

12 July 2018

Care homes consultation team
7th Floor
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

By email to: carehomesconsultation@cma.gsi.gov.uk

Dear colleague,

Competition and Markets Authority's consultation on Care Homes for the elderly – draft consumer law advice

About the Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) welcomes this opportunity to respond to the CMA's consultation on draft consumer law advice for UK care home providers on the charging of fees after a resident's death. We provide a one-stop-shop for complaints about the actions of local authorities including their adult social care departments and the adult social care services they operate and commission and complaints about all registered social care providers. We investigate complaints about both publicly and privately funded and arranged adult social care.

We can look at a range of complaints regarding adult social care, including the assessment process and care planning, fees and charging for care and support, quality of care within residential and home care, safeguarding and a range of other areas.

Comments on the draft advice

We welcome and agree with the main thrust of the proposed advice and believe it clearly addresses the issues identified by the CMA in its earlier market study on care homes. It also closely reflects common themes we have seen in adult social care complaints we investigate. Our investigations have identified recurrent difficulties around people who use care services being given confusing or incorrect advice or complaints arising due to contract terms that are not transparent.

It is particularly welcome to see a strong emphasis on effective complaints handling within the advice – in our submission, we have focused our comments specifically on the section about how complaints should be handled, however we agree with all the areas proposed for the advice to cover.

An essential element of making the complaints system accessible is ensuring that users of a service know about their right to complain to the provider and their right to seek the view of an independent ombudsman. We welcome therefore the explicit recognition in the draft advice that our jurisdiction covers complaints from self-funded residents as well as those who are state-funded.

The four overarching principles outlined in section 6 of the draft advice – ensuring complaints procedures are easy to find, easy to understand and use, written and followed in such a way that complaints are dealt with fairly and effectively and also applied consistently – are helpful. They also mirror the key features of an effective complaints handling process which we outline in our [‘Guidance on running a complaints system’](#) which are accessibility, communication, timeliness, fairness, credibility and accountability.

The draft advice makes reference to guidelines on complaints handling produced by other bodies. We would welcome if a reference could be included to signpost to our [‘Guidance on running a complaints system’](#) and Our [‘Manual for councils and authorities’](#). These documents are intended to promote a shared understanding of what is meant by good complaint handling and to help improve the quality of complaints handling by authorities within our jurisdiction.

Furthermore, together with Healthwatch England we are due to shortly launch a new single complaints statement which is intended to help adult social care providers set out what service users, the families and representatives can expect when making a complaint. Born out of the Quality Matters initiative, which aims to improve the quality and consistency of adult social care provision across the country, the statement offers a simple bulleted guide for each stage of the complaints process. Launched alongside the complaints statement will be a second document created for service users to help them better understand the complaints process, including an easy read version.

We believe para 6.5 – which states that alongside consumer law obligations, there are statutory sector-specific rules and guidance on complaints handling that also apply – needs a further addition to it to include an explicit reference to the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009. These govern adult social care complaints procedures and apply to services provided by a care home organisation, where that care is arranged by the local authority (these should also be incorporated into Appendix B to the advice which lists all the relevant regulations).

The advice sets out the expectations of complaints being escalated including to the appropriate local authority where the concerns cannot be resolved. We believe the wording around escalation could be clarified. Where the local authority has no involvement, escalation would be directly to the ombudsman once the care home’s own processes have been exhausted. If care is funded or arranged by the local authority, then the local authority will be ultimately responsible for ensuring complaints are properly resolved. Our guidance stresses the importance of clarity between the care provider and local authority on their arrangements for how complaints are to be managed, ensuring these comply with the statutory requirements. We suggest the draft advice could helpfully mirror our key principles on effective complaint handling where services are delivered in partnership by local authorities with external partners (Appendix Two in this [document](#)).

We do not believe it would be helpful for the advice to prescribe a 28 days’ timeframe for providing a response to complaints. It is often the case that complaints can be resolved quicker than that so it would be preferable to avoid the risk of complaints being unnecessarily delayed as a result. We believe a better model would be to set out a high-level principle that there should be a proportionate and timely response to complaints. In addition, the current drafting risks causing confusion with the timescales apply under the statutory complaints procedure for adult social care (which requires a response within six months). The advice also does not explain whether the 28 days period applies to the response from the care provider before any escalation to the local authority. If a timeframe was going to be prescribed, it is not clear from the current drafting whether this would be working days or calendar days.

We would be happy to discuss further any of the points included in our response and provide any assistance to the CMA as necessary in finalising the advice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. King', with a stylized flourish at the end.

Michael King

Local Government and Social Care Ombudsman