OFFICE OF FAIR TRADING

Older People as Consumers in Care Homes

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OLDER PEOPLE AS CONSUMERS IN CARE HOMES

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FOREWORD
by the Director General of Fair Trading

Choosing a care home, for ourselves or our loved ones, is something that is likely to involve many of us at some stage of our lives. As with looking for a new home, it is likely to be a stressful time and we may find ourselves ill-equipped to make such an important decision. As with many new experiences we may find ourselves most vulnerable when we most need to be well-informed. We all have an interest therefore in ensuring that older consumers are offered the best possible deal. Part of that deal means clear and comprehensive information on what can be expected in a care-home environment.

The needs of current and future residents of care homes are receiving welcome attention from a number of organisations. Earlier this year, the Better Regulation Task Force completed its review of long-term care and concluded that residential care should be more vigorously regulated. The Government intends to publish White Papers on the future regulation of care services and the Royal Commission on Long Term Care for the Elderly is due to report early in the New Year. Our respective terms of reference may differ but they are complementary.

My own inquiry has confirmed fears that vital information is not reaching those who need it when they need it most. A variety of organisations produce excellent material covering all the things we need to think about before making a decision. Many of these organisations are charities who are unlikely to have the resources required to ensure delivery of key information to all that need it. I hope that my report will assist in raising the profile of the issues and those who are ready to help guide those in need to necessary information and assistance. I am issuing a fact sheet which will give consumers essential information and direct them to organisations and information to help them make a choice.

I am grateful to the many individuals and organisations who have provided evidence to this inquiry and to those who have in other ways assisted in the preparation of this report and the fact sheet. I hope that we can continue to work together with interested organisations to ensure that standards of consumer care in this most sensitive of market places are raised.

My special thanks must go to those residents who took part in the survey of residents. A key aim of my inquiry was to find out what residents felt and I now have the views of more than 965 residents. I hope that their experiences will help present and future residents of care homes alike.

John S Bridgeman
Director General of Fair Trading **October 1998**

1 INTRODUCTION

1.1 The Office of Fair Trading (OFT) announced that it intended to undertake an inquiry on care homes on 8 July 1997. Its primary objective would be to examine what information was provided to residents about their future home, what contracts were used, how the financial affairs of residents were handled, and what mechanisms existed to address complaints from residents or their representatives.

1.2. Under section 2 of the Fair Trading Act, the Director General has a duty to keep under review the carrying on of commercial activities in the United Kingdom and to receive and collate evidence about such activities where they may adversely affect the interests of UK consumers. The inquiry's terms of reference did not include the examination of how long-term care for older people should be funded. Nor did the inquiry aim to examine how competition is working in the market in the context of the Director General's competition powers. It was focused solely on the experience of residents as consumers in care homes within the public, private, and voluntary sectors.

1.3 The OFT's press release of 8 July 1997 invited views from residents, relatives, pressure groups, government departments, local authorities, and health authorities. It identified the following particular areas of concern:

information - were residents given sufficient information to enable them to choose the best home, and was it made clear at the outset what was included in the fees?

contracts - whether the residents were given contracts, and did the contracts clearly explain what services and facilities were included, the terms and conditions of the residence and how to make complaints?

financial issues - how adequate was the financial protection given to residents - for example, did they have control of their own money, did they have to surrender their benefit books on entering a home, would they risk losing their money if the home closed down because it had not been held in a separate account? and

redress - were the existing complaint procedures sufficient, known about, and effective?

1.4 The OFT received a large number of letters and other written submissions from both individuals and organisations. This data was supplemented by information received in phone calls and at face-to-face meetings. The OFT would like to put on record its appreciation of the contributions made by respondents. It is particularly grateful to those individuals, mainly carers and relatives of residents, who have passed on details of their own experiences - sometimes during periods of personal distress.

1.5 Throughout the inquiry, the underlying aim was to give a voice to the residents of care homes. In many cases, it was carers, relatives, charities, and other organisations who spoke for them. Nevertheless, there was a wish to reach residents directly and find out about their experiences. To that end, the OFT commissioned a survey of residents within residential and nursing homes. The inquiry team is extremely grateful for their participation in the survey. It would also like to thank the local and health authorities and care homes who made it possible for researchers to gain access to residents.

1.6 The OFT has been conscious of the pending legislative changes to the regulatory regimes for care homes. Consequently, while its recommendations have been directly based on the evidence collected, these have been framed in such a way that they can be progressed within the revised legislative framework. But, because there remain a number of unknown factors, in terms of who should take responsibility for acting on them, it has not been possible to be as specific as some readers might have wished. This report sets out principles of best practice that the OFT believes should be adopted and encouraged by everyone with an interest, and a part to play, in raising standards of consumer care in this area of customer service.

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2 THE MARKET

2.1 There are about half a million care places in residential and nursing homes in the United Kingdom. More than 70% of all residents are female and over the age of 74: about half are over 85 [1]. With the number of people over 85 in the population at large expected to double by the middle of the next century, the numbers in care homes might also be expected to show a rapid increase. But projections of future care-home demand are more complex than simply looking at the rising numbers of people over 80, and there are conflicting views on how the future may unfold. Much depends on the health of future generations of older people and the continued availability of informal home care by relatives and friends, in some cases with assistance from local authorities and voluntary organisations. Despite common perceptions, there is at present little evidence to suggest that the proportion of older people covered by family

Table 1 - Numbers of homes in 1998

	Totals to the nearest hundred	
	Residential homes	*Nursing homes*
England	12,000	5,200
Wales	700	400
Scotland	800	500
Northern Ireland	300	300
Totals	13,800	6,400

Source: Laing and Buisson

Table 2 - Numbers of residents in 1998

Figures include all private, voluntary and local authority homes	*Totals to the nearest thousand*	
	Residential homes	*Nursing homes*
England	260,000	155,000
Wales	15,000	12,000
Scotland	19,000	23,000
Northern Ireland	6,000	9,000
Totals	300,000	199,000

Source: Laing and Buisson

1 About 75% of residential and 80% of nursing home residents are over the age of 75.

care is actually falling. The 1995 *General Household Survey* (Office for National Statistics 1998) found 1.7 million individuals spending more than 20 hours a week caring for older, sick, or disabled people, compared with 1.4 million in 1985. Nevertheless, the trend towards smaller families, increased divorce rates, decreasing marriage rates, increasing dispersal of families, and increased participation of women (the traditional caring group) in the labour force could all reduce the ability of families to look after older people. In order to project the long-term cost of care, the Department of Health (in 1996) estimated that there would be a fall in informal care of around 10% by 2030.

2.2 In 1997, just over 70% of all residents were funded by the public sector in some way - Department of Social Security (DSS) Income Support, local authorities, and the National Health Service (NHS). Community Care reforms have resulted in a shift of public funding of care-home places away from Income Support towards local authorities. In addition, some 28% of residents in care homes financed themselves from their own resources - for the most part from the sale of owner-occupied property. Relatively few people are covered by insurance - at the end of 1997, there were 23,000 long-term care insurance policies in force. The continued growth in owner occupation, combined with the increasing number of people who have some form of occupational or personal pension, might suggest a reduced eligibility for local authority assistance in years to come. A larger proportion of future generations of older people will be owner occupiers. But many may well have committed part of their housing equity to supplement their income before a long-term care situation arises, or they may have taken steps to safeguard their children's inheritance.

2.3 Privately-run homes accommodate more than half of all those currently in residential care. Between late-1996 and 1997 private residential and nursing capacity remained static, while local authority provision continued to fall. There were 64,100 local authority residential home places in 1998 (including those that were dual registered) compared with 135,000 in 1988. The 1980s saw a rapid expansion of the private sector, fuelled by open-ended income support. With the transfer of DSS funding to local authority budgets, those authorities were actively encouraged to make use of the independent sector through transitional funding arrangements - and they were, indeed, required to spend at least 85% of a transitional grant in the independent sector. Nevertheless, this requirement applied only during the transitional period and it remains to be seen whether the decline in local authority provision will continue. The NHS has remained a relatively small and declining provider of care homes. The number of voluntary sector homes has been rising as local authority provision has fallen.

2.4 Most providers in the care-homes market are independent small businesses, each running just one or two homes. The larger operators, such as the British United Provident Association (BUPA), are focused on the nursing-home and dual-registered home sectors. The average number of places provided has continued to rise in both nursing and residential homes - although the average number of places is significantly

lower in the residential sector than in the nursing sector. Very small homes (with fewer than four residents) tend to specialise in residential care for younger, physically disabled individuals and those with multiple disabilities, rather than older people.

2.5 The care-home sector represents a capital-intensive investment in property. With the trend towards larger homes, the financial barriers to entry to this market have been steadily increasing - particularly in the nursing-home market where the average size has increased by more than one-third in 10 years. In 1996, on average, nursing homes provided 37 places, dual-registered homes 45 places, and residential homes 19 places - although new nursing homes set up by major providers average nearer 65 places. Initial capital and start-up costs are thought to be in the region of £30,000 per bed.

2.6 Owners of the smaller homes tend to use capital raised on the security of buildings, most notably as mortgages. Large operators tend to be subsidiaries of major health-care companies with access to capital markets and an ability to spread risks. Off-balance-sheet capital funding, including sale-and-leaseback, has also allowed major operators to expand much more rapidly than if they had used traditional forms of finance. There are currently some £900 million-worth of assets under such contracts.

2.7 The cost of running a care home is related to its size, whether it is managed by a resident owner or by a corporate body, its geographical location, and - most importantly - the type of care it provides. The inherent running costs of nursing homes are typically greater than those of residential homes, since they require specialist equipment and full-time qualified nursing staff. Staffing levels and costs are determined by the layout of the home, and the number of residents and their level of dependency. Laing and Buisson[1] have estimated that, for a typical 50-bed nursing home, wages account for three-quarters of total costs. Commentators suggest that - from a profit point of view - the optimum size for a nursing home, based on staff-to-resident ratios, is 50-60 beds. For many residential homes, the numbers will be lower. Rates of pay vary from region to region, with wages accounting for a lower proportion of total costs in such low-wage areas as the North East than in high-cost London.

2.8 Given the present depressed state of demand for residential home places (see paragraph 2.3), it is not surprising that the average fees charged by both nursing and residential homes have followed a path intermediate between average costs and changes in support limits. Recently average fees have increased by less than the average earnings index, the retail price index or the weighted average income-support uprating. This reflects strong pressure on fee rates being exerted by local authority providers and the impact of a rising number of vacancies.

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1 Laing and Buisson are consultants covering a wide range of areas in the health and community care field. They are specialists in the care-homes market.

3 THE REGULATORY FRAMEWORK

3.1 Residential homes are expected to provide the level of care one would expect from a competent and caring relative - covering, for example, security and the provision of such day-to-day services as laundry and meals, as well as the stimulation of company, encouraging individuals to remain as alert and independent as possible. Residents may require assistance with some aspects of personal care. Nursing homes cater for more dependent older people requiring nursing care. In nursing homes there will always be a qualified nurse on duty and 24-hour nursing care is provided.

3.2 Residential homes are run by local authorities, by voluntary organisations (registered charities or religious bodies), or privately, by individuals or companies on a commercial basis. Nursing homes are usually run privately or by voluntary organisations. Homes that are run by voluntary organisations may have special rules about whom they can admit. In some areas there are homes especially for people who have served in the armed forces, or for people from particular ethnic groups or religions.

3.3 Regulation throughout the United Kingdom follows broadly the same principles although there is separate legislation and associated guidance and regulations governing the provision of long-term care for older people in England and Wales, in Scotland, and in Northern Ireland. This chapter highlights the key features of the *existing* regulatory framework governing issues pertinent to the OFT inquiry. (At the time that this report was being prepared for publication, however, it was anticipated that the Government would shortly be producing a White Paper on Social Services, incorporating proposals to reform the regulatory framework for social services and nursing homes in England, and that this would be followed by further papers covering such provision in Scotland and in Wales. The Northern Ireland Department of Health and Social Services was also understood to be preparing its own set of regulatory proposals.)

Registration and inspection

England and Wales

3.4 The primary legislation relating to nursing homes and residential care homes is the Registered Homes Act 1984. Under the Act, the providers of nursing homes and of residential care homes in the private and voluntary sectors must be registered. Although directly managed local authority residential homes for adults do not fall within the scope of the Act, they do have to be regularly inspected. Residential care homes are monitored by inspection units within local authority social services departments, while nursing homes are monitored by inspectors of the relevant health authority. Failure to register with the appropriate local or health authority is a criminal offence.

3.5 Different criteria apply to residential homes and to nursing homes: consequently those registering such accommodation need to define the services that they offer to ensure they register correctly. Care-home owners can 'dual-register' their homes, making it possible for them to provide both categories of care. Such homes will be registered with both the local authority and the health authority. The Registered Homes (Amendment) Act 1991 removed a previous exemption from the registration requirements for 'small homes' - those providing residential care for fewer than four people.

3.6 Social services inspectorates are constituted under the auspices of local authorities, while health authorities appoint officers to inspect nursing homes. In some areas there are joint inspection units, covering both residential homes and nursing homes. Elsewhere, health and local authorities have less formal arrangements but do liaise closely. The legislation requires that the registering authority inspects each home - except small residential care homes - at least twice a year. One of these inspections should be unannounced. Nevertheless, inspectors are authorised to enter homes unannounced at any other time, day or night. Inspections are also carried out by health and safety inspectorates, environmental health officers, and fire brigades in respect of their specific duties.

3.7 The National Health Service and Community Care Act 1990 requires that local authorities inspect (but not register) their own in-house residential care provision on an even-handed basis with provision in the private and voluntary sector. Local authorities are required to make their inspection reports openly available and to make arrangements to ensure that any requirements and recommendations made in the reports are carried out. In addition they have to set up advisory panels and include lay assessors in inspections.

Northern Ireland

3.8 The registration and inspection of both residential homes and nursing homes in Northern Ireland is governed by the Registered Homes (Northern Ireland) Order 1992 and associated regulations. Many of the provisions of this Order are similar to the regulations which apply to England and Wales. Residential homes must be registered, as must nursing homes in the private and voluntary sectors. While homes provided by Health and Social Services Trusts do not require to be registered, they are expected to provide the same standards of accommodation and care as those in the independent sector. In appropriate circumstances, individual homes can be registered as both residential care homes and nursing homes. Statutory regulations on how a home should be run are supplemented by guides to developing good practice.

3.9 In Northern Ireland the organisational structure for health and social services differs from that elsewhere in the United Kingdom, with local and health authority functions carried out by four health and social services boards. Authorised personnel of the boards or the Department of Health and Social Services have the right of entry to

inspect homes at all times. Each board is required to inspect every registered home in its area at least twice a year. But this is regarded as a minimum requirement and the boards are encouraged to carry out inspections more frequently if the situation in a particular home appears to warrant it. To register and inspect residential care homes and nursing homes (and also children's homes) every board has its own integrated registration and inspection unit, with staff drawn from both nursing and social work backgrounds. Each unit operates at arms' length from the day-to-day management of its parent board, reporting directly to the board's Chief Executive, and producing its own annual report. The inspection units include lay assessors. A circular from the Department of Health and Social Services in Northern Ireland requires that, as in England and Wales, inspection reports are open to the public and that follow-up arrangements are made to address action points from inspections. Practice guidance was issued by the Social Services Inspectorate in 1994.

Scotland

3.10 The primary legislation governing the inspection of all nursing homes in Scotland is the Nursing Homes Registration (Scotland) Act 1938. Secondary Regulations from 1990, 1991, 1992, and 1998 are also relevant. The Act requires each Health Board to inspect all nursing homes in its area at least twice a year - but there is no upper limit. All nursing homes in Scotland must comply with certain 'core standards' that were published in 1997.

3.11 The primary legislation governing the registration of residential care in Scotland is the Social Work (Scotland) Act 1968, as amended by the Registered Establishments (Scotland) Acts of 1987 and 1995. Under the legislation, 'any establishment controlled by a government department or by a local authority' is excluded from the need for registration. With the transfer of all NHS hospitals - bar one - to NHS Trusts, this category has diminished. In addition, some local authorities are currently in the process of transferring their homes to the private sector - so that they will no longer be exempt from registration. Pending the introduction of new legislation, authorities have been directed by the Scottish Office to treat their own direct provision, as far as possible, in the same way as the independent sector. The National Health Service and Community Care Act 1990 applies in Scotland and introduced the requirement for local authorities to establish arms'-length inspection services. Many authorities integrated their registration responsibilities with these services. No specific provision needed to be made for small homes as residential care for even one person had previously been possible. Although there is provision for 'joint' registration of homes providing both residential and nursing care (known as 'dual' registration elsewhere in the United Kingdom), the owners of such homes have to pay two sets of registration fees and are required to achieve the standard of care appropriate to each service.

3.12 Nursing home registration and inspection teams throughout Scotland have to apply the criteria set out in the core standards issued by the Scottish Office (see paragraph 3.10).

The procedures for residential care homes were reviewed in 1996. One of the recommendations made was that nationally recommended guidelines and quality-of-care standards should be produced, and the Scottish Office is setting up a National Consultative Committee to take that recommendation and related issues forward.

The scope of inspections

3.13 While checking that homes meet the demands of the statutory regulations, inspectors in all parts of the United Kingdom increasingly seek to ensure that they comply with standards of good practice beyond these basic requirements. The OFT has seen a number of specimen inspection guidelines that have been issued by local authorities in England and Wales, and which indicate that inspectors look into a very wide range of matters. These include: the facilities offered by individual homes; occupancy rates; charges; the availability of descriptive brochures; complaints procedures; catering; staffing; health and safety; management records; access to, and recording of, medication; records of residents' money held; arrangements for safeguarding residents' valuables; access to telephones and a private place; care plans; and leisure activities. The inspection process also includes discussions with residents.

Information for residents on making complaints

3.14 The Residential Care Homes Regulations 1984 require that home owners inform every resident, in writing, of the person to whom, and the manner in which, they should make any request or complaint that relates to the home. Home owners must also ensure that any complaint made by a resident, or a person acting on their behalf, is fully investigated. In addition, they must tell every resident, in writing, of the name and address of the registration authority to whom complaints about the home can be made. The Nursing Homes and Mental Nursing Homes Regulations 1984 provide no equivalent requirement to provide nursing-home residents with similar information. Nevertheless, those in nursing-home care in Scotland, whose care is paid for in full by the NHS, do have access to the NHS complaints procedure.

4 INFORMATION - MAKING A CHOICE

4.1 In an ideal world, all residents of care homes would have made up their own minds about when the time was right to have made that move. They would have chosen their future home on the basis of clear and accurate information and after shopping around. The reality is that, in many cases, the decision to place an older person in a care home is taken by others, such as carers, relatives, friends, hospital staff, general practitioners, or social workers. The move to a care home may be at time of crisis, domestic or medical.

4.2 Of those residents surveyed by the OFT, 57% considered that they had had no choice about moving into a care home. The three most common reasons given for the lack of choice were:'couldn't cope on my own, illness or disability' (43%); the 'family had brought me, sent me'(11%); and the 'doctor/hospital brought me here' (10%). The main reason for what residents considered a lack of choice about moving into a particular home was that the 'family brought me/sent me' (39%).

4.3 Whatever the circumstances and whoever the decision maker, it is vital that there should be access to a range of accurate, consistent, and user-friendly information about residential homes and nursing homes and related issues, such as how the care of individual residents will be paid for. This chapter reviews the information gaps that exist and looks at ways of addressing them.

Care assessments

4.4 Where anybody feels that they require residential care, they are entitled to have their care needs assessed. Under the National Health Service and Community Care Act, local authorities in England and Wales, and in Scotland are required to carry out such assessments to decide what services need to be supplied. In Northern Ireland, the four boards that carry out both health and local authority responsibilities for health and personal social services on an integrated basis contract with 19 provider health and social services trusts. The assessment processes and the provision of community care services are, however, much the same as elsewhere in the United Kingdom.

4.5 Care assessments can involve a number of different professionals - such as hospital staff, general practitioners, social workers, and district nurses. They can also cover a wide range of issues as, for example, the medical and nursing needs of those being assessed, their ability to carry out basic daily functions, their mobility and sensory functioning, their own wishes, the views of carers, and financial issues.

4.6 Guidance to local authorities stipulates that a copy of the completed care assessment should normally be given to the person assessed. Subsequently, they should also be given a copy of the care plan if the local authority is to provide and arrange care. The

plan sets out what care and support is needed and who is going to provide and arrange it (for example, the NHS, the local authority, or a voluntary organisation).

4.7 Both the care assessment and the care plan are vital documents which set out the individual's identified needs. They are the basis upon which the decision about a suitable care home will be made.

4.8 If the local authority decides that a particular individual's needs could be best met by residential or nursing care it will provide that person with details of possible homes which could include a directly-managed local-authority home. It is not, however, necessary for the individual concerned to choose a home that has been suggested by social services. It is possible to select a different home - maybe in another area - provided that that home can provide the care required and will agree a contract with the relevant social services department. While it is the local authority that will be formally contracted to cover the full cost of the home selected once the choice has been made, that authority will assess what contribution the individual should make towards meeting those costs.

4.9 Where individuals pay directly for their own care (self-funders) they can approach homes in the private sector for a place, even if the local authority's assessment indicates no need for care services.

4.10 A number of those who provided evidence to the OFT inquiry expressed concern about inadequate detail in care assessments. One charity had received many reports of assessments which merely recorded '24-hour care required' or 'care in a residential/ nursing home needed'. Such lack of detail can make identification of suitable homes difficult. The charity thought that more detailed care assessments were required, stating the precise nature and type of care that was needed, such as particular assistance with eating or nutrition, or the need for accessible environments. The Audit Commission in its report *Coming of Age*, published in 1997, identified 'inconsistent assessment procedures leading to poor quality assessments' as one of the problems which occurred in the hospital discharge process.

RECOMMENDATION 1 - Care assessments should be clear, comprehensive, and accessible. Inconsistencies between different authorities should be minimised.

Access to information

4.11 There are many sources of information for prospective residents and their carers and relatives. They include NHS Trusts and health authorities,[1] local authority social services departments, general practitioners, the Benefits Agency, care homes and their trade associations, and several major voluntary organisations such as Help the Aged,

1 In Scotland, health boards and social work departments.

Counsel and Care, Age Concern, and The Relatives Association. All these and other voluntary organisations offer advice and produce written information on choosing a home and paying for care.

4.12 The National Care Homes Association operates both a freephone advice line and a freepost service, and can supply information about such matters as financial options, local authority support and social security benefits. It can also put people in touch with a local association adviser. Other national trade associations in the care-home sector provide lists of homes in any particular part of the country enquirers are interested in, but make no recommendations about any specific establishment. Depending on the nature of the query, they direct enquirers to social services departments, voluntary groups, and other appropriate organisations.

4.13 A key concern raised by both residents and their relatives during the course of the OFT inquiry was the lack of guidance available when choosing a home. Decisions were often made in a hurry, particularly after an older person's discharge from hospital, when relatives might be pressurised into making arrangements quickly in order to release a bed for another patient. While the social services department could provide lists of homes, there was little indication which ones might suit particular individuals.

4.14 The OFT survey of 965 residents in care homes appeared to confirm that specific information about such homes was not getting through to residents and relatives. It showed that less than a quarter (23.3%) of residents had received *written* information from a leaflet or brochure about their care home before moving in. Of those residents who had not received any written information, just 27% said that relatives and friends had done so. Residents in local authority homes were even less likely to have received any written information - only 11% of those interviewed claimed to have done so.

4.15 By contrast, 59% of residents had been *told* about the services and facilities offered by 'their' home before they had come to stay there, but 34 % had not. Furthermore, three out of ten residents in the survey who had had a choice of home said that they had not received any help in making that choice. For the 66% of residents who had obtained such help, the most common sources of advice were their children, other relatives, friends, and social workers, in that order.

4.16 One charity suggested that people were often very ignorant about what they should consider when choosing a care home. Its experience of advising relatives led it to conclude that many people made the critical decision with only the most skeletal information and that social workers either gave them too much information, or too little.

4.17 Since November 1995, one local citizens advice bureau has contracted with a social services department to provide an advocacy service. Two full-time advocates were

engaged to represent residents at reviews held six weeks after entering a home and at annual reviews of care plans. The service was originally primarily intended for residents of residential and nursing homes funded by social services departments, but has been extended to be available by referral from relatives, carers, or self-referrals. The issues it has raised on behalf of its clients have been the provision of financial information - such as what options are available to pay fees, and what benefits are available - as well as other care-related issues. The local advice bureau has found that these matters are not always fully explained prior to admission, either to residents or to their relatives.

4.18 The key message to have emerged from the evidence given to the inquiry team was that while there is a wide range of useful data available about care homes and related matters, access to specific information of immediate relevance to particular cases may not be easy. Some commentators claimed that, when prospective residents and their relatives sought information and advice from social services departments, what was provided was not always sufficient or accurate, nor was it tailored to the circumstances of the enquirer. They told us that more information from both local authorities and care homes was required. Residents needed to be clear exactly what had been purchased and what they should expect of the chosen home.

RECOMMENDATION 2 - Those who provide information should review the oral and written data (including details of hospital discharge procedures) they give prospective residents of care homes, to ensure that it is clear and comprehensive. Individuals should be able to freely access the details of those homes that can meet their assessed needs so that they can make an informed choice.

Inspection reports

4.19 One relatively recent source of information about individual care homes is the inspection reports compiled and published by registration and inspection units. The reports record what the inspectors found in particular homes and set out their requirements or recommendations for any improvements they feel may be necessary or desirable. Since 1994, such reports on residential homes have been open to public scrutiny at registration and inspection units and at other public places such as town halls and libraries, where copies can be made for a charge. These reports have the potential to be a valuable information tool for prospective residents.

4.20 In England and Wales, inspection reports on nursing homes have been open to public scrutiny only since April 1998. In Scotland, the reports of health board inspections of nursing homes have, in the past, not been routinely published. Some areas however - Lanarkshire for example - have recently adopted the practice of opening their inspection reports to the public, and there is nothing to prevent other health boards following suit.

4.21 The inquiry team also heard concerns expressed about variability in the standards and quality of inspection reports and access to them. Some reports could be obtained only from the relevant inspection unit's offices, which might not be easily accessible nor widely known, whereas others were freely available. Moreover, in certain areas, the reports were sometimes couched in terms that might not be readily understood by lay readers, although some authorities did produce summaries. The director of one social services department told the inquiry team that his department provided free 'executive summaries' of inspection reports, although there was an administrative charge of £5 for a copy of the full report. He maintained that, in general, care-home owners did encourage people to look at inspection reports, but they received few spontaneous requests to do so.

4.22 Although there was, as yet, no statutory requirement to do so, some authorities routinely inspected small homes with fewer than four residents. Others would inspect such establishments if they considered it necessary - for example, if they had received a specific complaint. The availability of reports on such inspections varied.

RECOMMENDATION 3 - Inspection reports on residential homes and nursing homes should be widely available, easily accessible, clear and comprehensive. Inconsistencies between different authorities should be minimised.

Brochures

4.23 Concerns were expressed at the absence of any standard-format list detailing what individual homes included in the fees they charged. Extra charges for such services as chiropody were often not discovered until after a resident had been admitted. Brochures varied greatly in clarity and content. Misunderstandings about what facilities and services were covered by the fees were not uncommon.

4.24 The inquiry team was told that some local authorities gave prospective residents an information booklet which itemised what services were covered by the fee and which were 'extras'. In other areas, however, there appeared to be little information available to potential residents about what extras they might have to pay for.

4.25 The OFT carried out an analysis of brochures from 155 care homes in England and Wales, and Scotland, covering the private, voluntary, and local-authority sectors. This was not a random sample: the brochures were supplied by care homes and their trade associations in response to a direct request for this material.

4.26 The analysis showed that:

- only one brochure in the 155 supplied provided any information about what charges would be made for extras - such as hairdressing, outings, and chiropody;

- fewer than one-third of the brochures (45) mentioned fee levels;

- just 13 brochures (10%) stated when fees were reviewed, nine (6%) mentioned notice periods for termination of contracts, and only eight (5%) used large print - only six (4%) spelt out whether there were penalties for long absences for holidays or hospitalisation - and none of the brochures mentioned a notice period for changes in fees;

- the five most frequently mentioned services were hairdressing, chiropody, laundry, the provision of television sets, and outings;

- the five least frequently mentioned services were toiletries, dry cleaning, optician services, occupational therapy, and daily or weekly activities.

4.27 The OFT inquiry team concluded that existing brochures frequently did not provide potential residents with adequate information about the level of fees and specifically what they included, what factors affected the fees and what charges were made for extras.

4.28 The Royal National Institute for the Blind estimated that there were around 200,000 older people with some measure of visual impairment living in residential homes and nursing homes. The fact that this handicap was not recognised as a disability as such and the lack of experienced staff meant that the quality of life of such residents was lower than it should have been. Self-evidently, the visually impaired did not have the same access to information as their sighted counterparts, and that information could be worthless if it was presented in a format they were unable to read. Material should be available in the medium best suited to the individual's condition, whether in large print or braille, or on audiotape.

RECOMMENDATION 4 - All care-home owners issuing information should review their brochures to ensure that clear and comprehensive information is given about:

a the care and facilities they provide;

b the fees that are charged, what they cover, and when they must be paid;

c the cost of facilities not covered by the fees;

d the key contract terms and conditions, such as the notice periods for the termination of the contract and changes in fees (and, if the full contract terms are not shown in the brochure itself, there should be a clear statement that they are available on request);

e the internal and external complaints procedures.

RECOMMENDATION 5 - All bodies providing information should consider offering that information in large print or braille, or on audiotape.

Visits by prospective residents

4.29 Those directly involved in the care-home sector encourage prospective residents (or their family, or carers) to visit the homes being considered, and most of the literature produced by private, voluntary, and public organisations also recommends visiting homes in advance. Material produced by social services departments and charities sometimes includes a helpful checklist of points to consider when making such a visit.

4.30 One care-home owner told the OFT that any written document was limited in its usefulness, and he usually advised people to visit the home and talk to the person in charge. A number of other care-home owners also brought up this last point, and further suggested that, in addition to giving enquirers as much written and verbal information as possible, prospective residents might be encouraged to stay for a day or so on a trial basis.

4.31 The OFT's survey of residents showed that half (50%) of those questioned had 'looked around' the home to which they subsequently moved. The most common reason cited for having chosen a specific home was that they had liked it when they had made that preliminary visit. Reflecting that response, for the 31% of residents who had considered another home, the most common reason for not choosing the alternative was that they had not liked it when they had visited it. These results indicate that a greater emphasis should be put on the desirability of prospective residents visiting a care home than relying on the contents of the home's brochure.

RECOMMENDATION 6 - Visits to homes by prospective residents should continue to be encouraged.

5 CONTRACTS

5.1 This chapter looks at the contractual situation of care-home residents - for example, whether residents have written contracts and, if so, what those contracts say. Those who provided evidence to the inquiry team highlighted a number of problems faced by residents and by their relatives. Before the inquiry was put in hand, it had been suggested that - in some cases - residents did not have written contracts or that, where they did, those contracts lacked clarity and detail to explain what services and facilities could be expected from the home provider. It had also been suggested that contracts lacked information about individual residents' rights and obligations and/or those of their relatives. Written and oral evidence from respondents confirmed these criticisms, while the survey of residents further showed that most of them had no knowledge of any written contract or what it might contain.

The absence of contracts

5.2 The OFT's survey of residents showed that fewer than one in five was aware of being a signatory to a contract. More than one-third of those residents who were interviewed believed that there was a contract which they or a relative had signed. A lower proportion, 24% of those under the age of 75 had signed a contract (or believed that a friend or relative had) compared with 38% for other residents. One in four residents or their relatives had had a copy of their contract at any time. Two thirds of residents either did not know or could not remember what sort of areas were covered by their agreement with the home. The apparent absence of a written contract, or the lack of awareness of the contract terms in so many cases, is disturbing.

5.3 It may be that, in some instances, a relative of the resident, or some other person, does hold the contract for safe keeping. Nevertheless most of the residents interviewed claimed not to have signed a contract relating to their care. This may be partly explained by cases where a local authority has purchased care services from an independent provider on behalf of potential residents when the contracts would be between purchaser and provider. Support for this thesis is provided by the OFT survey of residents which showed that a higher proportion of those in the private and voluntary sectors had signed a contract (or a friend or relative had done so). Where a local authority purchases care services from an independent provider, the residents affected would not generally be a party to these arrangements unless they had been specially joined into a tripartite contract. The OFT has been told by the Audit Commission that the use of such tripartite contracts is increasing. In other cases, there may be two concurrent contracts, one between the resident and the care-home owner and the other between the care-home owner and the local authority.

RECOMMENDATION 7 - It is recommended that:

a **all residents should have a written contract;**

b **all contracts should be clear and comprehensive;**

c **residents must be clearly informed of their rights and obligations and who is liable if there is a breach of contract;**

d **all contracting authorities should ensure that tripartite contracts are available in all situations where a resident is not the direct purchaser of the care services;**

e **care-home providers should ensure that all residents have a copy of their contract and any variations to the original contract. Copies should be made freely available to residents. In cases where a resident's interests are represented by a relative or another person who is a signatory to the contract that person should also be provided with a copy of the contract; and**

f **all inspection units should check that copies of their contracts are made available to all residents.**

The timing of the provision of contractual information

5.4 Examination of a selection of care-home brochures and contracts suggests that, in many cases, brochures are no more than an advertisement. Details of a home's facilities and terms and conditions may be passed on to residents only after they have moved in. In some cases, the first occasion that residents may be made aware of these matters is when they receive the written contract - *provided* it is comprehensive and covers all terms, conditions, and key information. But, if it lacks detail and clarity residents may not learn of key provisions of their contractual relationship until much later - perhaps when a problem arises. The OFT accepts the view of those respondents who suggested that such information should be made known earlier on in the process and should form part of the decision-making process.

5.5 Many of those who submitted evidence to the OFT inquiry regarded the care plan or pre-admission care assessment of the needs of individual residents as a key element of the contract which should be reflected in contractual documentation. The *Framework Contract between Residential Care Provider and Resident* (issued by the Continuing Care Conference) clearly makes reference to the assessment being prepared and agreed with the resident and the resident's previously nominated carer, relative, or advocate.

5.6 The framework contract also provides that, where a detailed pre-admission care plan is not available, a care plan will be developed by the care team within the home in conjunction with the resident and their previously nominated carer, relative or advocate. In exceptional circumstances - as, for example, an emergency admission to a home, where the home completes a pre-admission assessment *without* the agreement of the resident and the resident's previously nominated carer, relative or advocate - the assessment will be followed by an agreed care plan as soon as is practicable once the care needs have been established. It is difficult to cater for emergency situations and the provision for an agreed care plan to be drawn up as soon as is practicable does not seem an unreasonable way of dealing with such a situation. It would, however, not appear practicable to select a minimum period during which a care plan that has not been agreed should be replaced with one that has. Much will depend upon the judgment of all those involved. It might be advisable to give individual residents or their representatives the opportunity to request a reassessment after a reasonable period in order to avoid a situation where the reassessment process can be activated only by the professionals caring for the individual.

RECOMMENDATION 8 - It is recommended that:

a a copy of the standard contract is made available before a resident moves into a home and well before signing so that consideration can be given to the terms and conditions before a decision has been made and the contract signed. Inspection units should check that this is standard procedure;

b the pre-admission care assessment should set out in clear language the needs of the individual being assessed;

c brochures and other pre-admission information given by the home or by others should be directed towards clearly confirming the ability of the home to match the individual's needs;

d an agreed care plan should form part of the contractual documentation so that everyone involved is clear about the terms of the service the individual should expect; and

e where care needs are reassessed, the revised and agreed care plan should be copied to all the contractual parties and their representatives.

The content of contracts

5.7 The OFT's survey of residents showed that, where respondents did know about a contract, it rarely - if ever - specified what they could expect from the home. Those providing evidence to the inquiry commented on the fact that, where contracts existed, they were not sufficiently clear, transparent, and comprehensive. Key terms and

conditions were alleged to be missing or hidden within the small print. Others were seen as being ambiguous or unfair, or both. The OFT has also received some formal complaints about specific terms in contracts. In addition, during the course of the inquiry, it asked various bodies to supply copies of contracts currently in use.

5.8 The main problems in care-home contracts appear to arise from the lack of clarity about the financial obligations assumed when the contract is entered into, such as the costs of terminating the agreement following the death of a resident. There are also problems of lengthy and unnecessarily legalistic contracts and the use of small and dense print that is difficult for anybody to read. Many contracts also extend liability to a relative or a guarantor but may not do so clearly. Given that contracts may often be entered into at a time of particular distress or stress it is vital that the full implications are known to those with expectations and obligations arising from the contract.

5.9 The OFT has studied contracts not only in the light of general concerns but taking account of specific complaints that have been made under the Unfair Terms in Consumer Contracts Regulations (which gave consumers new rights regarding contracts with businesses entered into from 1 July 1995). Among other things, the Regulations say that a consumer is not bound by a standard term in a contract with a seller or supplier if that term is unfair. The Regulations also give the Director General of Fair Trading powers to stop the use of unfair standard terms by businesses and to prevent anyone recommending such terms - if necessary by obtaining a court injunction (interdict in Scotland).

5.10 The OFT has prepared guidance on the extent to which terms in existing contracts have the potential to be regarded as unfair in the context of the regulations. This guidance, set out in draft form in Appendix C, is to be finalised in the next few months following discussions with interested parties. Readers' views on the guidance would be welcome.

6 FINANCIAL ISSUES AND MONEY MANAGEMENT

6.1 One of the OFT's concerns has been to consider the extent to which residents can maintain financial independence within the care-home environment and to find out what arrangements exist within homes to assist residents in the management of their money.

6.2 Figures from Laing and Buisson indicate that 72% of care home residents receive some form of assistance with their fees, whether from the local authority or from the Benefits Agency. It therefore seems likely that most people in homes have relatively small amounts of personal monies available, and are below the level at which official guardians of an individual's finances, such as the Court of Protection would become involved. Where residents need help, they are likely to rely on friends or relatives to assist them in the management of their financial affairs. These arrangements may be formalised in a variety of ways, for example by the resident nominating an agent, appointee, or by drawing up a power of attorney.

6.3 There is no specific requirement within the primary legislation for an inspector to monitor or check an individual's financial situation, although under regulations for residential care homes - as, for example the Residential Care Homes Regulation 1984 (SI 1988/1192) covering England and Wales - there is a requirement for the registered person to keep a record of money or other valuables deposited by a resident for safe keeping, or received on the resident's behalf. An inspector has the right to inspect such records. Differing views have been expressed about whether financial records in nursing homes can be, and are, inspected. In Northern Ireland the legislation requires both residential care homes and nursing homes to keep a record of money or valuables deposited by residents for safe keeping.

RECOMMENDATION 9 - Inspection units should be given the power, and the relevant training, to monitor the handling of residents' finances by all homes.

The Personal Expenses Allowance

6.4 One particular anxiety raised by a number of residents and relatives was the way the Personal Expenses Allowance (PEA) was handled. This allowance is a specified amount (currently £14.45 a week) which all residents supported by local authorities retain after their contribution to the care-home fees has been calculated. The intention is that it should be used by individuals to purchase such extras as gifts or personal items. Those providing evidence to the inquiry expressed concern about the allowance being used to top-up fees rather than being available for use by the individual for personal expenses.

6.5 For those residents whose fees are paid under the 'preserved rights' system, the PEA is paid directly to them as a component of their income support payments, and there are no official restrictions on such payments being put towards the care-home fees.

6.6 The OFT's concern here is not whether the PEA *should* be used as a top-up to the fees but that, where it occurs, all parties are aware that it is being done, and the implications of using this money towards the fees is clearly explained to the residents in question or their relatives, or both. If contracts clearly show what is covered by fees and what will be charged as extras, this should help to ensure that residents or their relatives know what money is needed to cover personal items.

6.7 It is not clear how widespread the alleged practice of pooling the PEA is - where care-home owners retain the allowance paid for individuals and then spend it collectively on all the residents. One relative told the inquiry of a home being unable to provide an itemised account of the expenditure for the individual resident when asked to do so. The pooling of residents' money goes against the principle of allowing residents to retain control over their own money as far as possible. Also of concern is the fact that records of expenditure may not be maintained.

6.8 The OFT survey of residents showed that less than half (43%) of those who took part claimed to receive a personal allowance. The survey sought to find out how much residents knew about the PEA and asked those who received it to state how much it was. Nearly one-third (32%) correctly placed it at between £14 and £14.50 a week, with a further one-third placing it at a lower level. Residents who claimed to have the PEA had a better chance of knowing the correct amount if they were in a local authority residential home (41%), or a voluntary residential home (28%), while only 10% of those in private nursing homes knew the correct amount. The Department of Social Security has commented that, if the residents interviewed included those on 'preserved rights', it would not be surprising that most did not know about the PEA which is a component of their income support benefit.

6.9 When asked who had told them how much the PEA was (whatever they believed it to be), nearly half (48%) of the respondents said that they had been informed by a 'member of staff' and more than a quarter (27%) by a 'relative or other person'. Only one in twenty (5%) said that they knew the sum involved from a letter or statement which they had received. Nearly one in five (19%) said they received a regular written statement, although this does not appear to have increased their knowledge of the amount, as 59% of those who received statements did not know how much it was.

6.10 Whether residents who claimed to have the PEA knew the correct amount also depended on their source of information: if they had been told by a member of staff, 59% got the amount right, compared with 46% who picked it up from a written statement, and 20% informed by a relative or other person.

RECOMMENDATION 10 - The pooling of residents' personal allowances should be actively discouraged.

If, in exceptional circumstances, pooling of residents' personal allowances is deemed necessary it should not take place without the express consent of the

individual residents who should receive detailed statements of their allowance, expenditure, and outstanding balance. Inspectors should monitor such arrangements closely.

6.11 About four in five (80%) of respondents to the residents' survey said that they received a state pension, while a minority (20%) said they received a works or occupational pension. Most were paid through a pension book, with around a quarter being paid though a bank, building society, or post office account.

6.12 Of those respondents who had money paid through pension books, bank or building society accounts, or post office accounts, fewer than one in five (19%) looked after them themselves. Of the remainder, 49% had the main pension or benefit book looked after by relatives, *and 44% by staff within the home*. Where residents had 'other' accounts, such as cheque books or account cards, it was more likely they would look after these themselves (71% of those with cheque books, and 95% of those with cash cards).

6.13 Most respondents who received a PEA looked after it themselves (70%). Where others did so, in the majority of cases (70%) it was looked after by the matron, manager, or officer in charge of the home, with relatives accounting for another 25% of cases.

6.14 For some care-home owners, looking after a resident's money can prove to be onerous, as the administrative burdens required to keep track of it are high while the amounts involved can be very small. In addition, the differing funding methods - local authority contributions, preserved rights, and self funders - may each demand that the cash sums are handled in different ways, since some payments go directly to the home, while others have to be collected from the post office. As most homes have a combination of differently funded residents, this requires careful management.

6.15 In general, residents who responded to the OFT survey were satisfied with the arrangements made to look after their money, although some were worried about not being able to keep track of it because they did not receive statements.

6.16 Many of the organisations providing evidence to the inquiry felt strongly that care-home owners should not normally handle residents' money: they should do so only as a last resort - if there was no available or willing relative, for example. A number of representatives of the care-home industry confirmed that looking after their residents' money was a task which they would prefer to not have to do, although - where there was no-one else available or willing to take on the responsibility - they felt obliged to do so. Some considered that more advocacy schemes should be available to help those who are alone and need help in managing their finances. One idea put forward by some care-home owners envisaged the establishment of national guidelines on the handling of residents' money.

6.17 An alternative point of view, put forward by some local authority inspectors, was that there were positive benefits in care-home owners and managers taking responsibility for residents' money. At least in this way they could use their powers of inspection to ensure that the sums involved were properly managed and accounted for, whereas - were the money to be kept by residents themselves or by their relatives or by some other third party - they had no authority to monitor the situation.

6.18 Others involved in the inspection process, however, commented that, in the short time available during a visit, inspectors might not be able to look at all the financial records and would have to rely on checking a mere sample. It was also pointed out that many inspectors were not trained to deal with financial issues.

6.19 An alternative way of handling residents' money was demonstrated to the inquiry team by Sheffield Health Authority, which has set up its own financial management system for residents in homes within its area. The scheme is operated by a dedicated unit within the authority, which was primarily set up to ensure that residents were claiming all of the state benefits to which they were entitled, and to provide a means whereby it would be possible to manage residents' money properly. Participation in the scheme by homes and their residents is voluntary. The system has obvious merits in that the management of residents' finances is wholly independent of the individual care home and frees the home's owner from worries about the day-to-day handling of money on a resident's behalf.

RECOMMENDATION 11 - Residents should be encouraged to look after their own financial affairs. Where they need assistance and there is no suitable relative or friend to help, it is recommended that more agencies and individuals other than care-home owners or managers should be made available. Where home owners do retain responsibility it is recommend that there should be national guidelines to ensure the accountability of residents' funds. A limit should be set on the amount of a resident's money that can be held by the home owner. Residents should receive regular detailed statements about expenditure and their outstanding balance. Inspectors should ensure that this is done.

6.20 The practice of separating residents' private accounts from the home's own accounts is an important safeguard to ensure that, should the home close for any reason, those sums that properly belong to the residents are not jeopardised or lost. Where the money is kept in the home's bank account, it would be taken as part of the home's assets in any insolvency, while the residents would merely be unsecured creditors, which could result in their losing it all. The OFT is aware of one home which went into receivership where all the residents' monies were found to have been kept in a single account.

RECOMMENDATION 12 - All monies kept by a care-home owner on behalf of residents should be maintained in a clearly separate account for each resident.

Inspection units should have the power to check that a separate account has been opened and is being maintained correctly.

7 MAKING COMPLAINTS

7.1 There are various ways that residents of care homes and nursing homes and their representatives can make and progress complaints about any aspects of the services supplied by those homes. The options are partly influenced by who arranged or pays for the care provided. The aim of the inquiry team was to seek views on whether those options were generally known about, whether they were used, and whether they were effective. In order to determine this, it examined the responses to the questions it put, and carried out an analysis of the complaints procedures of 105 care homes to see what information they contained, and how that information was presented. In addition, the OFT's survey of residents included questions about complaints.

The current situation

7.2 The Residential Care Homes Regulations 1984 require residential care homes in England and Wales to provide a complaints procedure, to make it known to all their residents, and to keep related records available for inspection. There is no equivalent requirement covering nursing homes. In Scotland, while there is no statutory requirement for either residential homes or nursing homes to establish a complaints procedure, the published core standards require them to provide a written policy on complaints. In Northern Ireland, legislation requires the owners of residential care homes and nursing homes to have a complaints procedure, the operation of which must be made known to residents, and to keep related records available for inspection.

7.3 Nevertheless, in practice, those homes that are not *formally* required to establish internal complaints machinery procedures may have such procedures in place, and will draw the attention of both their own staff and residents and their relatives to their existence. A home may well see the establishment and operation of an accessible and proper complaints procedure as part of its role in ensuring quality assurance.

7.4 Two of the inquiry team's main concerns were that prospective and current residents might not be informed at a sufficiently early stage (that is, before admission) about internal and external complaints procedures, and that all options for progressing complaints might not be mentioned in all the appropriate material. Ideally, before being admitted to a home, residents, or their relatives, or both, will have received a copy of that home's brochure, a standard form of contract, a resident's handbook or some other literature which explains its internal complaints procedures. External complaints procedures may be explained by the home itself, a social worker, or hospital staff. Some homes display details of the procedures on notice boards in areas visited regularly by friends, relatives, and other visitors.

7.5 Inspection units, however, do investigate complaints mainly to collate evidence and determine whether the care-home owner is a 'fit person' to run the home, and in order to raise and maintain standards. Such investigations may highlight areas an

announced or unannounced inspection visit may not have detected, and can provide an insight into the overall standards within a care home.

Complaints routes for differently funded residents

- **Self-funding and 'preserved rights' residents**

7.6 Where a resident of a *residential home* believes that the inspection unit has not properly dealt with a complaint, that individual can take the matter further using the local authority's own complaints procedure. But the complainant can criticise only the way the inspection unit handled the matter, *not* the standard of care provided within the home unless that relates to the way the inspection unit carried out its duties. Subsequently, if there is still dissatisfaction about the way the complaint against the inspection unit has been handled, the complainant can ask for the question to go before a local authority review panel.

7.7 Self-funding and 'preserved rights' residents in *nursing homes* can follow a similar route up to the stage of making a complaint to the inspection unit - in this case under the health authority or board). If dissatisfied with the outcome, the complainant can access the NHS complaints procedure, but only to raise matters arising directly from the unit's response. Once all other stages have been exhausted, the matter could be progressed as far as the Health Service Ombudsman.

7.8 The Ombudsman can investigate: poor service; failure to provide a service the resident is entitled to receive; and administrative failures (including avoidable delay, not following proper procedures, rudeness or discourtesy, not explaining decisions, and not answering the complaint fully and promptly). Where the cause for complaint occurred after 31 March 1996, the Ombudsman can also investigate the care and treatment provided by trained professionals such as doctors, nurses or dentists, pharmacists, opticians providing an NHS service locally.

- **Residents funded by local authorities, and those in local authority homes**

7.9 Where residents of a *residential* or a *nursing home* are funded, or placements are arranged, by a local authority, they may follow the same local authority and NHS complaints procedures as self funders. They can also contact the care manager at social services in connection with his or her duties in commissioning and monitoring the care that has been provided for the resident. The procedure for dealing with complaints by residents of nursing homes funded by local authorities - including investigation and notification of the outcome - should be agreed, formally and in advance, between the relevant local authority and the health authority registration officer.

7.10 A complainant who is not happy with the outcome of an investigation by the care manager or the local authority inspection unit can ask for the matter to go before a

review panel at the local authority. The panel will consider the outcome of the local authority's investigation of the complaint but only if the complaint is about a home run by that authority.

7.11 If the complainant is dissatisfied with the decision of the review panel, an approach can be made to the Local Government Ombudsman. That approach would have to be in regard to the conduct of the care manager, the inspection unit, or the purchasers of the care provided, but not the conduct of the home.

7.12 In homes owned by the local authority the inspection units have no powers of enforcement. The complaint would have to be progressed through the local authority procedures. In addition to the reasons mentioned in paragraph 7.11, residents of a home owned by the local authority may - in this case - also approach the Ombudsman to raise concerns about the conduct of the home.

- **Residents funded by health authorities**

7.13 Most of the residents funded by health authorities are in nursing homes. Those who are dissatisfied with an inspection unit's ruling on a complaint they have made can make use of the NHS complaints procedure. This involves writing to the chief executive of the health authority (trust, or board) that is funding their placement, and the chief executive will appoint a convener, a non-executive director of the authority, to deal with the matter.

7.14 If they are still dissatisfied with the convener's findings, complainants have the right to ask the convener to set up an independent review panel. Such a request might be refused, in which case the convener would so inform the complainant concerned. Where a review does take place, the convener will advise the complainant of the outcome.

7.15 Finally, if the complainant is still not happy with either the convener's or the review panel's decision the Health Service Ombudsman can be contacted. Normally, however, the Ombudsman will only become involved once the processes described have been completed.

Evidence received

7.16 Several owners of residential homes and nursing homes and one trade association commented that the current complaints procedures were satisfactory and needed little amendment. In their view, the most effective way of handling complaints was to ensure that the procedures were clear: they should be included in brochures and contracts, and displayed on notice boards in homes.

7.17 Nevertheless, of the 155 care-home brochures examined by the OFT (see Chapter 4), only 27 (17%) mentioned a complaints procedure. Furthermore, a lay inspector told

the inquiry that he had rarely seen any display of such information within the homes he had visited. The low profile these procedures appear to have in relation to pre-admission information material and in public areas of care homes is of concern.

7.18 It was suggested to the inquiry team that many homes worked on a 'need to know' basis, and did not fully advertise the complaints procedures. A lack of knowledge of these procedures was a situation commented on by several residents and relatives. It was further claimed that a large number of friends and relatives were unaware of their right to complain, or how to go about making a complaint, whether from inside or outside the home.

RECOMMENDATION 13 - A copy of the complaints procedure (in large print) should be exhibited in at least one prominent place in the care home where there is easy and frequent access by residents, visitors, and staff members. In addition, a separate copy of the procedure, also in large print, should be given to every resident.

7.19 The OFT was told that, even when they had been made aware of the procedures, residents had been reluctant to use them for fear of alienating staff who dealt with them on a daily basis. The fear of victimisation or other unwelcome attention was a further underlying theme in the responses of many residents, relatives, and charities. Relatives told us that, if they made a complaint, the home viewed them as troublemakers. For residents themselves, expressing dissatisfaction could be rather more problematic. Those who provided written evidence to the inquiry cited five examples of residents having been asked to leave homes after they had made complaints, while another four residents believed that they had been victimised as a result of complaining.

7.20 Some care-home owners mentioned regular residents/relatives meetings as providing a good opportunity to raise specific problems. But one relative of a care-home resident said that when she tried to set up a relatives' association she was thwarted by the home's head office. The OFT's analysis of 105 care-home complaints procedures (see paragraph 7.22) found just one reference to residents/relatives meetings.

7.21 The inspection process was seen by home owners and by some trade associations as a means of ensuring that residents were aware of complaints procedures, with residents being asked for their views, as well as the number and type of complaints being monitored. The same owners and trade associations commented that inspectors could also advise on the literature the care homes published, including complaints procedures. The analysis of complaints procedures from 105 care homes in England, Wales, and Scotland showed that:

- in almost two-thirds of cases the most frequently mentioned point of contact was the home's proprietor, while one of the three *least* frequently mentioned was the residents' committee - with just one reference;

- five procedures stated that complaints *should* be escalated through specific staff members, the manager, or owner; another 25 procedures named one staff member who should be contacted, 20 mentioned two contacts, five mentioned three contacts, and one mentioned four contacts.

RECOMMENDATION 14 - All care-home providers should review their internal complaints procedures. As part of this review they should:

a consider supporting or initiating the establishment of a residents/relatives committee with regular meetings;

b name a designated complaints officer whom residents can contact directly;

c ensure that the home has a clear, highly visible complaints handling policy which is fair to both the complainant and the person or organisation against whom the complaint is made;

d consider establishing target time limits for processing complaints and reporting progress to complainants; and

e consider the scope for independent review of complaints procedures and their operation.

7.22 The OFT's analysis of complaints procedures also showed that:

- sixty-three (60%) procedures cited one regulatory authority (the social services department, an inspection unit, or a health authority) outside the home for complainants to contact;

- of those procedures that had cited a regulatory authority, nearly half (46%) did not provide the address;

- eight (7%) procedures had not mentioned any regulatory authority (nor any individual from such a body).

RECOMMENDATION 15 -All material produced by care homes mentioning external complaints procedures should:

a contain not just the name and address of the regulatory authority, but also the phone number;

b clearly explain the stages of the complaints procedures;

c ensure that all complaints procedures state that residents can directly contact the regulatory authority with their concerns.

7.23 Several organisations told the inquiry team that the existing procedures relating to the investigation of complaints in nursing homes were confusing. For example, it was often not easy to determine which path should be taken to pursue a particular complaint - through the inspection unit, the local authority contracting staff, or the local authority itself. It was claimed that, with little knowledge of the system, residents and their relatives were thwarted by the confusing network of possible routes available. The OFT, too, has found the issues less than easy to follow.

RECOMMENDATION 16 - The different procedures relating to the investigation of complaints should be simplified, and the roles of the authorities involved in the investigation of complaints should be clarified. The aim should be to improve awareness of the procedures and to facilitate their use.

7.24 More than a dozen relatives cited examples of cases of dissatisfaction with the way inspection units had handled complaints and with the outcome. Many said that inspectors did not spend enough time during their visits with residents or relatives in private, while often relatives did not know when an announced visit was scheduled to take place.

7.25 One charity maintained that many complaints took too long to resolve because of the various systems in use. It also said that some investigations were conducted without reference to the complainant, and that the findings were notified to the body or person against whom the complaint was made ahead of the complainant.

RECOMMENDATION 17 - Residents should receive a clear and full assessment of their complaints. They should be provided with this information no later than others involved in the process. Where investigations cannot be completed expeditiously, residents should be kept informed of progress.

Survey of residents

7.26 Three-quarters of those residents who responded to the survey said that they were very satisfied with the services and facilities of the care homes they were in. Nevertheless, 41% of those who responded to the survey considered that staff were too busy to sit down and talk. Another indicator is the fact that, at some time, 12% of those interviewed had felt worried about standards in the home or how things were done and would change something in the home if they could (if they had ‘had a magic wand’), or had felt dissatisfied or very dissatisfied about the arrangements for looking after their money.

7.27 The four most common attributes of their care homes which respondents liked were: kind and helpful staff; companionship; the care they received; and the friendly,

pleasant atmosphere. The four most common concerns mentioned were: not enough experienced staff; deteriorating standards or maintenance; insufficient food; and not enough staff to look after residents or take them out.

7.28 Of those residents who had complaints or concerns, only 67% had told anyone about them. Where complaints had been made (69 in total), 40 had been made to staff. Twenty-nine (46%) of the complaints had been made to others, mostly (18) to a relative. Just two complaints had been made to an officer from the inspection unit, and one complaint had been put in writing. Only in a minority of cases (18%) had residents felt that their complaint had resulted in a 'change for the better'.

7.29 The isolation faced by some older people in care homes is illustrated by the fact that a quarter of all the residents interviewed knew of no-one outside the home to whom they could complain if their concerns were not dealt with satisfactorily. For the 70% who did know someone outside the home to whom they could turn, relatives were seen as the main source of support. Social workers were named by just 3%.

RECOMMENDATION 18 - Details of external organisations that might be able to advise residents and could assist them in making complaints should be made freely available. As in the case of complaints procedures, these details should be prominently displayed within care homes.

8 SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

Care assessments should be clear, comprehensive, and accessible. Inconsistencies between different authorities should be minimised. **Paragraph 4.10**

RECOMMENDATION 2

Those who provide information should review the oral and written data (including details of hospital discharge procedures) they give prospective residents of care homes, to ensure that it is clear and comprehensive. Individuals should be able to freely access the details of those homes that can meet their assessed needs so that they can make an informed choice. **Paragraph 4.18**

RECOMMENDATION 3

Inspection reports on residential homes and nursing homes should be widely available, easily accessible, clear, and comprehensive. Inconsistencies between different authorities should be minimised.

Paragraph 4.22

RECOMMENDATION 4

All care-home owners issuing information should review their brochures to ensure that clear and comprehensive information is given about:

a the care and facilities they provide;

b the fees that are charged, what they cover, and when they must be paid;

c the cost of facilities not covered by the fees;

d the key contract terms and conditions, such as the notice periods for the termination of the contract and changes in fees (and, if the full contract terms are not shown in the brochure itself, there should be a clear statement that they are available on request); and

e the internal and external complaints procedures. **Paragraph 4.28**

RECOMMENDATION 5

All bodies providing information should consider offering that information in large print or braille, or on audiotape. **Paragraph 4.28**

RECOMMENDATION 6

Visits to homes by prospective residents should continue to be encouraged. **Paragraph 4.31**

RECOMMENDATION 7

It is recommended that:

a all residents should have a written contract;

b all contracts should be clear and comprehensive;

c residents must be clearly informed of their rights and obligations and who is liable if there is a breach of contract;

d all contracting authorities should ensure that tripartite contracts are available in all situations where a resident is not the direct purchaser of the care services;

e care-home providers should ensure that all residents have a copy of their contract and any variations to the original contract. Copies should be made freely available to residents. In cases where a resident's interests are represented by a relative or another person who is a signatory to the contract that person should also be provided with a copy of the contract; and

f all inspection units should check that copies of their contracts are made available to all residents. **Paragraph 5.3**

RECOMMENDATION 8

It is recommended that:

a a copy of the standard contract is made available before a resident moves into a home and well before signing so that consideration can be given to the terms and conditions before a decision has been made and the contract signed. Inspection units should check that this is standard procedure;

b the pre-admission care assessment should set out in clear language the needs of the individual being assessed;

c brochures and other pre-admission information given by the home or by others should be directed towards clearly confirming the ability of the home to match the individual's needs;

d an agreed care plan should form part of the contractual documentation so that everyone involved is clear about the terms of the service the individual should expect; and

e where care needs are reassessed, the revised and agreed care plan should be copied to all the contractual parties and their representatives. **Paragraph 5.6**

RECOMMENDATION 9

Inspection units should be given the power, and the relevant training, in order to monitor the handling of residents' finances by all homes. **Paragraph 6.3**

RECOMMENDATION 10

The pooling of residents' personal allowances should be actively discouraged.

If, in exceptional circumstances, pooling of residents' personal allowances is deemed necessary it should not take place without the express consent of the individual residents who should receive detailed statements of their allowance, expenditure, and outstanding balance. Inspectors should monitor such arrangements closely.

Paragraph 6.10

RECOMMENDATION 11

Residents should be encouraged to look after their own financial affairs. Where they need assistance and there is no suitable relative or friend to help, it is recommended that more agencies and individuals other than care-home owners or managers should be made available. Where home owners do retain responsibility it is recommended that there should be national guidelines to ensure the accountability of residents' funds. A limit should be set on the amount of a resident's money that can be held by the home owner. Residents should receive regular detailed statements about expenditure and their outstanding balance. Inspectors should ensure that this is done. **Paragraph 6.19**

RECOMMENDATION 12

All monies kept by a care-home owner on behalf of residents should be maintained in a clearly separate account for each resident. Inspection units should have the power to check that a separate account has been opened and is being maintained correctly.

Paragraph 6.20

RECOMMENDATION 13

A copy of the complaints procedure (in large print) should be exhibited in at least one prominent place in the care home where there is easy and frequent access by residents, visitors, and staff members. A separate copy of the procedure, also in large print, should be given to every resident. **Paragraph 7.18**

RECOMMENDATION 14

All care-home providers should review their internal complaints procedures. As part of this review they should:

a consider supporting or initiating the establishment of a residents/relatives committee with regular meetings;

b name a designated complaints officer whom residents can contact directly;

c ensure that the home has a clear, highly visible complaints handling policy which is fair to both the complainant and the person or organisation against whom the complaint is made;

d consider establishing target time limits for processing complaints and reporting progress to complainants; and

e consider the scope for independent review of complaints procedures and their operation. **Paragraph 7.21**

RECOMMENDATION 15

All material produced by care homes mentioning external complaints procedures should:

a contain not just the name and address of the regulatory authority, but also the phone number;

b clearly explain the stages of the complaints procedures; and

c ensure that all complaints procedures state that residents can directly contact the regulatory authority with their concerns. **Paragraph 7.22**

RECOMMENDATION 16

The different procedures relating to the investigation of complaints should be simplified, and the roles of the authorities involved in the investigation of complaints should be clarified. The aim should be to improve awareness of the procedures and to facilitate their use. **Paragraph 7.23**

RECOMMENDATION 17

Residents should receive a clear and full assessment of their complaints. They should be provided with this information no later than others involved in the process. Where investigations cannot be completed expeditiously, residents should be kept informed of progress. **Paragraph 7.25**

RECOMMENDATION 18

Details of external organisations that may be able to advise residents and assist in making complaints should be made freely available. As in the case of complaints procedures, these details should be displayed prominently within care homes.

Paragraph 7.29

APPENDICES

A SURVEY OF RESIDENTS

Why the survey was commissioned

A.1. The OFT commissioned a survey of residents within residential care and nursing homes to gather information about their experiences as consumers to identify and quantify specific areas of concern. There have previously been relatively few surveys carried out in this area, and those which have taken place were localised or focused on very specific groups, partly because of the difficulty of eliciting the views of residents by reason of their high dependency on others and their age.[1]

A.2 Given the difficulties involved in surveying the residents of care homes, the alternative of surveying carers (such as relatives or friends who visit frequently) was considered. These alternatives were rejected on the grounds that the best people to represent residents as consumers were themselves. It was considered that care-home owners would not necessarily be able to fully represent residents either.

Objectives of the survey

A.3 The objectives of the survey were to:

- discover how individuals make decisions on choosing a particular home and what information is provided to help them make that choice;
- establish what contractual arrangements exist between the resident and homeowner;
- ascertain whether residents' financial affairs are managed correctly;
- discover whether there are complaints procedures and, where they exist, whether residents are aware of them, and to evaluate how effective these are in resolving any disputes arising;
- find out how life in a home differs from residents' expectations

1 In general, older people are a relatively difficult section of the population to survey because of their worse health (including dementia, loss of hearing or loss of sight) by comparison with the population as a whole. Interviewing the residents of care homes provides further obstacles, as - for instance - obtaining access to the homes.

Coverage of the survey and methodology

A.4 The survey research was put out to tender and the successful bid was from Liverpool John Moores University (JMU)/Elderly Accommodation Counsel (EAC), with the main fieldwork carried out by Market Research UK during June and July 1998.

A.5 The survey aimed to cover the population of residents of nursing and residential homes operated by local authorities, the private sector, and the voluntary sector within Great Britain. A multi-stage random-sample design was used, selecting 20 local authorities at random, then stratifying by type of home within each authority, selecting a total of eight homes at random within each authority, and selecting residents randomly from within each home. A further study of residents in very small homes (fewer than four residents) was conducted separately. A screening test was used to ensure that residents were capable of providing accurate answers. Altogether 965 residents were interviewed, of whom 33 were residents of very small homes.

A.6 In view of the need to evaluate the reliability of both the screening test (which needed to be stringent enough to ensure that those passing it could complete the full questionnaire, without excluding possible respondents by being too stringent) and the questionnaire, a pilot study comprising 40 fully completed questionnaires was carried out (within the Kirklees Metropolitan Borough Council area). As a result of the study a number of improvements were made to the questionnaire.

Results of the survey and further information

A.7 Key results and summary tables are given below. Further results and additional details of the survey methodology can be found in: *Older People in Care Homes: Consumer Perspectives* by Veronica Wigley (EAC), Malcolm Fisk, Brendan Gisby, Michael Preston-Shoot (JMU). Copies are available from the Office of Fair Trading, Room 205, Field House, 15-25 Bream's Buildings, London, EC4A 1PR.

Survey accuracy

A.8 The results are subject to sampling error because the survey measures results for a proportion of the residents in Great Britain, rather than for all residents. Note that where results are displayed to the nearest percentage point in the tables below and elsewhere, this does *not* necessarily imply that these results are accurate to the nearest percentage point. Nevertheless the key conclusions given below (and elsewhere in this report) are considered sound and reliable.

Response rates

A.9 Of the original 20 local authorities selected at random, 19 agreed to take part [as did the first 'reserve' authority selected at random]; 78% of selected care homes agreed to take part; of the original 965 residents selected, 34 (4%) were unable to attempt the

screening test due to illness, absence etc, and 189 (20%) failed the screening test (for instance due to severe dementia), resulting in 223 substitute interviews.

Key results

A.10 The key results of the survey can be summarised as follows:

- **Information**

  only half of the respondents (or their relatives) received any written information before moving in

  only one in five respondents had considered any other homes, and only one in thirteen respondents had considered more than one other home

- **Rules and restrictions**

  only one in five respondents said they had been told in advance of restrictions

- **Contracts**

  around one- third of respondents believed that they or a relative had signed a contract

  the aspects of agreements which respondents identified as included in contracts focused more on financial matters than on residents' entitlements

- **Financial control**

  less than half of respondents received the Personal Expenses Allowance

  of those, only a third could say correctly how much it was, and only a fifth received written statements

- **Environment**

  three-quarters of respondents claimed to be very satisfied with the home that they lived in, although 41% said that staff were too busy to sit down and talk

  nine in ten respondents said they could get cash when they needed it, mainly through relatives and staff

  the most commonly expressed concerns were about a lack of experienced staff, deteriorating standards, and not having enough to eat

- **Satisfaction, complaints, and redress**

  respondents were reluctant to complain

  inspection and registration systems were largely unknown to respondents and might be inaccessible

  only a small proportion (5%) of respondents could recall complaining, and in those cases nearly one-third were very or fairly dissatisfied with the outcome

Summary tables

A.11 The following tables provide more detailed results from the survey. These tables have been selected to supplement the information provided elsewhere in this report.

Table 3 - Survey of care home residents: profile of those taking part

Number of local authority areas	20			
Number of care homes	166			
Number of residents	965			
		Type of provider		
the 965 residents were divided as follows:		*Private*	*Local authority*	*Voluntary*
Residential sector	638	*411*	*104*	*123*
Nursing sector	213	*205*	-	*8*
Dual-registered sector	114	*73*	-	*41*

Table 4 - Information received by residents prior to staying in home

	Yes	*No*
Looked around	50%	48%
(of those who looked around) Saw own room	*69%*	*28%*
Told about what allowed to do/not allowed to do	21%	72%
Information from a leaflet or brochure	23%	71%
Friend/relative received information from a leaflet or brochure	35%	43%
Told about services/facilities	59%	34%
None of the above information sources	17%	
Only one of the above information sources	24%	

Percentages do not add up to 100 due to Don't know/Can't Remember responses (not shown).

Table 5 - Level of choice among care-home residents

Had a choice about coming into a care home	40%
Had a choice about coming into a particular care home	55%
Had a choice about coming into a care home *and* about coming into particular home	35%
Had **no choice** about coming into a care home *or* about coming into particular home	**35%**

Table 6 - When resident didn't have choice of particular home, who did choose it?

	(	Daughter	24%
	(	Other relative	15%
Mentioned by 54%	(	Son	14%
	(	Brother/Sister	4%
	(	Husband/Wife/Partner	2%
		Friend	2%
	(	GP	12%
Mentioned by 30%	(	Social worker	11%
	(	Hospital/Consultant	9%
		Don't know/Can't remember	8%

Percentages do not add up to 100 because some residents indicated more than one person who chose the home.

Table 7 - When residents did have choice of a particular home, who helped to make that choice?

		Nobody	**34%**
	(	Daughter	25%
	(	Son	14%
Mentioned by 54%	(	Other relative	11%
	(	Husband/Wife/Partner	6%
	(	Brother/Sister	4%
		Friend	6%
	(	Social worker	11%
Mentioned by 30%	(	GP	3%
	(	Hospital/Consultant	2%
		Don’t know/Can’t remember	0.1%

Percentages do not add up to 100 because some residents indicated more than one person who helped to choose the home.

Table 8 - When residents did have choice of a particular home, how many other homes were considered

None	**64%**
One	18%
Two	6%
Three	2%
More than three	4%
Don’t know/Can’t remember	5%

Table 9 - Who signed a contract?

Resident	18%
Relative/Friend/Someone else	18%
Neither of above (ie: **no contract was signed**)	**27%**
Don’t know/Can’t remember	37%

Table 10 - Who, at any time, has had a contract?

Resident	11%
Relative/Friend/Someone else	16%
Relative/Friend/Someone else or Resident	27%

Table 11 - When a resident, relative, or someone else has had a contract, what is the level of awareness of its contents?

Things that have to be paid for	11%
Rules about the home	7%
Medication or care to be provided by home	3%
When payments are to be made	3%
Conditions under which residents have to leave the home	1%
Pocket money that they are given by home	1%
Signing away resident's pension book	1%
TV licence being covered by home	0.5%
Resident's length of stay in the home	0.5%
Other things	3%
Don't know/Can't remember	**69%**

Table 12 - Proportion of residents receiving different pensions or state benefits

State retirement pension	80%
Work or occupational pension	20%
Widows' pension (State or work)	14%
Income Support	7%
Disability Living Allowance	6%
Attendance Allowance	4%
Mobility Allowance	2%
None of these	3%

Percentages do not add up to 100 because 34% of residents indicated they received more than one pension or state benefit. The main pension/benefit for those with more than one pension/benefit was generally the State retirement pension (22%), a work or occupational pension (7%), or a widow's pension (3%).

Table 13 - How are pensions or benefits paid to residents?

Pension book	62%
Bank/Building society/Post office account	25%
Another way	4%
Prefer not to answer	1%
Don't know/Can't remember	9%

Table 14 - Who looks after the pension book/bank account/other source of pension/ benefit payment?

		Resident	15%
		Matron/Officer in Charge/Manager	**27%**
		Other member of staff	**2%**
	(	Daughter	16%
	(	Other relative	8%
Mentioned by 32%	(	Son	5%
	(	Husband/Wife/Partner	2%
	(	Brother/Sister	1%
		Friend	1%
		Bank Manager/ Independent financial adviser	2%
		Don’t know/Can’t remember	11%
		Prefer not to answer	4%
		Does not receive pension/benefit	3%

Percentages do not add up to 100 due to rounding.

B DRAFT GUIDANCE ON POTENTIALLY UNFAIR STANDARD TERMS FOUND IN CONTRACTS FOR CARE HOMES

Introduction

B.1 The Unfair Terms in Consumer Contracts Regulations 1994[1] implement EC Directive 93/13. They give the Director General of Fair Trading the duty to prevent business suppliers of goods and services from continuing to use unfair terms in their standard form contracts with consumers. The Regulations apply to standard terms in contracts between businesses and consumers made after June 1995. An 'unfair term' is one which, contrary to good faith, causes a significant imbalance in the contract to the disadvantage of the consumer (in the words of the Regulations, causing 'consumer detriment'). Terms must be written in plain and intelligible language and certain kinds of contracts and terms are not covered by the Regulations. Schedule 3 to the Regulations contains an illustrative and non-exhaustive list of terms which may be regarded as unfair.

B.2 The Director General acts on complaints that terms are unfair and he can seek to prevent them being used or relied on in the future by applying for a High Court injunction (or a Court of Session interdict in Scotland). In so doing, his role is to protect consumers generally in the future. This does not include power to obtain redress for individuals who have been disadvantaged from the use of unfair terms in the past. A term that a court finds to be unfair under the Regulations is not binding on consumers. Consumers can also challenge a contract term as unfair and seek to rely on their other legal rights quite independently of whether we at the Office of Fair Trading (OFT) take any action. It is, however, essential that consumers seek legal advice before trying to challenge a term in court.

B.3 The Regulations require standard terms to be written in plain and intelligible language. Terms which set the price to be paid or define the main subject matter of the contract are excluded from the Regulations and cannot be assessed for unfairness to the extent that they are in plain and intelligible language. Such 'core terms' which are difficult to understand may therefore be considered for unfairness.

B.4 On the question of intelligibility, we consider what a consumer is likely to understand by the wording of a standard term. Even if a term would be clear to a lawyer, we take the view that if it is drawn up for general use it has potential for unfairness if it is likely to mislead consumers, or be unintelligible to them. Consumers entering care home contracts do not normally seek legal advice so contracts should use language that is plain and intelligible to ordinary people.

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1 SI 1994/3159, available from the Stationery Office, price £1.56.

B.5 In general, following a complaint about terms, we seek to persuade the trader to revise the terms voluntarily. The test of unfairness in Regulation 4 takes note of how a term could be used. If a term is so widely drafted that it has the potential to put consumers at a disadvantage, then it is open to challenge. Even if it is argued that a term is not in practice used unfairly, we generally take the view that the potential for unfairness remains and the term should be re-drafted so as to remove this. The dialogue with traders enables us to establish more precisely how terms operate in practice and their scope for consumer detriment. This guidance has been prepared on the basis of a sample of standard contracts without the benefit of such a dialogue. It therefore represents only a preliminary view on why we would consider certain types of terms in care homes contracts to be potentially unfair, and may therefore need to be revised in the light of experience and the views of the industry. It should also be emphasised that the courts are the final arbiters of what is or is not unfair and that views expressed in this guidance represent only the OFT's interpretation of the Regulations.

Care home contracts

B.7 A major concern with care home contracts is a lack of clarity about the financial obligations entailed in the contract, such as those arising on the death of the resident. This problem is in some cases made worse by lengthy and unnecessarily legalistic drafting and the use of small and dense print which is difficult to read, particularly for older consumers. Many contracts, for example, seek to extend liability to a relative or guarantor but are insufficiently transparent about the scope of this liability or how it arises. Concerns have been expressed about the way that additional charges are presented. These should not come as a surprise, where the Regulations had been fully taken into account, and the provisions giving rise to them should be given prominence in the contract. There are also common problems with variation clauses and exclusion of liability clauses.

Language used in contracts

B.8 The language of contracts should be plain and intelligible. Legalistic terms such as 'joint and several liability' should be avoided and can always be translated into plain language. Some contracts copy inappropriate models, such as one obviously modelled on a tenancy agreement which incorporates terms which are therefore not only inappropriate but could cause unnecessary confusion. On the other hand, we have also seen some very clear and comprehensive contracts. It is of course in the interests of suppliers as well as consumers that standard terms should be clearly drafted, because terms which are complex and difficult to understand are more likely to be regarded as unfair under the Regulations. Paragraph 1(i) of Schedule 3[1] indicates that a term may be considered unfair if it has the object or effect of irrevocably binding the consumer to terms with which he or she had no real opportunity of becoming

1 All references to 'Schedule 3' in this appendix relate to Schedule 3 to the Unfair Terms in Consumer Contracts Regulations 1994.

acquainted before the conclusion of the contract. Accordingly, consumers should be given the opportunity to read and understand the contract before signing it, and the use of unreadable and illegible terms obstructs this process.

'Declaration' terms

B.9 It is common for standard form contracts to require consumers to make a 'declaration' about the contract and what they have understood about it. We regard as potentially unfair, terms which require the resident and/or the sponsor to state that they have read and understood the terms and conditions and agree to be bound by them. Terms which require residents to make declarations which are not necessarily true are open to objection. There can be no guarantee that the resident has even been given the opportunity to read the contract. There is a risk that residents, having signed such a declaration without fully understanding its significance, will subsequently believe that they have signed away their rights to seek redress, regardless of how they have been treated, and that they are bound by all the terms of the contract - such as the exclusion of liability.

B.10 For practical purposes, residents have no real choice whether to accept declarations of this sort or not. The consumer is obliged to acquiesce in the declaration if the contract is to go ahead. Such terms in fact confer no legitimate benefit on the suppliers that use them, since a court is entitled to enquire as to the truth of the statement in any case and make a decision accordingly. However, the resident is unlikely to know this.

Finance

Liability to pay

B.11 Contracts typically require both the resident and the guarantor to be jointly and 'severally' liable for the charges. This kind of indemnity has considerable potential for unfairness but is ambiguous and difficult to understand. It is often not clear, for example, whether the indemnity governs the liability of a relative for a resident who does not have the capacity to enter into a contract, or the liability for a resident who does have capacity but may have run out of money. It is essential that such important terms relating to liability are spelled out beyond the point of any possible misunderstanding.

B.12 Some standard terms require the sponsor to guarantee the resident's performance of the terms. This is asking the impossible from a relative, particularly as the relative is usually not also resident, and thus the object or effect of such terms appears to be to make the relative liable should the resident breach the terms. Standard terms sometimes provide for an indemnity and guarantee where the relative or sponsor makes a 'waiver of rights as surety'. It is not clear what these rights are and it is most unlikely that the consumer would know what was meant. Such terms are usefully deleted and we would expect the relevant contract terms clearly to identify who is

liable to pay fees and in what circumstances, as well as specifying when and against whom, liability for damage caused by residents arises.

What the fees are for

B.13 'Extra charges' are a contentious issue with residents and their relatives. But dispute is less likely where they do not come as a surprise because the contract spells out when additional charges may be made. The problem does not appear to be a common one, however. Most contracts appear to be clear about the charges and it seems to be common practice to specify that there are additional charges for items of a personal nature such as laundry and dry cleaning. These are core terms and, to the extent that they are clearly expressed, cannot be challenged. However, we would regard statements that 'other services will be charged as extras' as vague and potentially unfair under the Regulations if they could enable the care home to change what was to be supplied or to determine unilaterally whether the services supplied are those contracted for or additional services. Terms which provide for the management to reserve the right to charge for any services rendered to residents while outside premises could also be regarded as being insufficiently clear and therefore unfair. Where relatives are responsible for payment of such extra charges, this should be clearly agreed in the contract and full details provided in the invoice. We would need to see how these terms operate in practice in order to make a full assessment.

Charging period

B.14 The 'charging period' would be considered a core term under the Regulations and so not subject to the test of unfairness. However it is incumbent on care homes to ensure that all standard terms are written in plain and intelligible language. We have seen contracts which mix the terms 'daily charge', 'weekly charge', '28 days' and 'monthly charge'. Some contracts refer to a 'charging period' without clearly defining it, leaving the consumer with no way of knowing the first day from which charges are calculated. Residents may therefore pay more than they need, for example by joining a home mid-way through a charging period.

Review of charges and right to increase prices

B.15 Paragraph 1(l) of Schedule 3 indicates that a term may be regarded as unfair if it has the object or effect of '. . . allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded'. In general a right to get out of a contract, without penalty, in response to a price increase provides sufficient balance to a price variation clause. But we recognise that the right to cancel the contract in the face of an increase in fees may be of little practical value to the resident.

B.16 There is unlikely to be consumer objection to changes arising from an annual review of fees where this is stated in the contract, or for reviews where care needs change (and reasons have to be given). To comply with the Regulations, such terms should provide for an adequate notice period of the change and this notice should be no less (and preferably somewhat greater) than the notice required to terminate the contract. Some terms require payment of increased fees even where the notice period has not been given, and we consider such terms to have clear potential for unfairness. However, it has to be recognised that residents in care homes who are accustomed to their surroundings and not unhappy with the services provided are to some extent a captive market. In assessing the unfairness of price variation clauses we would need to take into account the width of the discretion available to the home owner to raise prices, for example whether the number and scope of the price reviews are limited in any explicit and objective way, such as a cap on fee rises by reference to some relevant and independent index of price increases.

B.17 In short, we recognise that there must be scope for care homes to raise charges in a contract of indeterminate duration, and where the service to be supplied may change to meet the fluctuating needs of a resident. But the scope to increase prices must be reconciled with the need to avoid significant imbalance in the contract that is detrimental to the interests of consumers. Terms which give care home owners unfettered discretion to review and raise fees are therefore liable to be considered unfair.

Interest charges

B.18 Terms imposing unfair penalties on the consumer for breach of the contract may be regarded as unfair under the Regulations (paragraph 1(e) of Schedule 3 indicates that a term may be considered to be unfair if it has the object or effect of requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation). Under the existing common law, a term may be held to be unenforceable if it seeks to make anyone (not just a consumer) pay more than a reasonable pre-estimate of the loss actually caused by their breach.

B.19 Some contracts impose interest charges for late payment of fees, but these are generally not punitive and may only reflect the rates of interest which small businesses generally pay for overdraft facilities. However, the interest rate should be clearly specified. Rates referring vaguely to percentage points above inflation, where the inflation rate used is not clarified, may be regarded as unfair, as may rates generally referring to unspecified overdraft charges. Monthly interest rates may be onerous under paragraph 1(e) of Schedule 3 and regard should be had to the proposed statutory rate of interest included in the Late Payment of Commercial Debt Bill. We anticipate that there may be concerns where charges are imposed in cases of delay in Social Security payments outside the resident's control, but we shall have to see how these terms operate in practice.

Deposits and payments in advance

B.20 The requirement to pay a deposit as a condition of residency would probably amount to a core term and fall outside the scope of the Regulations. But non-returnable deposits, or an unfettered right to demand deposits at any time during the residence, could be open to challenge. Paragraph 1(d) of Schedule 3 indicates that a term may be considered unfair if it has the object or effect of permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract. There should be clarity about the return of deposits. Advance payments of any kind which cannot be refunded or returned for any reason would be open to challenge as being potentially unfair.

B.21 The home has a duty to mitigate (or minimise) its loss even where residents are in breach of contract when they cancel the agreement, by trying to relet the room for example. Terms which require payment of a specific fee, such as one week's charges in the event of cancellation, would be open to challenge if this represented more than the loss incurred by the home - particularly if the term does not include a reference to mitigation of loss, or that fees will be refunded in whole or part where the home has successfully reduced its loss. The contract should make it clear what the deposit is for and what performance the home will provide in respect of it. Where a deposit is held on account throughout the duration of the stay, and then refunded, we would also expect there to be some statement about the way interest, if any, is calculated.

Period of notice

B.22 Paragraph 1(g) of Schedule 3 to the Regulations indicates that a term may be regarded as unfair if it has the object or effect of enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so. In indeterminate contracts for provisions of services we would expect both sides to be able to withdraw from the contract subject to reasonable notice, provided there is balance in the contract. Most contracts we have examined balance the notice period required of the resident and the home but we would question contracts that provide an imbalance in favour of the home. We would expect there to be a reasonable notice period in the light of the charging period involved but notice periods which require residents to give notice of one month expiring on the day of the invoice or on the last day of the calendar month, could be requiring notice of virtually two months and this could operate to extend the contract unreasonably to the benefit of the care home, and thus be unfair. This is particularly so where the home can require early termination of residence in exceptional circumstances.

Termination procedures

B.23 Termination of the contract seems to be a problematical area. Termination occurs where the resident switches home, or goes into hospital/other care at short notice, or on death (see paragraph B.27), or where the home requires termination for a variety of reasons including breach of contract and non-payment of fees. The home's reservation of the right to terminate is not in itself unfair but there must be balance in the contract between the respective termination provision of home and consumer, as mentioned above. Such terms should explain how much notice must be given and how it should be served by or to a resident. In general, if a home terminates the contract, a resident needs to be given notice that is long enough to be able to find alternative accommodation.

B.24 Residents are making a new home and will probably take up residence only if there is a reasonable prospect that they will not be required to move against their will. We would therefore expect the reasons for compulsory termination by the home to be specified in the contract. In certain circumstances, an unfettered right to terminate could produce a significant imbalance in the contract to the disadvantage of the consumer - for example, it could be used to circumvent annual price reviews and to import replacement residents at higher fees (although we have not come across any examples of such practices). We are encouraged to note that most contracts do include reasons. The provisions for the refund of fees in cases of termination of the contract should be clear. A term which provides for termination for breach of *any* term of the contract (however trivial) is liable to be considered unfair under Regulation 4, and should be limited to serious breaches of contract. Paragraph 1(m) of Schedule 3 indicates that a term may be regarded as unfair if it has the object or effect of giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract. Accordingly, a breach of contract giving rise to a threat of termination should be an objectively serious breach and not one determined by the home owner at its sole discretion. It may not be unreasonable for the home to give notice where there is wilful non-payment or significantly delayed payment of fees, but payment of fees may be delayed for a number of reasons for which it would be unreasonable to demand that the resident should move.

B.25 Contracts usually include a 'bad behaviour clause' to protect the interests of other residents. These terms enable the care home to terminate a resident's contract where there has been unacceptable conduct. But such rights need to be expressed to be exercised reasonably or may otherwise be considered to have potential for unfairness. Such terms typically give the resident 24 hours notice in the light of exceptional circumstances which are the resident's 'fault'. This sort of term creates significant imbalance in the rights and obligations of the parties, contrary to the requirement of fairness in Regulation 4 if there is no parallel provision for the resident to give 24 hours notice without penalty should there be a major failure or misconduct by the home. Where the home insists on the resident leaving in these circumstances, it may

be unreasonable for a standard term to state that unused fees are non-refundable, since the resident's misconduct may well not be wilful. Reasons for precipitate termination such as 'persistent bad manners' could be used unfairly if there was no requirement to help or warn the resident or scope for consultation or appeal. A fairer standard term would provide for consultation with the resident, proper notice, and the home assisting with finding alternative accommodation where this was necessary.

B.26 Termination of the contract can also arise if the registration of the home is withdrawn. The circumstances giving rise to loss of registration may be the direct fault of the home and there may be a right for some kind of compensation to the residents. Accordingly, this should not be expressly excluded from the contract. (See also paragraph B.38)

Death

B.27 Some of the contracts we have examined regard death as determining the contract, and ending any obligation to pay further charges. Others provide for seven days' fees, and another group rely on the care home's standard notice period. Some contracts, however, require four weeks' fees in lieu of notice of death, and these have given rise to complaints under the Regulations that, first, the term is unfair and, secondly, the home would not have been chosen if the effect of the term had been clear. We regard four weeks as long but not necessarily unfair provided that the home recognises its duty to mitigate its loss by reletting the room. We have already indicated in paragraph B.22 why we would consider notice periods of more than four weeks as being potentially unfair. Since fees are frequently required to be paid monthly in advance, the position on refunds should be explicit. We are uncertain of the effect of such notice periods on the death of residents who have Social Security contracts and will need to see how this operates in practice.

B.28 Terms requiring fees due until the personal effects are cleared from the room have also given rise to complaint. Some contracts provide for the home be entitled to fees for seven days following the death of a resident and that the relatives should have access to the room during this period to make arrangements and clear effects. On the other hand, some terms authorise the home to collect personal belongings together for later collection and thus free the room immediately for alternative use. The unfairness of terms which state that the home owners accept no responsibility for anything left on premises at the end of agreement will be examined in the light of the provisions in the contract for clearing the room, and the terms relating to payment for the use of the room following termination by death. Contract terms which set a reasonable time limit for rooms to be cleared and identify who is to be given notice of this and what payment is due are less likely to be found unfair than terms which, for example, restrict the home's liability if it fails to protect the deceased resident's effects

B.29 We have seen a term which allows the home to exercise a lien over a resident's goods if fees are outstanding. There is no common law or statutory right to such a lien and

so it has to be created by a contractual term. Such a term amounts to an objectionable increase in the home's rights, contrary to the good faith requirement of Regulation 4, and is particularly unfair because the lien could attach to any of the resident's goods which may have sentimental value to the family.

Absences

B.30 Once consumers become residents, they may be absent for planned holidays or for hospitalisation and other reasons. Some contract terms allow some abatement of fees in these circumstances, but most require full fees throughout absence and deny any *right* to abatement. This could be reasonable if the resident had any security of tenure but it is clear that the residents are licensees and in many cases are treated as having few if any rights to the room of their choice. If the home takes temporary residents and the resident has no right to retain his room he may be required to pay in full for almost nothing, and this denial of abatement is likely to be considered unfair under the general test of unfairness.

B.31 It is of questionable fairness to decline abatement where the resident is absent for longer absences (of say more than a week) since residents are thus required to pay in full for food and other services they do not receive. Terms vary widely between homes. Some terms abate fees for a short period but then require full fees after a period of extended absence. Some contracts make it clear that where residents give permission, rooms are re-let on a short term basis and refunds are given. Some contracts require written notice of temporary absence. This may be reasonable if fees are to be abated, but may lead to difficulties in cases of sudden illness. We will need to examine how these terms operate in practice.

Trial periods

B.32 Trial periods are fairly standard and are enjoyed by both resident and the home. Since they are usually terminable on very short notice, such as '24 hours without reasons', we would take the view that it would be unfair to exclude full refunds.

Exclusion of liability and insurance

B.33 Many homes' contracts exclude residents' money from their insurance cover. As insurance is readily available to the resident, we would not regard this as unfair under the Regulations. However purported limitations of the home's own liability for its negligence (typically embodied in statements such as 'management cannot accept any responsibility') are liable to be considered unfair. Paragraph 1(b) of Schedule 3 indicates that a term may be considered unfair if it has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any

claim which the consumer may have against him. We take the view that the contract should make it clear that such terms are not seeking to exclude liability where the home is at fault - where, for example, it is in breach of contract or has been negligent, or its staff have defrauded consumers. This extends to all exclusions of liability for loss or damage to residents' possessions. (See also paragraphs B.39 and B.40 for exclusions of liability for personal care.)

Services

Facilities

B.34 Terms that describe the facilities provided by a home may be considered to be core terms and not subject to the Regulations except where they are not in plain and intelligible language. However paragraph 1(k) of Schedule 3 indicates that a term may be considered to be unfair if it has the object or effect of enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service provided.

B.35 Accordingly, terms which allow for change in facilities offered are *not* core terms. The wider the discretion they give the care home, the more likely they are to be under suspicion of unfairness. The reasons for making changes should be specified and be objectively verifiable - such as a change of care needs. Significant changes in what is supplied should be subject to a reasonable notice period enabling the resident to leave without penalty if the change is not acceptable. We would consider challenging the unfettered right to change the room supplied and to do so without proper notice. The resident's needs may well change and the contract may thus need to anticipate circumstances in which the home may not in the future be capable of providing care or will need to vary the terms of the contract. However, there should be no surprises.

B.36 Variation clauses which could allow a home at its discretion to substitute other rights and obligations for those agreed between it and the resident are likely to be considered unfair. They conflict with the fundamental requirement that each party should be subject only to terms to which he or she has agreed at the outset, and thus leave the resident open to the unilateral imposition of unexpected costs or penalties, or loss of benefits under the contract. These objections apply to a term that may be intended only to cover minor and technically unavoidable changes, but is so phrased that it could be used to impose more substantial variations on the consumer**.** In appropriate circumstances, a right to vary contract terms can also be fair if the resident is given a right to cancel the contract, having been notified as early as possible of the home's wish to vary the terms. The variation should not take effect before the resident has been able to cancel. However, as noted earlier, a right to cancel is unlikely to achieve fairness if residents will suffer loss or substantial inconvenience by exercising it and may in practice be of limited countervailing benefit to residents who are reluctant to change home**.** We would regard terms which retain the right to vary the terms and conditions unilaterally, even with a notice period, as being potentially unfair.

B.38 We have found some terms providing for owners to consult residents before making changes. Most contracts are silent on this point but a current issue seems to be homes being sold with a consequent assignment of the residents' contracts. Paragraph 1(p) of Schedule 3 indicates that a term may be regarded as unfair if it has the object or effect of giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement. Consumers clearly need notice of any proposal reducing consumers' guarantees in this respect.

Exclusion of liability for care

B.39 Paragraph 1(a) of Schedule 3 indicates that a term may be considered unfair if it has the object or effect of excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier. In addition section 2(1) of the Unfair Contract Terms Act 1977 makes exclusions of liability for death or personal injury (caused to anyone) automatically void. While it is not unlawful under the 1977 Act to purport to exclude such liability, we would regard the use, for example, of notices disclaiming such liability as misleading and as a source of unfairness subject to challenge under the Regulations. The 1977 Act governs only exclusions of liability for death or injury caused by negligence. Because the illustrative term does not mention negligence, it calls into question the fairness of terms excluding liability for death or injury even when they are qualified by an exception for liability arising from negligence. This is of particular relevance in situations where a business is placed under 'strict liability' by statute.

B.40 Any exclusion of liability for the resident's care would be open to challenge as the home cannot exclude its liability for negligence causing death or injury. Some contracts reasonably exclude liability for medication when it is not under the home's control, but terms which make the administration of prescribed medicines the resident's risk would be considered unfair as they could be relied upon to exclude the homes' liability for their own negligence. For medical arrangements the best practice appears to be that residents retain their own doctor, and most contracts seem to recognise this. Terms providing for the home to authorise medical decisions in the absence of relatives need to be finely balanced and the home needs to make sure that there is no separate term excluding liability for death or personal injury caused by the home's negligence.

Visiting

B.41 Some contracts indicate the times when visiting is convenient and some nursing homes place a significant restriction on times and require that permission is required outside these hours. This is not really an area for consideration under the Regulations provided that such terms are given prominence, since these will be a matter of choice

for residents when selecting the home. However, terms which allow for visiting hours to be changed - thus varying the contract terms - could be open to challenge.

Complaints procedures

B.42 Many contracts contain a reference to a complaints procedure. The requirement for complaints to be in writing may restrict the resident's ability to complain and introduce an unnecessary formality requirement. Paragraph 1(n) of Schedule 3 indicates that a term may be considered unfair if it has the object or effect of limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality. We would like to see details of the complaints procedure being made available in advance so that the accessibility of the procedure can be taken into account in deciding whether to contract with a care home.

Brochures

B.43 Where brochures are produced by the homes and form part of the agreement they must be made available in advance and not just on request. Paragraph 1(i) of Schedule 3 indicates that a term may be considered unfair if it has the object or effect of irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract. Terms which provide for the agreement to supersede any brochure statement may also be subject to challenge under paragraph 1(n). We consider such a term creates an incentive to make exaggerated or misleading claims.

C LIST OF RESPONDENTS TO THE INQUIRY

The Abbeyfield Hertfordshire Extra Care Society
Action on Elder Abuse
Age Concern (England)
Age Concern Surrey
Age Concern Wakefield District
Age Concern (Wales)
Alderbourne Residential Care Home
Allonsfield House Residential Home for the Retired and Elderly
Alphington Lodge Residential Care Home
Alzheimer's Disease Society
Anthony Collins Solicitors
The Association of Charity Officers
Association of Directors of Social Services
Association of Residential Care
Audit Commission
Avenue House Residential Home
Avon Registered Care Homes Association
The Aylsham Manor Residential Care Home
Baseline Healthcare Communications Ltd
Begbrook House Nursing Home for the Elderly
Berkshire Health Authority
Better Regulation Unit
Birchfield Residential Home for the Elderly
Borough Care Ltd
Bradeney House Residential and Nursing Home for the Elderly
Brighton & Hove Care Homes Association
British Federation of Care Homes Proprietors
British Geriatrics Society
Care First Group plc
Care Forum
Care Forum Wales
Care Homes Information Network
Care in Retirement
Centre for Policy on Ageing
Cheshire County Council (Social Services)
Church of Scotland Social Work
Cleeve Lake Court Residents Association
Clovelly House Private Residential Home for the Elderly
Community Action for Residential Elderly Services
Continuing Care Conference
Counsel and Care
Cumbria Care
Department of Health
Department of Old Age Psychiatry
Department of Social Security
Deva House Quality Care Home for the Elderly
Devon County Council (Social Services)
Devon County Council Registration and Inspection Unit
Doncaster Metropolitan Borough Council Directorate of Social Services
Dumfries and Galloway Council Social Services Department
ENH English Nursing Home
Egerton Care Ltd
European Confederation of Care Home Owners
Exwistle Lodge Residential Care Home
Fairway Care
Federation of Small Businesses
Ferfoot Ltd
Forum of Private Business
Dr Heather Frenkel (Bristol University)
The Friends of Heathlands
Gillaroo Lodge Nursing Home Ltd
Greater London Association of Disabled People
Hampshire Care Association
Hanover Housing Association
Hawthorns Nursing Home
Health and Social Services Executive - Northern Ireland
Heatherdene Residential Care Home
Help the Aged
The Hollies Residential Home for

the Elderly
Independent Care Organisation Network
Independent Healthcare Association
Prof Malcolm Johnson (Bristol University)
Kent Farm House Accredited Residential Rest Home
Kent County Council
Kingsdowne Society
Laing and Buisson
The Leonard Cheshire Foundation
London Borough of Barnet Joint Inspection Unit
Manchester Care
Methodist Homes for the Aged
Mount Pleasant Rest Home for the Elderly
National Association of Citizens Advice Bureaux
National Association of Inspection and Registration Officers
National Care Homes Association
National Consumer Council
National Council for Women of Great Britain, Stirling & District Branch
National Heads of Registration and Inspection Units
The NHS Confederation
North Ayrshire Council
Panteg Nursing Home
M J Payton & Co
Policy Studies Institute
Public Concern at Work
Puretruce Care Providers Ltd
Registered Nursing Home Association
Registered Nursing Home Association North West Branch
The Relatives Association
Residential Forum
Royal College of Psychiatry
Royal College of Physicians
Royal Commission into Long Term Care for the Elderly
Royal National Institute for the Blind
St Francis Nursing Home
Sandwell Metropolitan Borough Council
Scottish Association of Care Home Owners
Scottish Association for Mental Health
Sheldon Grange Residential Home for the Elderly
Sheffield Health Authority
Shropshire Association of Registered Care Homes
South Eastern Association of Residential Care Homes
South London and Surrey Care Homes Association
South Pembrokeshire Home and Day Care Consortium
Southern Cross Healthcare
Terrington Lodge Residential Home for the Elderly
Trent Lodge Residential Care Home for the Elderly
United Care Association
UK Central Council for Nursing, Mid Wifery and Health Visiting
UK Homecare Association Ltd
Voluntary Organisations Involved in Caring in the Elderly Sector
Warwickshire Association of Registered Care Homes
Warwickshire Care Services Ltd
West Midlands Regional Heads of Inspection Units
Westgate Health Centre
Willow Care Ltd
Wren Manor Registered Private Nursing Hom

There were also 260 responses from care-home residents, relatives, carers, and other interested individuals.