge more than the council would pay.

There were a small number of people (eight in total from both the interviews and the thematic inspection) where the outcome of the financial assessment took between three and five months to come through. Residents and relatives said this had caused them some anxiety as arrears of care home fees had built up.

2.3 Care homes understanding people’s needs

By contrast, care homes are undertaking an assessment of people’s needs before they move in – 328 (83%) of the 396 homes inspected between 27 November and 8 December 2006 met or exceeded the National Minimum Standard. In just 10 of these 396 homes, residents were being admitted with no assessment, particularly where no social worker was involved.

Similarly, in only five situations in the 110 homes in the thematic inspection had pre-admission assessments not taken place. Statutory requirements (actions that homes must take to comply with legislation governing care homes) were made concerning assessment by care homes in 16 of these 110 homes.

2.4 Council policy and practice

- **Single assessments**

Ideally, the assessment of needs should be multi-disciplinary, as set out in the guidance relating to the single assessment process (SAP).³⁰ No councils in the case studies were confident that they had reached the stage of a fully integrated multi-disciplinary approach, even where health and social care staff share offices.

Of the 28 care managers interviewed, 12 (43%) reported that there were parallel health and social services assessments that allowed an integrated assessment at the end of the two processes. Two care managers reported that there was informal liaison between social services and health staff and six (21%) reported wholly separate processes.

Three of the 10 councils in the study use an electronic SAP system to enable health and social care professionals to share information. However, it was reported that there were still problems with technology compatibility and consistency of use between the different organisations.

- **Supporting people who fund their own care**

In two of the 10 councils in the study, both commissioners and care managers identified that the process of assessment was the same for older people funding their own care as it was for other older people paid for by the council or the NHS. In four of the 10 councils, commissioners specifically identified that the level of support for assessment was lower for people paying for their own care than for other older people.

Researchers examined material made available by councils to publicise care and financial assessments. Four of the councils' websites made clear that people who funded their own care would be entitled to an assessment and possibly some further support. In the remaining six, there was either no mention of support for self-funders or very little information.

30 Department of Health (2004) *Guidance on the single assessment process for older people* (HSC 2002/001: LAC(2002)1) London: Department of Health.

2.5 Examples of good practice

Particular note was made by the inspectors of homes whose assessments were comprehensive, listened to the views of individuals and linked in to assessments undertaken by councils; for example:

There is a full needs assessment for residents prior to admission. The care home manager also visits people in their own homes to carry out a full assessment and to confirm that the home is able to provide the care needed. There is a comprehensive admission questionnaire, which is an example of really good practice. There is evidence that the assessments done by the home link into those done by social workers and documentation shows that people's needs are continually re-assessed and care plans updated.

[thematic inspection report]

One council keeps in touch with and supports people paying for their own care beyond the assessment and until the routine review after the first six weeks of living in a care home.

3



Information when choosing a care home

Key findings

(i) Older people and their carers said the most powerful sources of information are social workers, friends and relatives and, most importantly, through visits to care homes. They emphasised that information given face to face is more personal and relevant than written information.

(ii) People were generally critical of the written information they had received from councils and care homes; 63% of survey respondents said the written information did not tell them what they wanted to know. Our mystery-shopping exercise found councils answered calls and provided verbal information promptly but the provision of written information was inconsistent.

(iii) Choice of homes was restricted in a number of ways. One in three people in our study in 10 councils had been in hospital immediately before moving into a care home and felt that the process would have been better if they had had more time to make considered decisions. Older people in two of the 10 councils visited felt they were being influenced to choose council-run care homes or homes where the council had block contracts. People are also not prepared that they may have to move from one residential home to another if there is a re-assessment of their needs.

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(iv) From our inspection of 396 homes, the majority are adequately meeting National Minimum Standards governing the information that care homes must provide, but there are still significant gaps in the information being provided by 20% of homes. Deficiencies in information identified in the two inspection exercises include:

- 5% – the service user’s guide did not exist or was not available
- 8% – the guide contained out-of-date information
- 13% – information was not made available in other formats, such as languages other than English, large print or Braille.

(v) However, there were also good examples of homes providing comprehensive information packs, DVDs and guides in a range of formats for prospective residents.

(vi) Knowledge of local care homes by care managers in councils was highly variable, as was their understanding of their role in advising people on choosing a home. Some thought that providing a list of care homes was sufficient; 42% of care managers simply gave limited advice or signposting whilst 21% supported older people and their families through the process.

(vii) Information from councils about care homes usually took the form of a list of names and addresses but there were examples of more comprehensive guides and regularly updated lists of care homes.

(viii) Four out of 10 councils studied were actively trying to develop the local care market to offer increased choices of care to older people. Two councils had introduced extra support services for people going into care homes, including staff appointed specifically to support people who pay for their own care.

3.1 Introduction

Once people have decided a care home is the best option, information on local care homes and their facilities is vital.

Care homes must produce a statement of purpose and a service user's guide to the care home.³¹ There are national regulations that prescribe the content of these documents. The statement of purpose must set out the aims, objectives, philosophy of care, services and facilities, terms and conditions of the home, and a statement of how the physical environment meets national standards. The service user's guide should contain all this information in a format and style easily understood by current and prospective residents.

The statement of purpose and service user's guide was examined in 40 care homes visited as part of the case studies. In addition, the inspections looked at the performance of 506³² homes against the National Minimum Standards on information.

Councils, too, should ensure that information on homes in their area is available, accessible, accurate and useful to older people and their families. The study explored the written information made available by 10 councils, as well as the general support and advice offered by those councils to people in the process of choosing a care home. Further evidence from a CSCI mystery-shopping exercise with councils has also been included in this report. [See box 3 for further information on this exercise.]

The CSCI provides information and advice to people who use services, and their carers, in finding care. This includes a care services directory, booklets and checklists (for example, on choosing a care home) that are all available in a range of formats and languages.

31 Department of Health (2003) *Care homes for older people. National minimum standards and care home regulations (third edition)* London: Stationery Office. Regulations 4 and 5.

32 This is the total of 110 homes where there was a 'themed inspection' and 396 homes that had a full inspection.

3.2 Experiences of older people and their relatives

- **The importance of face-to-face information**

Older people told us that council staff (predominantly care managers), relatives and friends are the main sources of information on range, location and quality of care homes in the first instance. Half of the older people interviewed recalled being advised and given a list of care homes by the council and two-thirds had relatives or friends who advised them.

“The information I have gained is from other people in the same position as myself and that is the most powerful source you could ever have.”

“All the information we got was verbal, mainly from the social worker who was very knowledgeable.”

“The social worker was very clear that mother would need residential care and, with the active involvement of the family, came up with the care home my mother is now in, which we can’t praise highly enough.”

Two-thirds of people interviewed had actually visited some care homes before making a decision, or their relatives had done so on their behalf. The pattern was similar amongst survey respondents, with 91% (all relatives of older people moving to care homes) saying that they had visited care homes before making their decision. These comments illustrate the importance for people of being able to experience the care home environment at first hand:

“All the glossy brochures in the world do not tell you what it is really like living in a particular care home.”

“It is important to speak to residents on the quiet before you finally choose – something which is not easy to do.”

“You must not judge the home by the fixtures but the feeling of the environment and how carers and management make you feel when you visit.”

Only one in six people who took part in the case study interviews and online survey had received advice from an independent organisation. Several people said they would have liked an independent source of information, but were not aware of voluntary organisations that provide this.

- **Criticisms about written information**

Most people interviewed in our study in 10 councils were satisfied with the information they got from councils and care homes, but the online survey completed by 188 people told a different story. The survey found in relation to written information:

- 79% of survey respondents said the information did not explain clearly what rights they had
- 76% would have liked more or better information
- 73% said the information did not explain the process fully
- 68% said the information did not help them to make informed decisions about which care options were most suitable
- 64% said the information did not explain clearly about costs and who would pay them.

Of the 188 people who completed the online survey, there were no positive comments about the process of finding out about care homes; and 22 people made critical comments – see Table 1.

Table 1. **Comments on finding out about care homes**

| Issue | Example |
|---|--|
| Being rushed into making a decision without seeing any information. | <i>“We were forced into finding a place at short notice as my mother was seen as a ‘bed blocker’.”</i> |
| Councils not providing adequate information for people who fund their own care. | <i>“We were just given a list of homes and told to find one... we had no advice or direction as it was assumed my father would be self-funding.”</i> <i>“The social worker, although helpful, made it perfectly clear that as my husband was self-funding she didn’t have to help, but would as a favour as it was ‘a difficult time’.”</i> |
| Conflicting information from different sources. | <i>“The main problem was the lack of information/decision making about whether my mother was on continuing care or local authority funding.”</i> |
| Information not being clear. | <i>“Information from social services was at best misleading, at worst non-existent for months on end.”</i> |
| Out-of-date information, for example councils’ list of care homes not being up to date. | <i>“The list of homes the council gave us was out of date... eventually we chose a new home that wasn’t even on the list.”</i> |
| Incomplete information on the suitability of care homes for people with specific needs. | <i>“We lacked independent advice and guidance about what to look for in a home for someone with dementia and very limited vision.”</i> |

One person summarised their experience:

“I have found the whole process to be a complete minefield, with conflicting information and little or no useful advice, also a complete lack of emotional support from any source whatsoever. The only way to make the right choice seems to be by trial and error, thus involving much moving about after trial periods.”

- **Limited choice**

People found their choices limited or constrained in a number of ways. The process of moving into a care home can be rushed, most often because there is pressure for the older person to vacate a hospital bed. One in three people interviewed had been in hospital immediately before moving to a care home and felt that the process might have been different if they had had more time. This echoes the key finding of the OFT report and CSCI studies on hospital discharge.^{33,34} It also goes against “established good practice that where possible people should not move directly from a hospital to a care home for the first time, but should have a period of time to make personal arrangements and adjust.”³⁵

One carer reported:

“When my mum was in hospital I felt I was put under pressure by social workers and hospital staff to quickly find a home for her. I was told that if I didn’t find somewhere soon they would find a home for her and that might not be the home I would pick.”

One survey respondent described the pressure they experienced to find a place in a care home:

“After two months in hospital my father was suddenly told that he needed to leave and go into a home virtually immediately. This gave us next to no time to find a suitable

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33 Commission for Social Care Inspection (2004) *Leaving hospital – the price of delays* London: Commission for Social Care Inspection.

34 Commission for Social Care Inspection (2005) *Leaving hospital revisited – a follow-up study of a group of older people who were discharged from hospital in March 2004* London: Commission for Social Care Inspection.

35 HSC 2003/009:LAC(2003)21 *The Community Care (Delayed Discharge etc.) Act 2003 Guidance for Implementation* London: Department of Health.

*home with a vacancy. We were given no help or advice at what was an extremely traumatic time. Initially we were told he would have to fund his own care. After six weeks of paying for him he was finally assessed and is now council funded. It took over two months to get the money we had spent back. My elderly mother would never have been able to cope with this on her own. All in all it was appalling. The only good thing is that we are happy with the home.*⁹

One relative expressed the view of many:

*I think being given seven days to select a home when a relative is in hospital and needs to go into a care home after treatment very unfair on both the patient and the relatives.*⁹

Older people in two of the 10 councils visited felt that care managers influenced people to choose council-run care homes, or care homes where the council had agreements to purchase beds ('block contracts'). For example:

*It seemed as though the social worker wanted my friend to go into a council-run care home even though it was supposed to be my friend's choice where she ended up.*⁹

The lack of choice for people with dementia was commented on by survey respondents, reflecting other research findings.^{36,37}

*As I had to look for an EMI [elderly mentally infirm] nursing home the choice was not great. Out of two suitable homes there was only one bed available.*⁹

*I am finding it hard to find a suitable home for my father with EMI care, especially one that doesn't cost him or me excessive cost (sic) – after reading some of the CSCI reports I am quite concerned.*⁹

36 Wanless D (2006) *Securing good care for older people. Taking a long-term view* London: King's Fund.

37 National Audit Office (2007) *Improving services and support for people with dementia* London: Stationery Office.

Other people did not feel prepared for moves if their relative's health deteriorated and that their choice may not be a 'home for life':

At the time when I arranged for Mother to go into a residential home I was not made aware of the upset and possible problems that can occur when someone has to move on from a residential home and go into a nursing home. If I had been aware of this I think I would have looked for a residential home that had a nursing home attached.

3.3 Provision of information by care homes

Inspections focused on the service user's guide and statement of purpose and found some good practice:

- 70% of 396 homes inspected were adjudged to be providing 'good' or 'excellent' information
- 25% of these 396 homes were providing information assessed as 'adequate'.

Evidence from inspections suggests that a minority – 5% – were providing inadequate information for prospective residents, with a further 15% providing information that only just meets the minimum standards but could not be described as comprehensive.

Statutory requirements (actions that homes must take to comply with legislation governing care homes) were made in 20 out of 109 homes inspected (18%).

Overall, the two inspection exercises identified the following deficiencies in information provided by care homes:

- information was not available in other languages or formats – for example, Braille, large print – in 13% of homes inspected, including one for blind people
- there was no service user's guide in 5% of homes
- the service user's guide contained out-of-date information about the facilities on offer or the fees charged in 8% of homes
- the service user's guide was considered to be unclear in 15% of homes.

In most cases the homes that failed to meet the standards were small homes whose explanation for not providing information was usually limited resources or lack of time. However, some homes that are part of large national organisations also did not meet this standard. Inspectors noted that the information provided was ‘standard corporate literature’, rather than individualised information about the home in question.

In the homes that scored well against the standards, residents could usually remember receiving a service user’s guide. Homes that provided good or excellent information also tended to score well against other criteria.

Box 2. **Supporting evidence from *Which?***

In March 2007, the independent consumer body *Which?*³⁸ called 50 care homes in the UK. Researchers posed as relatives needing to make an urgent decision about the care of an older person and asked homes to post information packs to them. The study found that no care homes provided all the information that should be made available to prospective residents and their families. In particular:

- Two in five care home information packs did not refer to care home fees, and many packs that included fee information did not indicate what fees were for.
- Inspection reports were not routinely referred to, and only two out of 43 packs included an inspection report.
- Three in five homes sent information within four days – the remaining homes all needed to be chased with follow-up telephone calls.

3.4 Council policy and practice

- **The role of social workers and care managers**

For most older people we interviewed, help and support from a social worker or care manager, or lack of it, was a crucial part of making the process of choosing a care home manageable.

38 ‘Care essentials’. *Which?* June 2007: 19-23.

A key role of social workers and care managers is to make information available and help people to make informed choices, but not to recommend particular homes. However, there were significant differences between care managers as to their involvement in providing advice and help with financial matters. This was true both within and between councils.

In one council taking part in our study, there appeared to be a practice of steering people towards particular homes, either because the council has block contracts in place, or because care managers have their own views about the quality of care within these homes. In another council, care managers and commissioners told us that over 75% of homes required top-ups which heavily influenced and restricted people's choice.

Across all 10 councils staff reported there was at least some information on care homes available:

- 64% of care managers felt there was limited and variable information available
- 39% of commissioners and care managers thought there was a lot of information available to support choice of home – ranging from booklets, leaflets, websites and other information – although some indicated the quality was variable.

In terms of quality of the overall information, just over a third of interviewees described the information as 'helpful' in assisting them to inform older people and their carers about the options available to them. Only three of the 28 could cite information comprehensively available in languages other than English or other formats (eg Braille). A mystery-shopping exercise also found shortfalls in the accessibility of written information from councils (see Box 3).

The volume of information itself was cited as an issue by two care managers. They found it difficult to navigate the information to arrive at a clear view on the range of options available – *“too much information and not enough knowledge”*, as one interviewee described it.

Three-quarters of the care managers interviewed said they signposted people towards voluntary organisations as a source of information on the care homes available. Of council interviewees, 86% cited the CSCI website as a source of information for older people and their families, although few older people mentioned using it.

Box 3. CSCI mystery shopping exercise with councils

The CSCI commissioned a mystery-shopping exercise focusing specifically on local councils to see what information they would give someone about social care services at the first point of contact.

A team of trained mystery shoppers contacted all 150 councils with social services responsibilities in England twice by telephone in February and March 2007. Three-hundred and five mystery-shopping calls were made requesting information on behalf of an older relative needed help, particularly with personal care and getting around.

Overall mystery shoppers found local councils' social care advisors easy to access, friendly and helpful, and 65% of all calls got through to the right person first time. However, in 15% of cases mystery shoppers had to call three or more times before getting an answer. Five calls were abandoned completely after the shopper was unable to get through to someone after six attempts.

Most shoppers were impressed by the knowledge of the person they spoke to. A wide variety of help was mentioned – respite care, accompanied shopping, pension collection and local voluntary services. However, this varied considerably from council to council.

The need for an assessment was mentioned in virtually all of the calls but there was an assumption that the shopper would know what an assessment was and how it was carried out.

Nine out of 10 councils also referred to funding. In some instances the council advisor mentioned funding immediately, asking how much savings the older relative had. Some mystery shoppers felt they were being pushed towards the private sector. They were sometimes encouraged to opt for private agencies, implying the older person would not feel the State was interfering with their lives.

The quality of the information packs posted to mystery shoppers, at their request, varied greatly. Nearly a quarter of councils did not send any written information. In total, 202 information packs were sent to the shoppers from 300 calls made.

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An expert panel of older people and CSCI communication professionals analysed the information packs. Two-thirds of the expert panel thought the packs explained the assessment process, people's rights and choices.

But more than 50% of the packs had too much or too little information which could either frustrate or confuse people.

A quarter of the packs had material with too much jargon or leaflets produced in small print or poorly photocopied that were difficult to read.

Nearly one-third of councils had said there was no information for someone with poor sight.

Overall, while most councils promptly answered calls and provided oral information, there was no consistent approach in the provision of written information.

The full report – *Hello, how can I help? An analysis of mystery shoppers' experiences of local council social care information services* will be published at the end of October 2007.

● Commissioning and purchasing for choice

None of the frontline staff interviewed in local councils believed that a wide choice of homes was on offer to older people. Thirteen (31%) thought that there was some choice available and four described the level of choice as "very limited".

It was recognised that choice was curtailed when there were pressures put on people to move out of hospital quickly into a care home. One care manager also noted that 'interim' placements – designed to place older people temporarily while their home of choice became available – tended to become permanent placements.

However, four of the 10 councils had taken a proactive approach to commissioning that sought to develop the local care market to better serve older people. Two of these councils had undertaken full market reviews. In one of these councils, top-ups are not an issue, due to a 'true cost of care' review where the price agreed between council and care homes reflects the full costs

of providing care. In two councils, the proportion of top-ups was very small – under 20%. Service developments of intermediate care, re-ablement, care at home and extra care housing were factors reported to be taking the pressure off care home placements. In two councils this meant that there were vacancies in care homes and prices had reduced. Overall in these areas, older people had greater choice in the types of services available and in the range of homes charging the price agreed with the council.

This is in contrast to two of the 10 councils which acknowledged that “*very little has been done proactively*” in relation to commissioning for their whole population and developing the local care market. In these councils, care home places are predominantly spot purchased. All participants from these councils said that over 75% of homes required top-ups and that there were very few vacancies or few ‘suitable’ vacancies.

- **Supporting people to make their choice**

Two councils had introduced extra support services for older people choosing and going into care homes, for example:

- **‘Service solutions team’** to support care managers in finding the best care option following the care assessment. The team works across the council and the NHS. It has ‘service finders’ who work with older people to find the best care for them; and ‘home finders’, who help older people who are in hospital and need a care home to make their choice.
- **Continuing care placement team** works exclusively with older people with mental health problems who are, or have been, cared for by the NHS. This includes people who fund their own care as they are, at the point of engagement, NHS patients getting a service free at the point of delivery. The team works closely with council colleagues.
- **Call centre signposting service** for people who may be requiring residential care. People able to fund their own care get the same access to assessment and support as those who are eligible for council and/or NHS funding. For example, after initial screening, calls are put through to the appropriate person in the council. If the enquiry is from a person who funds their own care, the call will be referred to a designated self-funder support worker who offers advice, support and a care assessment.

These are important initiatives aimed at ensuring older people get the same level of support whether they fund their own care or are council or NHS funded.

There were variations between councils, and even within councils, as to how involved care managers were in the decision-making process for older people moving into care homes. This was partly determined by how much information the care managers themselves had access to, as well as the care manager's own views on their role:

- 21% of care managers felt the process was very clear: they had access to a comprehensive range of information and they supported older people and their families through the process
- 16% of care managers had access to some form of brokerage service or the council's finance department
- 42% of care managers gave limited advice or signposting assistance to older people and their families.

The majority of care managers felt that consistent, timely and robust information on the quality of homes is not available, and there is limited emphasis on quality when determining where an older person will move. Only 10% described information as helpful. A third of the care managers said they would simply advise the older person or their family to visit prospective homes.

One care manager summed up a common view:

“Social workers feel frustrated with the hoops that have to be gone through on the client's behalf. They can see the distress with the complexity of it.”

● Using CSCI information

Just under a third (32%) of care managers said they used CSCI inspection reports to inform the decision-making process but commented that they needed to work with older people and their families to clarify specialist terms used in the inspections. One care manager stated *“we use what is available through CSCI but this is only partial”*.

3.5 Examples of good practice

Care home provision of information

There were examples of care homes exceeding National Minimum Standards by providing not only a statement of purpose and service user's guide but also comprehensive information packs. Inspectors noted the following examples in their reports:

One person, recently admitted to the home, was being visited by members of his family. They confirmed that the home was chosen after intensive research that had included studies of statements of purpose, service user's guides and inspection reports. They had visited homes and had discussions before deciding that this home was the best they had seen. They had been impressed by the content and 'good plain English' of the information they had received which had included copies of the complaint procedure.

A video has been produced, showing daily life at the home. It has been useful for prospective residents who live too far away to visit. It has also been used to promote the service and gain supporters.

Council provision of information

In addition to the earlier examples of support services, councils offered:

- a weekly list for care managers that outline local homes and any relevant key quality issues; primarily based on local 'intelligence' as acquired by individual care managers
- comprehensive care services guide, which includes a 'care homes checklist', fees guide and an explanation of third-party top-ups.

4



Information about care home fees and the funding system

Key findings

(i) People are not being given explicit and transparent information about the costs of their care and how the funding system works, particularly those who pay for their care in a residential home. Whilst 90% of care homes are meeting the NMS to give people personalised fee information by the moving-in date, homes rarely provide this information until the very last moment, sometimes on the day the person moves into the home. They rarely provide a detailed breakdown of what the fees cover and published fees for a home can vary by as much as £850 per week: £650 – £1,500 in one example.

(ii) Two-thirds of the older people interviewed received information about costs and what they would get for their money but this did not set out clearly when and by how much fees might increase, what would happen if their funding ran out and how top-ups worked.

(iii) Whilst nearly all the people funding their own care who responded to our survey received information (87 out of 90), only 54 (60%) of them found this helpful. People lacked information about what the fees would cover; how often the care home would increase its fees; and the help residents might get from the NHS towards nursing costs.

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(iv) Of the survey respondents who had had a financial assessment, 45% said it did not clarify entitlement to funding and how to proceed. Seven interviewees out of 11 highlighted the length of time taken to sort out who would pay for what and poor communication with their council.

(v) Professionals acknowledged they found the funding system difficult to understand and confusing. In particular, professionals had difficulty in fully understanding the contributions from various parties, including the council, the NHS and third parties.

(vi) Older people lack good information about the top-ups they or their families may have to pay. Half of the councils in our study produced good general information that explains how top-ups work. The other councils say they are constrained by a lack of information from care homes on whether top-ups will be charged and at what level. Care homes say they experience delays in decisions about different funding streams so are unable to respond promptly. There is some evidence that in a few cases apparently arbitrary decisions are being made on the level of top-ups which individuals are charged.

(vii) The prevalence of top-ups appears to be closely related to the local care market in our study of 10 councils and ranged from 5% to 75% of homes that the council dealt with charging a top-up. In councils where there was no shortage of care home places and/or alternative appropriate services, top-ups were rare. In areas where care home places were limited, we found examples of up to three-quarters of council-funded residents paying top-ups.

(viii) In the study of 10 councils, 22 out of 38 homes (58%) visited charged different rates for people funded by their council compared with those who paid for their own care. However, people paying higher rates did not get a substantially different service. Both commissioners and care home providers report resource pressures on the system that lead to this situation. Council purchasing staff feel constrained to keep fee rates low to fund as many places as possible; and providers in turn resort to 'cross-subsidy' to compensate for the prices paid by councils which are claimed not to properly fund the cost of care.

4.1 Introduction

This section covers:

- People's understanding of the funding system when moving into a care home, ie entitlement to financial support, free nursing care and NHS continuing care.
- Clarity of care home fees – is it clear what people will be charged and what this will cover? Do people know when price rises will happen and why?
- Practice and understanding of third-party top-ups – what people's experiences have been, and what care homes and councils tell people.

Care home providers are required to give people personalised information about the fees and terms and conditions of their stay, to include accommodation, food, personal care and, if appropriate, nursing care. The information should include the method of payment of the fees and by whom the fees are payable. This information should be provided at the latest by the day the person moves into the care home, but ideally earlier. This requirement came into force in September 2006 in the Care Homes Regulations³⁹ and previously applied only to people in nursing homes. From 1 October 2006, care home providers must supply information about their fees to any resident who has not already received it.

The OFT report found that the issue of top-ups was not well covered in the information available from councils. In particular, it was not widely known that councils should not set arbitrary ceilings on the amount they are willing to pay for care homes, and they should not routinely expect third parties to make up the difference.

A topping-up arrangement should only arise where a person chooses a more expensive care home place than the authority would usually expect to pay for someone with that person's needs. If an older person's needs can only be met in a home that is more expensive than the rate the council will usually pay, then the council should meet the full cost of that home, as it is not a question of choice but one of paying to meet a person's assessed needs.

39 Department of Health (2001) *Care Homes Regulations* (as amended), Regulation 5A. London: Stationery Office.

Councils are liable for the whole cost where there is a top-up and whilst they should leave it to the care home to negotiate this with relatives, their contract with the home should ensure that if the home is asking for extra money they must inform the council.

4.2 Experiences of older people and their relatives

Most of the older people we interviewed who had moved into a care home found it difficult to recall details. However, two-thirds of these people and their relatives were able to confirm they had received information about:

- the weekly cost of living in their preferred home
- how much they would have to pay towards the cost
- what they would get for their money.

People were less clear about how fee increases would be notified, what would happen if or when private funding ran out, and how top-ups worked. In all cases, older people were not able to answer these questions. Only nine of the 30 relatives interviewed said they had got clear information about when fee increases would be notified and how much they would have to pay towards the cost.

Seven out of 11 older people amongst our group of interviewees who paid some of their own care home fees said they had had problems understanding the funding, for example:

“Sorting out the finances has been a horror story... we had to get help informally through a friend who works in the finance section.”

[relative]

“As a qualified social worker myself I am worried that if I found the system extremely difficult to negotiate, how can non-professional people cope?”

[relative]

One of the main issues cited by people who fund their own care was the length of time taken to sort out who would pay what, and the lack of communication from the council whilst awaiting their decision:

“As soon as they found out Mum had savings and a home to sell, we were abandoned by the system... the process is unclear, and takes far too long between stages.”

The survey confirmed that most people received some information about care home fees and who would pay what. Nearly all (87 of 90) of the people who funded their own care responding to the survey reported they got this information, but only 60% found it helpful. People said they lacked information about what the fees would cover, how often the care home would increase its fees and the help residents could get from the NHS towards nursing costs. For example:

“When Mum was discharged from hospital she was not assessed for NHS continuing healthcare or free nursing care.”

“The pricing structure was not at all clear. In fact advice received from hospital regarding what we would have to pay was totally misleading.”

Just over 20% (40) of the people who responded to the survey had entered into top-up arrangements. Just half of these said they had received a clear explanation from the council of why they needed to top up the fees. This comment was typical of the criticisms people made about the information they received:

“I spent a lot of time visiting homes suggested by my social worker and only after making the final painstaking decision was I told the home I had chosen had a top-up fee of £80 per week, which I could not afford to pay. This left me looking for a home that met the costs the council would pay and not really what my mother needed.”

“My view is that the [local] area is quite affluent and the council probably feel the majority of people in this area can afford to pay their own fees, but this is not the case for everyone. Why there is such a difference in fees from one area to another is beyond me. My choice of home – if you

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could call it that – was really down to what the council would pay and not the best care for my loved one. At no point did the council try and negotiate a lower rate at the home that I had originally chosen and advise me that maybe I could negotiate a lower rate. 

4.3 Care home provision of information on fees

The focused CSCI inspections found that, although 90% of homes complied with the requirement to give people personalised fee information by the moving-in date, few homes provided information about fees up front, such as in care home brochures.

Most commonly, homes publicised a range of fees, but with little information on what the different rates covered. The biggest range was £850 per week – with £650 the lowest fee and £1,500 the highest. Detailed explanations of prices tend only to cover ‘extras’, such as hairdressing and chiropody, and, in some homes, laundry, toiletries, journeys to hospital.

One in 10 of the 396 homes inspected did not meet the national minimum standard on information, in that they were found to have no or inadequate information on fees available prior to moving into the home.

In addition, the thematic inspection of 110 homes revealed the following deficiencies in information relating to fees:

- There were eight examples of homes providing no information for prospective residents on fees or costs, or of providing verbal information only.
- In a further eight homes, contracts did not state the range of fees payable and by whom.
- In four homes, no information about how and when fees would be increased was given.
- CSCI inspections uncovered three separate examples of serious lack of transparency over fees. One care home charged differential rates without a clear rationale. In a second home, differential fees for self-funded and council-supported residents were not transparent. In a third, it was not made clear to prospective residents that they would be charged a higher rate if they chose the home independently than they would if a council worker was involved.

Perhaps somewhat surprisingly, a member of staff in one care home we visited suggested to the researcher that the home manager decided whether or not to ask a prospective resident for a top-up, over and above the basic fee, based on a superficial assessment of the person's probable means. One care worker commented on how top-ups are decided:

...there isn't really a way of deciding... sometimes they just charge what they think they can afford. It depends on how affluent they are – what kind of car their relatives have, that sort of thing.

Information on how and why fees might change (apart from routine annual increases) was not available in any of the homes visited in the case studies. However, this is a concern for people who are at times both council and self-funding, and experience a differential in the fee levels which they perceive to be unfair. This example was given by a relative who responded to the survey:

My father was initially funded on 'stepdown' by the council and remained on their funding level after his house was sold and he became self-funding. Originally this was opposed by the care home who tried to insist he became a private resident on a significantly higher fee. The council, to their credit, opposed this.

4.4 Council policy and practice

With two exceptions, the council care home directories examined comprised lists of names and addresses of care homes, with little information on fee levels, top-ups and levels of council funding. Similarly, council websites contain limited basic information, which contrasts strongly with the detailed information on fees, funding and top-ups supplied by independent advocacy organisations.

However, councils themselves say they are not always able to access information about care home fees. Information on the costs of homes is of critical interest to care managers and brokers, and comprehensive and clearly comparable costs would assist all parties in the decision-making process. The picture that emerges from the case studies is of partial and inconsistent information across care homes:

- seven of the 28 care managers said they received 'comprehensive' information on the costs of care homes

- eighteen reported they were able to use ‘some’ information to assist older people and their carers in making decision about moving into a care home. Overall current pricing mechanisms do not enable direct like-for-like comparison of homes.

In terms of the funding arrangements, the relationship between funding from the individual older person, their family, the council and the NHS is complex. Only three of the 28 care managers stated that they received comprehensive information to pass on to older people and their families.

One care manager said:

“We’ve found that although people can access written information they still need face-to-face discussion, clarification and help, eg going into the detail of financial arrangements and explaining what a deferred charge⁴⁰ might mean.”

Only four care managers stated that the structure of fees from homes was ‘easy’ to understand.

4.5 Top-up payments

Older people and their carers are concerned about the level of top-up payments required and the information that people receive about top-ups.

The number of homes with top-ups in place varied from council to council. In one council, it was reported that approximately 75% of homes that the council dealt with charged a top-up, ranging from £10 to £130 per week. In another council, only 23 out of 420 (5%) people supported by the council had been asked to pay a top-up. In other councils the proportion of people with top-ups in place ranged from 20% to 75%. Half of the 10 councils we visited publicised their ‘normal’ rates so that people would be clear that a home charging above that rate would require a top-up payment. No evidence of this kind of publicity could be found in the remaining councils involved in the study.

40 Under section 55 of the Health and Social Care Act 2001 and associated Regulations, councils have the power to agree deferred payments in situations where individuals, with property that is taken into account by the financial assessment, cannot or do not wish to sell their homes on admission to permanent residential accommodation.

This compares with Laing and Buisson findings in the late 1990s of about 14% of residents funded by councils receiving third-party top-ups; and by 2004 the OFT market study reporting 33% of residents interviewed had third-party top-ups.⁴¹

The levels of top-ups in different councils in our study appear to be market-linked, with the number of top-ups being highest in the council with the fewest vacancies and the least choice in care homes.

In response to commissioning a range of care at home, extra care and intermediate care, one council had witnessed a reduction in top-ups. Five commissioners specifically discussed top-ups in relation to the demand and supply for care placements. As two observed, “*top-ups are less likely to be asked for where there are voids*”.

Evidence from our case studies suggests that care managers are not always aware of top-ups charged by care homes:

- 29% of care managers stated that they received ‘comprehensive’ information on the top-up payments requested by the homes
- 21% stated they received no information at all
- 46% said that they received ‘some’ information.

One social worker commented:

“I always advise people to ask about fees; this is usually broken down into how much the local authority will pay and how much top-up. Information that’s available depends on the room – sometimes the price range can be drastic. The range [of costs] isn’t easily available. Sometimes providers will be hesitant about costs until they know who will be funding.”

41 CCC Care Policy Insights (May 2007) *Paying for care: third-party top-ups and cross-subsidies* London: CCC.

Box 4. Findings from the Association of Charity Officers

The Association of Charity Officers (ACO) has over 200 member charities that make grants each year to around 200,000 people, totalling some £125 million, and a significant number of their member charities provide special services for their beneficiaries. These range from registered care and nursing to housing for older people, and from counselling to cash grants and loans. ACO is thus in touch with large numbers of people approaching statutory services but unable to find the help they need. They find:

- they receive regular requests for top-ups to care home fees, ranging from £50-£100 per week
- a lack of understanding by older people and residents about statutory funding, particularly as councils do not explain that they (councils) can pay fees above their usual rate if there are assessed needs to be met
- occasions where families are topping up fees without agreements in place
- relatives, and sometimes neighbours and friends, coming under pressure to sign third-party agreements – ACO advise careful consideration before signing in view of the precarious nature of the finances of some of the retired people asked to sign and as amounts sought will increase year on year
- councils asking charities to sign third-party agreements for grant aid towards fees in homes, yet charitable grants cannot be contractual payments
- charity personnel frequently having to advise staff in councils on care funding responsibilities and procedures.

www.aco.uk.net

4.6 Differential charging

Of the 38 homes visited in the case studies, 22 confirmed that they charged different rates for council placements and residents who fund their own care. The care provided was not found to be different for people paying higher rates. Only two of the 38 homes said they charged the same rate for council-funded residents and those people paying for their own care. The remaining 14 either admitted only council-funded residents under block contracts; or they had agreed a rate with the council that reflected the 'true cost' of a placement and was therefore the same as the amount charged to self-funders; or had no council-funded residents so differential charging was not an issue.

In two of the 10 councils, care home provider bodies representing the interests of care homes had argued that the normal rate the council paid to homes was below what providers consider necessary to keep viable. The two councils had dealt with these representations in different ways.

One council had agreed with the care home and saw the underlying problem as lack of central government funding for social care. The council and local care homes association signed a joint statement acknowledging the situation and declaring that self-funders were being charged rates that subsidised those paid by the council.

In the second council, the care homes association took legal action against the council, which led to mediation and an independent analysis of the rates paid to care homes by the council. The final outcome was an agreed price called the 'true cost of care'. It has resulted in few top-ups within this council. A second effect of this was that older people and carers now receive very comprehensive information about fees and top-ups.

4.7 Examples of good practice

While there were some examples of individual homes providing prospective residents with a comprehensive breakdown of fees in the service user's guide or other written format, this was not the norm. Examples of good practice, however, included:

- One council had attempted to address the deficiency in information from care homes by producing a clear leaflet outlining the standard fee structures and clearly signposting people to a financial helpline for individuals.
- In three councils, finance departments provided information directly to prospective residents and their families. Their detailed knowledge and expertise were reported to be a great help for people trying to understand the system.
- One council included a 'ready reckoner' in its care services directory to help people calculate what they might have to pay towards their own care.
- Three councils routinely negotiated the whole financial package, including top-ups, on behalf of older people and their carers. The councils' view is that this is a strong protection for older people and their families, as well as a means of enabling commissioners to better oversee the care home market.

4.8 Commentary

While there has been some progress, transparency of costs remains an area of concern. Of the 90% of homes that did meet the National Minimum Standard, there was very little evidence of providing cost information beyond the bare minimum. Evidence from the interviews with older people and council staff, as well as the online survey, suggests that more detailed information on what the range of costs charged by homes might comprise would help people to make a more informed choice of care home.

Moreover, there is some evidence from the study in the 10 councils that a few care homes have no clear business case to explain why one resident is charged more than another.

Councils acknowledge differential charging occurs because council rates are set low. Council-funded block purchases to achieve economies of scale are at lower rates than those paid by people funding their own care who are essentially spot purchasing their places.

These explanations may have some validity but it means that people who pay for their own care still have too little information at an early stage when deciding to move into a care home. They do not know why care homes are charging top-ups and what they will be charged. Without this information, people cannot exercise their rights as consumers of services and, indeed, may have to forego these rights because they urgently need services.

An audit of calls to different voluntary organisations reflects the public search for more information.

During the first six months of 2006, 20.5% of all enquiries received by Counsel and Care, a charity which provides advice, support and information to older people and their carers, were about care home funding. This figure had risen slightly to 22.1% for the last six months of 2006.

The Nursing Home Fees Agency (NHFA) provides advice on entitlements to state support for care, and for people who fund their own care, information on meeting ongoing care costs. The NHFA provided a breakdown of relevant enquiries during the period January to March 2007 (see Table 2). The largest category, comprehensive care advice, covered all of the issues about care home fees, council and NHS responsibilities and funding and welfare benefit entitlement and involved, in some cases, directing callers to independent care fees planning advisors. The enquiries reflect the range of difficulties people encounter in obtaining correct information and assessments.

Table 2. **Breakdown of enquiries to the NHFA advice line (over three months)**

| Issue | Number of enquiries |
|---|----------------------------|
| <i>Comprehensive care advice.</i> | 826 |
| <i>Financial Advice</i> | 363 |
| <i>Local council charging procedures</i> | 284 |
| <i>Registered nurse care contribution and NHS continuing care assessments</i> | 161 |
| <i>Treatment of property, 12-week disregard and deferred loans</i> | 134 |
| <i>Third-party top-ups</i> | 93 |
| <i>Benefits and allowances</i> | 80 |
| <i>Deprivation of assets</i> | 67 |
| <i>Treatment of couples</i> | 62 |
| <i>Section 47 care assessment: refusing the assessment process to people funding their own care, doing assessments by telephone and failing to assess properly and using a very narrow eligibility criteria</i> | 34 |
| <i>Carers' assessment and family care: failing to assess carers' needs and assuming care is received from friends and family.</i> | 32 |
| <i>Enduring power of attorney/court of protection</i> | 23 |
| <i>Choice of accommodation: denying choice on the grounds of local council block-booked beds and denying choice through poor commissioning</i> | 22 |
| <i>Complaints: lack of continuity in caseworkers, and lack of information and clarity about the complaints process</i> | 19 |

Although a good deal of written information is available, older people and their families are heavily reliant on professionals – usually council or NHS staff – explaining the system to them. People are more likely to understand and recall the details if they have had a face-to-face explanation. Many people who fund their own care do not know they can access help from the council, and therefore feel they are left to navigate the system on their own. There is also a risk of inconsistent messages being given out when staff themselves have different levels of understanding of the system.

5



Knowing what you will get for your money

Key findings

(i) The complex funding arrangements for care home placements – with contributions potentially coming from the council, the NHS and family or other third party as well as the resident themselves – means that there is a range of possible contractual relationships. The range and detail of these contracts and – where the council funds a person's care – the statement of terms and conditions and the agreement specifying the arrangements made can be a significant problem in ensuring people know what services they will get and at what cost.

(ii) People do not always have the contracts or statement of terms and conditions they should expect when moving into a care home, whether they directly fund their care or not. Statutory requirements (specific changes individual care homes must make to comply with legislation) relating to contracts or statements of terms and conditions were placed on 34 of the 110 care homes which had unannounced inspections; and shortcomings were noted in a quarter of the 396 homes inspected over a two-week period.

(iii) The most common failings were people who were paying for their own care not having a contract to sign until after moving in to the care homes and people funded by the council having no statement of terms and conditions.

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(iv) There is no standard format of contract or statements of terms and conditions in use, although templates do exist, and many contracts are not written in plain English.

(v) Four out of 10 councils in our study contract with care homes for the gross costs of placements, including contributions from councils themselves, the NHS and third parties. This helps to address confusion around contracts and terms and conditions and offers better safeguards for older people and their families against unfair terms. Councils claim that this practice also has the advantage of enabling them to retain an overview of the local care home market.

5.1 Introduction

Having a clear, complete contract available to older people before they move in to a care home is clearly necessary so people understand what they are entering into, in terms of cost and the service they receive, fee increases, notice periods, etc.

The complex funding arrangements for care home placements – with contributions potentially coming from the council, the NHS and family or other third party as well as the resident themselves – means that there is a wide range of potential contractual relationships.

There is some confusion over the definition of a ‘contract’ and the legal status of written agreements in use. The arrangement between a care home and an older person funded by the council does not constitute a legal contract with the older person. This is because the funding does not come from the older person but from the council. Nevertheless, care home regulations⁴² require care homes to have a statement of terms and conditions relating to the residency and care of an older person funded by the council. This enables every older person – regardless of funding status – to have a clear explanation of what they can expect from the care home.

This study set out to discover whether written contracts or statements of terms and conditions are transparent and easy to understand, whether people had an opportunity to review their contracts and statements of terms and

42 Department of Health (2001) *Care Home Regulations* London: Stationery Office.

conditions, and whether people were able to access advice and guidance on contracts. In this section we use the term ‘contract’ to refer broadly to the whole range of agreements in place, although, where appropriate, we do make a clear distinction between a legal contract and a set of terms and conditions.

National Minimum Standard 2⁴³ relating to contracts requires that each care home resident should have a written contract (if they fund their own care) or a statement of terms and conditions (if the council funds their care) with the home. People should have a contract or statement of terms and conditions at the point of moving into the home.

The statement of terms and conditions should include:

- the room to be occupied
- overall care and services (including food) covered by the fee
- fees payable and by whom (service user, council or health authority, relative or another)
- additional services (including food and equipment) to be paid for over and above those included in the fees
- rights and obligations of the service user and registered provider and who is liable if there is a breach of contract
- terms and conditions of occupancy, including period of notice (eg short/long term; intermediate/respite care)
- period of notice.

Providers also have obligations in the Care Home Regulations to supply any person whose care in the home has been arranged by a council with “*a copy of the agreement specifying the arrangements made*”.

In the course of the two inspection exercises, contracts or statements relating to at least three residents per home were examined in 506 homes – a sample of over 1,500 contracts or statements of terms and conditions.

43 Appendix 1 provides details on National Minimum Standard 2.

5.2 Experiences of older people and their relatives

Only one-quarter of the care home residents we spoke to could remember having received a contract, although relatives of people paying for their own care were usually able to confirm that they had seen and signed a contract. In general, people had little comment to make about contracts, beyond the observation that they were not written in particularly clear language.

Half of the residents funded by councils said they had no agreement at all.

In one home visited there were two reports of residents not having signed a contract until six months after they had moved in, and in another the daughter of a resident said her mother had been told to sign a contract before she (her daughter) had had the chance to look at it.

5.3 Contracts and terms and conditions provided by care homes

Case study interviews with care home staff showed limited staff understanding of and exposure to residents' contracts and terms and conditions. Some managers told us they had no dealings with contracts as 'everything is dealt with at head office'. Care staff referred to contracts with standardised information that was out of date and with unclear terminology.

Evidence from the inspections suggests that these are not isolated incidents. Inspectors made statutory requirements relating to contracts or statements of terms and conditions in 34 out of 110 cases. This is over twice as many requirements as were made in relation to any of the other three areas investigated – assessment, information and complaints. Table 3 provides some examples of shortcomings in contracts and statements in the 110 homes involved in the thematic inspection.

Table 3. Examples of shortcomings in contracts and statements of terms and conditions

| Issue | Number of homes (n=110) |
|---|--------------------------------|
| The home contract contains potentially unfair terms, including in relation to top-ups | 9 |
| There is no contract or terms and conditions in place | 7 |
| Contracts or terms and conditions contain out-of-date information | 7 |
| The notice period for fee increases is only two weeks, is not stated at all or fees are increased without notice | 5 |
| Council-funded residents have no terms and conditions | 4 |
| The contract does not specify the room to be occupied | 2 |
| Contracts are particularly unclearly written | 2 |
| The contract is not issued/signed prior to admission | 1 |
| Terms and conditions allow the home manager to charge more for the 'free' nursing component at his/her own discretion | 1 |

Similar concerns were found in the 396 homes inspected, as shown in Table 4.

Table 4. Shortcomings in contracts and statements of terms and conditions identified in the focused inspection

| Issue | Inspection report extract |
|---|---|
| Home does not have contracts or statement of terms and conditions | Comment cards completed by people using the service received prior to the inspection identified that out of 10 received, nine identified that they were not in receipt of a contract. |
| No terms and conditions for council-funded residents | The manager said that the home does not use a statement of terms and conditions for residents whose care is funded by the council or a contract for residents who are funding their own care. The need for this to be addressed was discussed so that residents are fully aware of the terms and conditions of their stay. |
| Residents do not have access to their contracts or agreements | There is a separate financial file kept for people using the service which contains their 'Resident's Agreement' with the home, and also a contract with the council if the person has been funded by them. The 'Resident's Agreement' is normally made between the home and the family. One resident said that they knew they were paying for their own care, but would have liked to have seen their 'Resident's Agreement', so that they knew what they were paying for. |

Continued on next page...

...continued from previous page

| Issue | Inspection report extract |
|--|---|
| Contract terms do not reflect people's circumstances | <p>One person had been moved from a single to a shared room while refurbishment took place. The registered manager explained that it would not be possible for the resident to be moved back to single accommodation as there were no vacancies available. This means that they may have to share their room in the future. Although the person stated <i>"I don't mind if I have to share"</i>, and the agreement with the council did not stipulate whether the accommodation that they were paying for was for shared or single accommodation, the 'Resident's Agreement' said that the person would occupy a single room.</p> <p>Contracts were seen to be the original ones issued at the time the resident had moved in to the home. Some did not contain up-to-date information; for example, one had not been reviewed or amended since May 2002. The contracts made no reference to any annual increases or changes. The contracts did not include the room to be occupied by the resident and any charges for additional services offered. Most of the contracts showed a different scale of fee charged. One contract stated that the fee would be paid in cash. When the inspector asked for the receipts for the cash transaction, the owners said that this was a mistake and that no cash payment was ever received.</p> |
| Lack of information in contracts | <p>The residents' contracts and terms and conditions looked at were very limited in information. The manager and owner were aware of the changes that were required and were seeking advice from the Office of Fair Trading to ensure they were correct and that all the required information would be included.</p> |

5.4 Council policy and practice

Councils were generally aware of problems that people experienced with care home contracts and some had attempted to address the issues on behalf of residents.

Commissioners in four of the 10 councils told us that the policy of the council was to contract for the gross fee with the care homes; that is, to have the council pay the full amount for care directly to the home and recover the payments from the other parties themselves. They said this has the advantage of simplifying the payments and contract structures, and potentially allows the council more closely to monitor the local market. A further six commissioners (46%) stated that their council has gross contracts for some of the payments – two covered third-party contributions but not NHS, and four covered NHS but not third-party payments.

An older person and their family should be able to see and understand a contract before entering into it. Fifteen commissioners and care managers (36% of those interviewed) said they knew that older people had the contract before they moved into a home as a matter of standard practice, whereas 10 (25%) stated that a contract would be issued but that it may not be given until after the older person had moved in. Five care managers acknowledged that contracts were not regularly issued.

Seven commissioners and care managers (17%) thought the care home contracts they had seen were unclear. As one person put it:

they are easy to read if you are a lawyer.

It was acknowledged that in some councils contractual arrangements between councils and care homes had resulted in older people not being given adequate information about the terms and conditions. In these cases older people have little or no control over the relationship between cost and quality, and are wholly reliant on the council to monitor this. As one council interviewee acknowledged:

The local authority is updating the terms and conditions of placement – one reason being to get a better understanding of the quality/cost issues... it's a gap that's being addressed.

Commissioners and care managers also expressed concerns about arrangements for increasing fees or charges. Fourteen interviewees (34%) told us that the arrangements were generally clear to older people, whilst nine (22%) stated that the terms for fee variations were unclear or not stated at all. A further eight (20%) did not know how increases in fees were covered in the contracts.

5.5 Examples of good practice

Despite the large number of requirements made relating to contracts, inspectors also found examples of good practice in care homes:

- One home had produced a document called ‘Explanation About Contract’, which was written in simple language and had been placed on every file to show that the resident had seen it. In addition there was a document on file recording the resident’s capacity to understand the information.
- There were six examples of excellent terms and conditions documents, containing personalised information, a clear breakdown of who would pay what, detail about the overall care and services to be provided, terms and conditions of occupancy, the personal and registered nursing care contribution to fees, with 28 days’ notice of fee increases and the reason for increases.

The following extracts from inspection reports provide examples of positive practice in relation to contracts:

“The manager said that all prospective residents and their families were sent a copy of the contract and terms and conditions of residence to consider prior to admission. If time were short the document would be provided on admission. Documentation was always supported by a verbal explanation.”

“As the three residents were relatively new to the home a full set of care records were assessed. These contained acceptable copies of a contract and letters from the home and the council explaining the charges and how they had been calculated. There were also copies of letters that explained why rises in charges were necessary and how much they were to be.”

One council issues 'individual placement agreements' for council-funded residents. The agreements make clear what each individual can expect from the care home, in terms of levels of care, terms and conditions of stay and care home facilities.

5.6 Commentary

The lack of clarity and confusion about contracts and statements of terms and conditions continues to be a cause for concern, despite the OFT report and work that has been done on standard contracts and terms and conditions. The situation is not helped by the complex funding arrangements, ie the arrangements whereby up to four different parties may contribute towards the cost of a care home placement.

The fact that contracts and statements of terms and conditions are not held in care homes in a number of cases makes transparency difficult. Older people and home managers both need to know what is in the contracts in order to ensure the service being paid for is being delivered.

6



The right to make comments and complaints

Key findings

(i) Procedures for making complaints and awareness of them were generally good. Of the homes inspected, 82% met or exceeded the National Minimum Standard on complaints.

(ii) It is less evident that people actually feel confident about complaining. Three in four relatives interviewed were wary of complaining “*in case of repercussions*” for their relative.

(iii) People funding their own care and responding to our survey indicated their feelings of being powerless, having no one to go to and no rights of redress throughout the whole process of moving into a care home.

6.1 Introduction

The purpose of the National Minimum Standard governing complaints (see Appendix 1) in care homes for older people is to ensure that people feel confident in complaining and that their concerns will be taken seriously and acted upon. Care homes must have a complaints procedure and must keep records of complaints made and action taken.

The CSCI is neither empowered by its functions nor funded to investigate individual’s complaints made about services they receive. The responsibility

for handling complaints rests with care homes and local councils. However, the CSCI fully understands that some people are worried about sharing their concerns and complaints with care providers. This is partly because people fear they will be treated less favourably by care providers if they complain.

In responding to a complaint it has received about a service, the Commission uses its powers of inspection to undertake enquiries. With regards to care homes, the CSCI undertakes these activities to ensure compliance with regulations and National Minimum Standards. The evidence is used to tell care providers what they must do to put things right.

Information about complaints, concerns and allegations against regulated services is published in the Commission's annual report to Parliament. In 2006-07, the CSCI received 5,407 such communications about regulated services with a significant proportion raising issues about care practice, staffing and abuse.⁴⁴

6.2 Experiences of older people and their relatives

Only two of the people interviewed in the course of this study had made a complaint and both had been satisfied with the outcome. Everyone we spoke to knew what to do if they wanted to complain. Most said they would be able to raise a concern with one of the care home staff directly. Others said they would talk to their relatives.

Relatives were more concerned about the implications of making a complaint. Three in four of those interviewed said they would be wary of complaining "in case there were any repercussions" for their relative.

Of people responding to our survey, 19% agreed "I would not like to complain even if something was wrong in case things got difficult".

One relative responding to the online survey commented:

Despite choosing what I feel is a good care home, it still fails on so many points... I do not want to complain officially to CSCI as I do not feel my mother is up to a move.

44 Commission for Social Care Inspection (2007) *Annual Report and Accounts 2006-07* London: The Stationery Office.

Comments from survey respondents, quoted in section 3, highlight the sense of powerlessness felt by people funding their own care and the lack of support “*from any source whatsoever*”.

No one we spoke to referred to seeking help from an advocacy organisation. One person was aware of the CSCI and had made a complaint to the CSCI in the past.

6.3 Care homes dealing with complaints

Care home staff were well versed in the purpose and contents of their home’s complaints procedure. Several mentioned undertaking NVQ training and learning about complaints procedures. All the homes we visited in the course of the study had a complaints procedure, although some were more accessible than others. This finding was reflected in the inspections, which revealed only a handful of examples of homes not having a procedure in place.

Overall, homes performed well against the NMS on complaints. Of the homes inspected, 82% met or exceeded the NMS. Requirements were made following thematic inspections in 12 out of 110 care homes and these were concerned largely with details of the procedure, rather than major concerns. Inspectors noted the following issues:

- Complaints procedures contained out-of-date information about the CSCI or did not mention the CSCI at all (six homes).
- Residents were not given a copy of the complaints procedure (four homes).
- Some complaints are not documented. Discussions with relatives showed that complaints had been made that were not recorded and relevant actions had not been taken (three homes).
- The complaints procedure requires people to complain in writing (two homes).

The overall picture seems to show that care homes have good policies and procedures overall. However, inspection reports show that further work is needed to enable older people and their relatives to voice any concerns freely. For example:

...some niggles are not seen by residents as complaints (eg recent staff shortages): recommended that home enhance systems to ensure home manager aware of adverse comments or niggles.

Residents that were able to express an opinion were aware they could raise any concerns they may have but some were wary of raising concerns as they did not know how staff would react. The acting manager was surprised at this being an issue in the home. She was advised she must ensure there are systems in place in the home to ensure the residents are able to raise any concerns that they may have without worrying about the reaction of staff.

6.4 Council policy and practice

Council staff interviewed were well aware of procedures for making complaints in local care homes. They were prepared to become involved in the complaints process within a home if the complaint was serious and unresolved for long enough to be brought to their attention.

Council staff expressed different views as to whether the first contact for complaints should be directly to care homes, to the council or to the CSCI. However, there was broad understanding that the council could and did help with older people complaining if required. Twenty-one commissioners and care managers identified care managers as having a role in helping older people to complain. Four interviewees stated that they viewed the CSCI as having a role in assisting older people to complain, although three felt that the responses received from the CSCI were variable and it was increasingly difficult to get the CSCI to become involved in complaints about serious incidents:

With serious incidents it's increasingly hard to get CSCI to make a contribution... Responses are very variable.

There isn't clarity about how CSCI operates in this role and the expectations of LAs. We and the public need this clarity.

[care manager]

6.5 Examples of good practice

Inspectors highlighted availability, visibility and clarity of the complaints procedure as key components of good practice. We found examples of residents being encouraged to raise concerns and care homes proactively responding to issues raised by residents, whether trivial or potentially serious. For example:

A complaints form is given out on admission. A copy is also available in all bedrooms. It was positive when reading minutes from a service user meeting held in November 2006 that the subject of complaints was raised. The minutes read: 'Residents were asked if they knew who to go to if they had a complaint. Most residents knew that they could go to the manager or member of staff. Residents were informed that they all had a copy of the complaints procedure taped to their wardrobe, and if they could not see the procedure a copy large print was available'.

The policy in place appeared to be robust and staff were following the procedure outlined to them. People using services stated that they had every confidence in the current management team in addressing issues and felt they were very approachable and had an 'open door' policy, which some had used.

Two of the 10 councils we visited said they had a service level agreement with a local advocacy agency and encouraged care home residents to use the service. We also found care homes that had arrangements with independent advice agencies to provide information in care homes. Many care homes publicised the services of advocacy organisations within the home and some hosted regular advocacy surgeries.

7



Conclusions

This study set out to examine older people's experiences of choosing and moving into a home. Is the current system offering 'a fair contract' with older people? What influence and power do older people and carers have in the care market?

Making a decision about moving into a care home

Older people who do get an assessment of their needs and whose care is funded by their council appear to find the process largely satisfactory. However, as with the OFT study, people are often prevented from making an informed choice by the circumstances in which they move to care homes, particularly those who are under pressure to be discharged from hospital.

The situation is very different for people who fund their own care. Although this study has found that some councils are proactive in making assessments, information, advice and support more accessible to people who fund their own care, this is not consistent across the country or within council areas.

There are examples of good partnership working between health and social care services which resulted in a less confusing experience for older people and their relatives but the Single Assessment Process is by no means part of everyday practice.

Choosing a care home

It is still doubtful whether older people know where to go as a first port of call to get information, particularly those without previous experience of care services.

However, when people come to choose the care home that best meets their needs and means, there is more and clearer information available than was the case two years ago. Care homes are producing better statements of purpose and service users' guides.

But people prefer one-to-one advice and this experience can be very variable given the different interpretations by councils and care managers as to their role in supporting people moving into a care home, particularly for people who fund their own care. Care managers do not feel they have the necessary comprehensive information on local homes, including, most importantly, the quality of the homes. Professionals are caught between aspirations of being brokers of services and advocates for older people at the same time as being gatekeepers to services.

There is evidence that some councils are trying to develop local care markets encouraging a wider range of services, including greater opportunities for care at home. This appears to be reducing the need for top-ups and increasing choice of services.

Information about the costs of care

The OFT study found significant problems with contracts. Evidence from our thematic inspections has found some improvements, particularly in the number of contracts with unclear or potentially unfair terms. Care homes are taking seriously the requirement to have signed contracts in place and it is now less common to find care homes where residents have no written agreement at all.

Most care home contracts in the study now comply with the NMS in respect of personalised fee information. Where this was found not to be the case, the likely causes are poor administrative systems. Although some council-funded residents do not have a statement of terms and conditions, many do have a letter or agreement setting out their entitlements and the terms of occupancy. This is a positive step towards recognising older people as consumers rather than as recipients of welfare services.

But the payment of top-ups remains a key concern of many older people. Indeed, others have recently commented on current practices that have “*evolved by stealth from a position where top-ups are paid for ‘extra services’ over and above needed care to a point where they are becoming necessary to secure care. Fundamentally, the way that top-ups are now required is symptomatic of the chronic under-funding of care and a cause of distress to care recipients and their families and to many of those who have to adopt such practices.*”⁴⁵

Guidance on top-ups that people understand is almost non-existent and the requirement for top-ups varies significantly between councils. Although there are some examples of councils providing information about how top-ups work in general, there is a lack of specific and timely information about whether, why and at what level top-ups will apply. Of most concern, there is some evidence that a small number of care homes are deciding arbitrarily on the level of top-ups which individuals or their families should pay. Consistent information about top-ups would help older people and their relatives to be better equipped to challenge this practice.

Four councils in our sample of 10 case studies contract for gross costs, and others are considering doing so. Although the Government did not accept the OFT recommendation that all councils should be required to do this, some councils regard gross contracting as good practice and are being proactive in implementing it. There is some evidence that older people and their relatives experience fewer problems over understanding, negotiating and managing different funding streams where this is the case.

Confusion remains about the different responsibilities for health needs (where care provided is free) and social care needs (where care is means-tested). These are not distinctions that are meaningful for people in need of high levels of support and cause extreme frustration and distress.

There remain concerns about the detail of some care home contracts and terms and conditions that need to be addressed. People would be in a stronger position as consumers if:

- care homes use a standard form of contract
- the contract is written in plain English and there are mechanisms in place in all homes for explaining the contents to older people who lack capacity to understand
- detailed information about fees is available up-front and before the point when people have made a choice and are about to sign contracts

45 CCC Care Policy Insights (May 2007) *Paying for care: third-party top-ups and cross-subsidies* London: CCC.

- it is made explicit who the parties to a legal contract are and what are the terms and conditions applying to each resident's stay
- residents are confident that agreements are not broken and councils check that resident's agreements are genuinely fulfilled for the individuals they place.

Differential charging

The OFT study estimated that 'cross-subsidy' was taking place in around one in five care homes. This is where people who pay for their own care pay a higher rate that subsidises the rate the council will pay for supported residents. Although our case study sample was small, we found evidence of differential charging in 58% of the homes.

Differential charging appears to be unrelated to quality of care, even if some people paying for their own care who pay a higher rate might get a slightly bigger room or a nicer view. This is unusual, since in most markets, the expectation would be that the consumer who pays more gets better quality in return.

Overall, people who participated in this study said they did not necessarily want to have a wide range of homes to choose from or to shop around for the best deal, but to know that there are standardised, reliable local services of a good quality that will meet their needs.

There is a lack of information available to help people decide whether they are getting value for money. When older people are unable to exercise their choice in buying care, the market is not serving people well. The critical issue is that people should have more information at an early stage in the decision-making process about care homes' fees and the reasons behind these charges.

Complaints and redress

Care homes now have complaints procedures in place and awareness of procedures has increased.

There are examples of councils who have commissioned independent advocacy services providing reassurance and support should older people and their carers wish to complain.

There have also been steps to clarify the different responsibilities of care homes, councils and the regulator in responding to complaints. The CSCI's policy is to promote the statutory responsibilities of providers and to clarify that its role is as a regulator and inspector rather than as a statutory complaints investigation agency.

Councils' responsibilities have been further clarified in Department of Health guidance supporting the introduction of reformed statutory social services complaints procedures in September 2006.⁴⁶ However, this does not change who can use these procedures and people who independently arrange and fund their care fall outside of them. Similarly, the Local Government Ombudsman can only consider matters of maladministration causing injustice on the part of local councils and other public bodies.

The Department of Health consultation proposes a joint process for health and social care⁴⁷. However, these proposals are at present restricted to the statutory complaints mechanisms of councils and the NHS and do not extend to the responsibilities of private and voluntary care providers.

The role of the regulator

More people who visit the Commission's website use it to obtain information about care homes but many people are only signposted to the site because they come into contact with social workers and would not otherwise know about the information available from the Commission. There were some suggestions for improvements in the information the CSCI provides to help people choose a care home. These included making inspection reports easier to find as well as providing links to guidance and information from central government and independent bodies. During this study, the CSCI has made a number of improvements to the website and has launched a dedicated website for professionals.⁴⁸ It will make further improvements as necessary.

Some people taking part in this study have said that the CSCI needs to take a more prominent role in enforcement activity. In 2006-07, the CSCI issued 584 statutory notices and prosecuted on six occasions. In the course of the study, the CSCI has set up special enforcement teams that target bad practice and act more effectively and consistently. The new regulator, OfCare, which will replace the CSCI and Healthcare Commission in 2009 will need to continue to pay vigorous attention to these issues.

46 Department of Health (2006) *Learning from complaints: social services complaints procedure for adults* London: Department of Health.

47 Department of Health (2007) *Making experiences count: a new approach to responding to complaints. A document for information and comment* London: Department of Health.

48 The **CSCI Professional** website – www.csci.org.uk/professional – offers a one-stop shop for care providers and councils and includes:

- email alerts with the latest news and developments
- easy-to-find guidance on all areas of running a care service
- self-assessment forms available to download for providers
- key information for councils on commissioning services.

What needs to happen?

As increasing numbers of older people require care services and a greater proportion have to fund their own care, it is crucial they are provided with the necessary information and support to make decisions about their care. The findings of this study suggest actions by all those involved with the workings of the care market, locally and nationally, to ensure older people and their carers, whether they pay directly for their care or not, have:

- 1 Access to expert, impartial advice and information on a one-to-one basis**

There is clearly a cost attached to this but government and councils need to respond to the demand from older people and carers for high quality information and advice services, ranging from good one-to-one advice over the phone to expert brokerage services available across the country. Potential brokerage models are discussed in an earlier CSCI publication.⁴⁹
- 2 Good comprehensive assessments of their needs**

Councils need to ensure that all older people have opportunities during an assessment of their care needs to consider the range of available options for support, including the use of direct payments or individual budgets. This should apply whether people are at home or in hospital. Councils should work with their local NHS trusts and primary care trusts to ensure that proper assessments are carried out when people are being discharged from hospital, regardless of their financial circumstances.
- 3 Clarity about what people are paying for and who pays for what**

The current system bears down unfairly on some groups of people and there needs to be far greater transparency about price, funding and the links between quality and cost, so that older people and their carers know what they are getting for their money.

⁴⁹ Commission for Social Care Inspection (2006) *Support brokerage: a discussion paper* London: Commission for Social Care Inspection.

Others have commented that the current practice of top-ups is “*symptomatic of the chronic under-funding of care*”.⁵⁰ The Wanless Review⁵¹ on the future funding of social care for older people and the work of the Joseph Rowntree Foundation⁵² have contributed important evidence towards the debate on the funding of social care. The CSCI has also highlighted the increasing shift of responsibilities from state to individuals and families without accompanying debate or the necessary support being in place.⁵³ The findings of this report contribute to the debate that the Minister has said should seek “*a new consensus, a new settlement in terms of the funding of social care between the state, the family and individuals.*”⁵⁴

Whatever the outcome of the 2007 Comprehensive Spending Review, people should only have to pay top-ups to fees when they have genuinely exercised choice. The fee charged by homes should be based on the cost of running a home and meeting a person’s needs, not on how or by whom a person is funded. This will require councils to work closely with providers to ensure block and other contracts are allowing for the costs of provision of proper quality.

Councils and care homes also need to produce written material that is explicit about top-ups and clearly states what is included in the price of a care home place. The merits of a standard contract and statement of terms and conditions should be considered.

Government will need to ensure implementation of the recent guidance on NHS continuing care⁵⁵ as from October 2007 genuinely addresses the current confusion felt by people about who is eligible for free NHS care as against means-tested social care.

50 CCC (2007) *Paying for care: third-party top ups and cross subsidies* London: CCC.

51 Wanless D (2006) *Securing good care for older people. Taking a long-term view* London: King’s Fund.

52 Joseph Rowntree Foundation (2006) *Paying for long-term care: moving forward* York: Joseph Rowntree Foundation.

53 Commission for Social Care Inspection *The state of social care in England 2005-06* London: Commission for Social Care Inspection.

54 <http://news.bbc.co.uk/1/hi/magazine/6277944.stm>

55 Department of Health (2007) *The national framework for NHS continuing healthcare and NHS-funded nursing Care* London: Department of Health (<http://www.dh.gov.uk/publications>).

4 More choice

Councils have a key role in developing the local care market and commissioning for all the communities they serve – not just for those people whose care they expect to fund. If they do not consider the supply of services for their whole population, this could result in shortages and higher fees. They should be closely involving older people from all communities to develop a portfolio of services to offer genuine choice for people, both in innovative alternatives to residential care and in high quality local care homes.

5 Full and authoritative information from the regulator

The CSCI has already taken a number of steps to address criticisms about difficulties in finding inspection reports and providing better information for the public. It has also recently launched a new website for professionals providing links to other sources of guidance and information. Further action is needed to raise the CSCI profile with care managers and other staff working with people who are considering moving into a care home.

The Commission will be publishing quality ratings for care homes which will be a significant step to empowering older people and their families. This will provide quick and easy information for the public about the quality of local care homes.

However, the third reorganisation of the social care regulator in the last six years inevitably challenges progress in establishing public confidence and recognition of the regulator's role as a key provider of information.

6 Complaints are dealt with effectively

People can make a complaint direct to a care provider irrespective of whether they fund their care or not. However, if they are not satisfied and want to take their complaint further, remedy and redress depends upon the individual's funding status.

People who are placed through local council's care management or NHS continuing care arrangements are eligible to use statutory mechanisms and can get their complaints considered by the local government or health service ombudsman. People who arrange and fund their own care fall outside of these procedures and cannot access independent public service ombudsmen.

The Department of Health is currently consulting on an integrated health and social care complaints procedure for implementation by 2009 and there are opportunities to debate solutions to this gap in the process. Some people have suggested the establishment of a Care Services Ombudsman as one possible way of providing improved remedy and redress.

Appendix 1: National Minimum Standards (NMS) focused on in the study

Standard 1: Information

OUTCOME

Prospective service users have the information they need to make an informed choice about where to live.

The registered person produces and makes available to service users an up-to-date statement of purpose setting out the aims, objectives, philosophy of care, services and facilities, and terms and conditions of the home; and provides a service user's guide to the home for current and prospective residents. The statement of purpose clearly sets out the physical environment standards met by a home in relation to [set] standards.

The service user's guide is written in plain English and made available in a language and/or format suitable for intended residents and includes:

- a brief description of the services provided
- a description of the individual accommodation and communal space provided
- relevant qualifications and experience of the registered provider, manager and staff
- the number of places provided and any special needs or interests catered for

- a copy of the most recent inspection report
- a copy of the complaints procedure
- service users' views of the home.

Service users and their representatives are given information in writing in a relevant language and format about how to contact the local office of the National Care Standards Commission [now the Commission for Social Care Inspection] and local social services and health care authorities.

Standard 2: Contract

OUTCOME

Each service user has a written contract/statement of terms and conditions with the home.

The statement of terms and conditions includes:

- the room to be occupied
- overall care and services (including food) covered by the fee
- fees payable and by whom (service user, council or health authority, relative or another)
- additional services (including food and equipment) to be paid for over and above those included in the fees
- rights and obligations of the service user and registered provider and who is liable if there is a breach of contract
- terms and conditions of occupancy, including period of notice (eg short/long term, intermediate/respite care).

Standard 3: Needs assessment

OUTCOME

No service user moves into the home without having had his/her needs assessed and been assured that these will be met.

New service users are admitted only on the basis of a full assessment undertaken by people trained to do so, and to which the prospective service user, his/her representatives (if any) and relevant professionals have been party.

For individuals referred through care management arrangements, the registered person obtains a summary of the care management (health and social services) assessment and a copy of the care plan produced for care management purposes.

For individuals who are self-funding and without a care management assessment/care plan, the registered person carries out a needs assessment covering:

- personal care and physical well-being
- diet and weight, including dietary preferences
- sight, hearing and communication
- oral health
- foot care
- mobility and dexterity
- history of falls
- continence
- medications usage
- mental state and cognition
- social interests, hobbies, religious and cultural needs
- personal safety and risk
- carer and family involvement and other social contacts/relationships.

Each service user has a plan of care for daily living, and longer-term outcomes, based on the care management assessment and care plan or on the home's own needs assessment.

The registered nursing input required by service users in homes providing nursing care is determined by NHS registered nurses using a recognised assessment tool, according to Department of Health guidance.

Standard 16: Complaints

OUTCOME

Service users and their relatives and friends are confident that their complaints will be listened to, taken seriously and acted upon.

The registered person ensures that there is a simple, clear and accessible complaints procedure which includes the stages and timescales for the process, and that complaints are dealt with promptly and effectively.

The registered person ensures that the home has a complaints procedure which specifies how complaints may be made and who will deal with them, with an assurance that they will be responded to within a maximum of 28 days.

A record is kept of all complaints made and includes details of investigation and any action taken.

The registered person ensures that written information is provided to all service users for referring a complaint to the NCSC [now CSCI] at any stage, should the complainant wish to do so.

Appendix 2: Methodology

Case studies

Case studies undertaken in 10 councils across England focused on the views and experiences of older people in care homes or moving into care homes. Other key participants in the process were also interviewed: relatives and carers, care home workers, care home managers, council care managers and commissioners.

Qualitative interviews focused on the following topic areas:

- information and advice on choosing a care home
- care home funding and fees
- terms, conditions and contracts
- complaints.

Case study interviews took place between January and March 2007.

The case studies were located in 10 councils with the following characteristics:

- six councils considered metropolitan/urban, with an ethnically diverse population
- three councils considered rural, with a more ethnically homogenous population
- one council represented a mix of urban and rural characteristics.

Online survey

The online survey targeted relatives and carers of older people who had moved into care homes or were considering doing so. The survey was publicised via the CSCI's website and through national voluntary organisations working with older people. One-hundred and eighty-eight people took part in the online survey between February and March 2007.

Reference groups

A reference group, comprising older people and relatives and carers, met twice during the data-gathering phase. Initially, the group commented on the content of the interview schedules. At the second meeting, the group commented on the preliminary research findings and added further insights.

The numbers of people taking part in the case studies, online survey and reference groups were as follows:

| Participants | Number |
|--|---------------|
| Council/NHS commissioners | 13 |
| Council/NHS care managers or social workers | 28 |
| Care home managers/key workers in care homes | 33 |
| Older people recently moved into care homes | 36 |
| Relatives of older people in care homes | 30 |
| Survey respondents (relatives of older people) | 188 |
| Reference group attendees | 14 |
| Total | 342 |

Themed inspections

(i) Thematic inspections

Between 11 December 2006 and 12 January 2007, 110 thematic inspections were undertaken, focusing specifically on care home performance against the following national minimum standards (NMS):

- NMS 1: Information provided by care homes
- NMS 2: Contracts
- NMS 3: Assessment of care needs
- NMS 16: Complaints

Over the course of the inspections, inspectors spoke to an average of three residents per home, and, where relatives were available at the time of the visit, to their relatives. Inspectors also reviewed individuals' files, which contained details of information supplied, fee levels, copies of contracts and terms and conditions, assessments, care plans and records of any complaints made.

The researchers analysed all 110 inspection reports and collated examples of the following:

- good practice by care homes
- shortcomings against the National Minimum Standards
- statutory requirements, ie specific changes that individual care homes must make in order to comply with legislation governing care homes.

(ii) Thematic probe

In addition to the thematic inspection of 110 homes, there were 396 inspections in the period 27 November-8 December 2006. During these inspections the inspectors took a particular interest in the four standards outlined above, although they also carried out a full inspection against other standards.

Inspectors spoke to, on average, three people living in each of the homes inspected and reviewed records kept by the home relating to individual residents.

Overall judgements made by inspectors for each of the 396 homes inspected were analysed alongside the individual scores for each of the four relevant NMS. In addition, the text of a random sample of 200 of the 396 inspection reports was analysed by content focusing on the same topics as the thematic inspection reports.

Appendix 3: Acknowledgements

The Commission for Social Care Inspection gratefully acknowledges the help and assistance received in undertaking this study:

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Care managers and council commissioners who participated in the case studies.

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- Alzheimer's Society
- Association of Charity Officers
- Counsel and Care
- Help the Aged
- Nursing Homes Fees Agency
- Parkinson's Disease Society

Organisations involved in discussions about the study and its implications:

- Department of Health
- English Community Care Association
- Federation of Small Businesses
- National Care Association
- Office of Fair Trading
- Registered Nursing Homes Association

Stakeholders attending our early findings meeting:

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- Claire Arnold Anchor Trust
- Caroline Bernard Counsel and Care
- Helen Bowers Independent Living Review, ODI
- Elaine Cass Social Care Institute for Excellence
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Notes

Notes