

Welsh Government response to the Competition and Markets Authority Care Homes Market Study

Introduction

Health and social care is a priority for the Welsh Government, as set out in the national strategy, Prosperity for All. It is vital that people who live in care homes receive compassionate and dignified care which focuses on what matters to them. The Welsh Government is committed to taking action to ensure progress continues to be made in relation to the care home sector in Wales.

Legislative context

The Welsh Government's policy approach to care homes has been driven by the development of social services legislation specific to Wales.

In 2011 the Welsh Government published the white paper: Sustainable Social Services: A Framework for Action, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act").

The Social Services and Well-being (Wales) Act 2014

The 2014 Act provides the statutory framework for improving the well-being outcomes of adults and children who need care and support and carers who need support. It has a particular focus on voice and control so that people have control over their own care and support and can make decisions about it as an equal partner

The Regulation and Inspection of Social Care (Wales) Act 2016

The 2016 Act reforms the regulation and inspection regime for social care in Wales. It provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce. It also enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

Engagement with CMA

The Welsh Government has worked closely with the CMA throughout this process. It facilitated visits by CMA officials during 2017 to support their fact finding activity in the preparation of their report.

Response structure

This response is grouped into three sections:

Section 1 - Response to overall recommendations in section 14 of the CMA report:

1) Capacity recommendations

- 2) Consumer protection recommendations
- 3) Consumer decision-making recommendations

Section 2 - Response to detailed recommendations in body of the CMA report

Section 3 - Response to 'Short summary for Wales' document produced by the CMA in addition to the main report.

Section 1 – Response to overall recommendations in section 14 of CMA report

1. Capacity recommendations

Recommendation 14.6: We also recommend the introduction of enhanced market oversight for UK-based care home groups, and of mechanisms for the sharing of critical information and market intelligence among the relevant national regulators to facilitate continuity of care for residents

The Welsh Government is already taking steps to address this recommendation through the development and implementation of legislation and the operational practice of the service regulator, the Care Inspectorate Wales (CIW).

In terms of legislative developments, market stability and financial oversight are key tenets of the 2016 Act.

The Welsh Government will be working with CIW and key stakeholders in the social care sector during 2018 to develop the provisions in relation to market stability and financial oversight, with the intention of implementing these arrangements from April 2020. The timing of this coincides with the completion of the re-registration of existing providers under the new system. As the nature of the care market may change as a result of this process (for example, some providers may use this as an opportunity to restructure or merge their current portfolios of services), it is prudent to allow sufficient time for these changes to take place. This will also allow time for consideration of the relationship between market stability reports, population assessments and area plans.

Further detail about the financial stability and market oversight provisions in the 2016 Act is set out below:

Financial sustainability

The 2016 Act contains the following provisions and regulation-making powers which are intended to provide Welsh Ministers with greater financial oversight of larger care providers:

- Section 59 allows Welsh Ministers¹ to specify, via regulations, criteria for determining which social care providers would be subject to a financial sustainability assessment;
- Section 61 allows the Welsh Ministers to assess the financial sustainability of certain providers and, where there is a risk of failure, to require the provider to develop a plan to mitigate or eliminate such risk;

¹ In practice this activity will be carried out by the service regulator, Care Inspectorate Wales (CIW).

- Section 62 places a requirement on the Welsh Ministers to inform the relevant local authority in the event that the failure of a provider is likely. Similarly, Section 189 of the 2014 Act places a requirement on local authorities to meet people's needs in the event of a provider failure.

Market stability is focussed on action at both a local and a national level, as follows:

Local market stability

Section 56 of the 2016 Act amends the 2014 Act to require local authorities to prepare and publish local market stability reports. The reports will review the sufficiency of care and support provision, including in relation to regulated services such as care homes. The reports must also include an assessment of the extent to which regulated services provided in that area were delivered by service providers subject to the financial sustainability requirements in the 2016 Act. The frequency of these reports will be prescribed in regulations. The aim of this provision is to ensure that local authorities have sufficient understanding of the sector to help them to plan and shape care and support services in their areas.

It is intended that the local market stability reports will align with the joint population assessment and planning process required under the 2014 Act. Local authorities and health boards must work together to undertake a joint assessment every 5 years of the level of the care and support needs of the population in the health board area, as well as the extent to which that need is, or is not, being met. The first population assessment reports were published in April 2017 and can be viewed [here](#).

Seven regional partnership boards have been established on the health board footprint, as required by regulations under the 2014 Act. They bring together health, social services, the third sector and other partners who will take forward the effective delivery of integrated services in Wales. These boards are required to develop joint area plans in response to these assessments, setting out how the care and support needs of the population across each health board area will be met. The first joint area plans will be published in April 2018.

National market stability

Section 63 of the 2016 Act requires Welsh Ministers to prepare and publish national market stability reports which review the sufficiency of care and support in Wales, having regard to local market stability reports.

The intention here is to identify gaps in service provision across Wales, support forward planning, provide better market oversight of key providers and build public confidence in the stability of social care services. CIW will be responsible for producing the national market stability reports on behalf of the Welsh Ministers.

Interim measures in relation to market stability and financial oversight

In advance of developing the legislation outlined above, there are a number of measures in place which contribute to supporting market stability.

As set out above, the joint population assessment reports provide local authorities and Health Boards with a greater oversight of the sector and highlight the extent to which care and support needs are, or are not, being met.

As the care home sector in Wales is made up of a high proportion of smaller providers², issues which are highlighted during inspections and through other means of gathering intelligence are often found to be effective indicators of the likely failure of these providers. CIW will discuss any such intelligence with the provider in the first instance in order to establish its veracity. If a significant risk is identified CIW will notify the relevant local authority, with the provider's knowledge. This provides local authorities with the opportunity to consider their exposure and take mitigating action if necessary.

CIW is improving its oversight of larger, more difficult-to-replace providers by assigning dedicated link officers to work with them as these providers re-register under the 2016 Act. Link officers will maintain oversight of the provider's performance across its portfolio of services and will focus on performance, development and improvement with the provider.

CIW has already established strong relationships with local authorities. Each local authority has a designated CIW link officer. They meet heads of adults' services and children's services on a regular basis to discuss performance and commissioning issues.

Section 39 of the 2016 Act places a requirement on the Welsh Ministers, in practice CIW, to notify local authorities in Wales and England about certain actions taken against a provider including the cancellation of registration or the variation of registration which results in the removal of a regulated service or place from that registration. The Regulated Services (Notifications) (Wales) Regulations 2017 which come into force in April 2018, prescribe the specific information required in respect of each notification requirement, along with adding additional notifications including in respect of appeals, tribunal decisions and proceedings brought against a person in relation to specified offences within the Act. Through enabling CIW to share key information, these Regulations give local authorities notice of key changes affecting the market in their areas, better informing decisions when planning and commissioning services.

Information and intelligence sharing with social care regulators across the UK

CIW is seeking to establish closer working relationships with, and improved information and intelligence sharing between, the other social care regulators across the UK. This will include information sharing arrangements with Care Quality Commission (CQC) in relation to its market oversight scheme which captures a number of companies providing regulated services in Wales.

Legislative mechanisms for the sharing of critical information

Part 9, Section 179 of the 2016 Act provides for two regulatory bodies to act together in exercising relevant functions, if the arrangement will have a positive effect on how the body exercises their function or if it will assist the body in achieving its general objectives.

² According to the PPIW report, [The Care Home Market in Wales: Mapping the Sector](#), published in 2015, 57% of care homes for older people in Wales are single home providers and 18% are from smaller providers with less than 4 services.

Related to joint working, CIW and Health Inspectorate Wales (HIW) are undertaking a pilot programme for care home settings in North Wales to identify a number of themes which impact on people's quality of life, including support for people with mental health needs, continence support and podiatry.

Between 1 August and 13 November 2017 a questionnaire was sent out to all registered older adult residential and nursing homes in Gwynedd, Isle of Anglesey, Conwy, Denbighshire, Wrexham and Flintshire. A total of 51 responses were received. The main purpose of the questionnaire was to determine:

- o what healthcare services are accessed by care homes;
- o the quality of the services that were accessed;
- o the reasons services weren't accessed;
- o service gaps; and
- o the relationship care homes have with their local health board.

The joint project will use the findings from this survey to determine which services/themes to focus on when carrying out inspections and interviews.

Social Care Business Support Pilot

Also related to market stability, the Welsh Government with the support of its Business Wales service is running a pilot in South Wales with independent and third sector providers to offer a tailored programme of advice, which includes one-to-one diagnostic sessions and themed workshops in key areas such as recruitment and retention, financial planning and human resource management.

In addition to equipping social care providers with improved knowledge, expertise and skills to undertake fundamental business operations that can improve sustainability of their business, it has the potential to provide officials with a better understanding of the challenges and opportunities facing the sustainability of social care sector and to inform future policy development and service delivery.

2. Consumer protection requirements

Recommendation 14.7: Alongside the actions we are taking to ensure care homes are meeting their consumer law obligations (including enforcement and new guidance - see paragraphs 12.9 to 12.25), we recommend that sector regulators play a greater role in helping to 'embed' consumer law compliance across the sector - both to further raise industry standards and drive a 'culture of expectation' amongst residents about the quality of service and fair treatment they are entitled to expect from care homes

The Welsh Government is already addressing aspects of this recommendation through the implementation of legislation, as set out below:

*The Regulated Services (Service Providers and Responsible Individuals) Regulations 2017*³ ("the 2017 Regulations"), developed under section 27 of the 2016 Act, place requirements

³ Available at http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

on service providers and designated responsible individuals of regulated services, including care home services, in relation to the standards of care and support to be provided. These regulations will come into force in April 2018.

The 2017 Regulations, the accompanying statutory guidance and CIW's inspection framework will become the means by which inspectors will determine whether care homes are demonstrating that they are meeting people's care and support needs and supporting them to achieve their personal outcomes.

Specifically, the 2017 Regulations contain requirements about the provision of information to individuals at the service, service agreements (contracts) and complaints procedures, all of which support individuals to understand their rights and what to expect from the service.

Regulation 23 states that the service provider must ensure that individuals have the information they need to make or participate in assessments, plans and day-to-day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes. Information provided must be available in the appropriate language, style, presentation and format. Furthermore, the service provider must ensure that the individual receives such support as is necessary to enable them to understand the information provided.

Regulation 20 states that the service provider must ensure that every individual is given a signed copy of any agreement relating to the care and support provided to the individuals and relating to any other services provided to the individual. It also states that the service provider must ensure that individuals receive such support as is necessary to enable them to understand the information contained in any such agreement. The statutory guidance goes into further detail stating that the agreement should include information about the costs payable by the individual, other costs covered by the placing authority, and terms and conditions of the service including termination of contracts and notice period, so that they can make decisions about their care and support.

Regulation 64 relates to complaints. It states that the service provider must have effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints;
- (b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person;
- (c) ensuring that appropriate action is taken following an investigation;
- (d) keeping records.

The statutory guidance also provides further detail relating to complaints. Specifically, it states:

Service providers have an accessible complaints policy which includes an informal resolution stage and explains –

- *who to approach to discuss a concern/complaint;*
- *how individuals can be supported to make a complaint;*
- *information about accessing independent advocacy, where available;*
- *how complaints will be dealt with;*
- *the stages and timescales for the process; and*

o *how to escalate a concern/complaint to a commissioner or Public Services Ombudsman for Wales.*

The overall aim of the 2017 Regulations is to drive improvement in the sector in all aspects of the provision of good quality care and support in order to raise industry standards.

In order to further consider this recommendation, the Welsh Government will require more detail about the CMA's expectations in terms of the role of the CIW. In principle the Welsh Government and the CIW would be happy to work with the CMA to maximise the impact of interventions in relation to consumer law and to avoid duplication, provided that this is consistent with its role and remit as a social care regulator.

Recommendation 14.8: As a follow up to our guidance, we would be prepared to work with industry bodies who wish to develop model contracts that they will recommend care homes to use with self-funders which would help address the variability we have seen in the user-friendliness and intelligibility of contracts and encourage best practice across the sector

The Welsh Government notes and welcomes the CMA's offer to work with the sector to achieve an improvement in this area.

The Welsh Government has supported the National Commissioning Board to develop model contracts, a model agreement for pooled funds for commissioning care home services and a market analysis of care homes for older people in Wales

Recommendation 14.9 In order to improve compliance and ensure consumers are better protected, we are also recommending that sector rules are updated to require care homes to:

- (a) Publish indicative fee information for self funders;**
- (b) Publish a copy of their standard (self funder) contract, and a standard summary of important terms and conditions (using a model template), as well as to provide these to prospective residents at an early stage in the decision-making process;**
- (c) Protect residents' deposits in full against the risk of insolvency;**
- (d) Notify the sector regulator if they ask a resident to leave a home or impose a visitor ban; and**
- (e) Follow new guidance from sector regulators on high quality practice to be followed when asking residents to leave and when imposing visitor bans or restrictions, to ensure such processes are fair and transparent.**

Recommendation 14.10 In order to achieve these changes, regulators will need to work together with industry to develop the standard practices and templates where necessary

The Welsh Government is already addressing aspects of this recommendation and action is already taking place specifically in relation to 14.9 (a) and (b) and 14.10, as set out below, with consideration also being given to recommendations 14.9 (d) and (e).

Regarding recommendation 14.9 (c), we consider further engagement with the CMA is required to discuss the practicalities of how this recommendation would be enforced.

Recommendation 14.9(a) and recommendation 14.10

Section 10 of the 2016 Act requires providers to publish an annual return which sets out key information about their services (including care home services). Regulations, the Regulated Services (Annual Returns) (Wales) Regulations 2017 (“the annual returns regulations”) have been developed under this section of the Act which prescribe the specific information to be included in the annual return. These regulations are due to come into force in April 2018.

The annual return will be a public facing document which will be published on the CIW’s website alongside the service provider’s latest inspection report. The intention is to provide greater transparency and to ensure that people have access to relevant information, presented in a consistent format in order to make an informed choice about the best service for their needs.

Providers are required to include details of the scale of charges payable by service users during the last financial year within their annual return.

We also note the Terms of Reference for the Good Choices in Care Homes Working Group (“GCWG”) being set up by CMA to implement the report’s recommendations. Specifically, we note these include focussing on improved website information, specifically in relation to the recommendation that all care homes who have a website should publish online information on pricing, key terms and conditions and vacancies, and contribute this information to digital intermediary services used by consumers to compare services. Further work is needed to consider how this recommendation will work with the existing requirements in Wales for providers to include some of this information within the annual returns.

Recommendation 14.9(b)

The 2016 Act and the accompanying regulations contain a range of requirements in relation to information to be provided to individuals receiving care and support from a service.

Specifically the 2017 Regulations require providers to produce a written guide to the service and to give individuals a service agreement.

In order to comply with requirements in the 2017 Regulations, the written guide must be given to all individuals receiving care and support from the home and must be made available to others on request. Providers are expected to include information within this guide on fees (the range, any additional fees or costs payable by the individual, methods of payment, notice of increase) and information on terms and conditions including circumstances in which the service may cease to be provided and notice periods.

Individuals receiving care and support from the home must also be given a signed copy of any service agreement which sets out information about the costs payable by the individual, other costs covered by the placing authority, and terms and conditions of the service including termination of contracts and the notice period, so that individuals can make decisions about their care and support.

In relation to both of these requirements, providers must ensure that individuals receive such support as is necessary to enable them to understand the information contained in any such agreement.

Recommendation 14.9 (c)

Although the 2017 Regulations do not deal specifically with issues relating to residents' deposits, there is a specific regulation regarding the protection of residents' money and belongings. Regulation 28 states:

(3) Where an individual's money is held by the service provider for any purpose (apart from moneys held for the purpose of paying charges payable by the individual in accordance with any agreement with the service provider), the policy and procedures required by this regulation must provide—

(a) that the money is held in an account in the individual's name or in an account which enables clear demarcation of each individual's money;

(b) any such account is not used in connection with the management of the service.

(4) The service provider must ensure so far as practicable that persons working at the service do not act as the agent of an individual.

We consider the issue of the protection of deposits, whilst important, to be outside the scope of the current legislation. As mentioned previously, further work is needed to discuss with CMA the practicalities of how this recommendation would be enforced.

Recommendation 14.9 (d)

We will consider the possibility of including as a future amendment to the 2017 Regulations, a requirement for providers to notify CIW if a resident is asked to leave or if a visitor ban is imposed. This would, however, be subject to the impact assessment process to determine the potential regulatory impacts of this amendment. Our intention is to review the 2017 Regulations as part of the normal cycle of legislation evaluation and we will update the CMA once this takes place.

Recommendation 14.9 (e)

Implementation of the new legislation and guidance developed under the 2016 Act will take priority over the development of additional guidance relating to asking a resident to leave or imposing a visitor ban. However, we will consider the possibility of developing further guidance on these in the longer term. This guidance would accompany any related regulatory change if taken forward in relation to recommendation 14.9(d).

Recommendation 14.12(b) Further, in order to ensure that residents can resolve problems they encounter after they have moved in, we are recommending that:

(b) sector regulators encourage a culture of feedback in care homes by including in inspections an assessment of the effectiveness of a) feedback processes within the home, including whether feedback champions are required; and b) awareness of and access to advocacy services

a) Feedback processes within the home

The Welsh Government is already addressing aspects of this recommendation as set out below.

The 2017 Regulations, developed under the 2016 Act, respond to this recommendation by requiring providers and responsible individuals to have effective arrangements in place for listening to the views of people receiving care and support, their relatives and staff members, and using this information to inform improvements in the operation of the home. From April 2018, once services have registered under the 2016 Act, CIW as the service regulator will inspect services against the requirements within these regulations, the accompanying statutory guidance and CIW's own inspection framework.

The 2017 Regulations also contain requirements about feedback processes in the home and access to advocacy services, as set out below.

Part of the role of the designated responsible individual for the service is putting suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of care and support provided by the service.

As part of this review, the responsible individual must make arrangements for:

- considering the outcome of the engagement with individuals and others;
- analysing the aggregated data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;
- reviewing any action taken in relation to complaints;
- considering the outcome of any audit of the accuracy and completeness of records.

This information must be fed back to the service provider to inform any decisions about the way in which the service can be improved. This is contained in Regulation 80.

Regulation 19 states that providers must produce a written guide to the service which contains information about the availability of advocacy services, as well as how to raise a concern or complaint. Regulation 20 states that providers must ensure that every individual is given a signed copy of any agreement relating to the care and support provided to the individual and any other services provided to the individual.

Service providers are also required to include details of the arrangements made for consulting service users about the operation of the regulated service within their annual returns.

b) Awareness of and access to advocacy services

In supporting people to have a stronger voice in, and greater control over, their care and support, and participate as an equal partner, the 2014 Act places duties on local authorities in relation to the provision of advocacy services.

Local authorities must arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an

appropriate individual, but there is no appropriate individual available. For example, a person may need to weigh up the advantages and disadvantages of moving into a care home. If they are unable to do this, they are likely to be experiencing barriers in participating fully in determining their well-being outcomes.

The Welsh Government is funding the Golden Thread project for 3 years to support the implementation of the 2014 Act in relation to advocacy services. The project started on 1 April 2016 and aims:

- to support the commissioning of independent professional advocacy through a sustainable, strategic approach;
- to improve the availability of advocacy services to adults across Wales;
- to improve the well-being of individuals through advocacy and to give them a stronger voice.

The 2017 Regulations, created under the 2016 Act, require providers to include information about the availability of advocacy services within the written guide to the service. Under this Act, the Welsh Government is developing legislation to regulate independent advocacy services for the first time in Wales to ensure services provided by the local authority meet the required standards and are of a high quality.

Specific regulations and statutory guidance for advocacy services are being developed as part of the third phase of implementation of the 2016 Act. These regulations will define what is meant by an advocacy service within the context of regulation and will set out the standards expected of these services.

Although the 2016 Act enables the Welsh Ministers to regulate both adult and children's advocacy services, the definition will extend initially only to advocacy services provided to children and young people who make or intend to make representations under sections 174 and 176 of the 2014 Act. Specifically, these are:

- Looked after children;
- Care leavers;
- Children with needs for care and support.

We will consult on draft regulations and statutory guidance in May 2018. If approved by the National Assembly for Wales, the final regulations are due to come into force in April 2019.

We intend to widen the scope of regulation to providers of independent advocacy services for adults once these changes have had time to bed in, taking into account the outcome of this work.

3. Consumer decision-making recommendations (helping people make decisions about care)

Recommendation 14.13: We are recommending that the national governments take forward the evidence of our work on consumer decision-making in order to improve the way in which people interact with care homes, whether acting for themselves or their families. We recommend that a working group is established to develop and

agree a plan for substantially improving the provision of supported decision-making services in the UK (see paragraphs 10.14 to 10.21). This group should:
(a) develop and implement an approach to give people access to better information on care homes and other services in their local area (paragraphs 10.22 to 10.30); and
(b) develop and implement measures with the objective of encouraging and helping people to think and plan ahead for care they may need in later life (paragraphs 10.31 to 10.37).

The Welsh Government is supportive of the proposal to establish a working group and is keen to participate in its work.

Supporting people to have a greater voice in and control over decisions about their own care and support is one of the key aims of the social services legislation in Wales and this principle is embedded throughout both the 2014 and 2016 Acts.

Through the 2014 Act we require local authorities and health boards to work together to assess and plan for the health and social care needs of people within their populations. This includes ensuring people can access information, advice and assistance to empower them to make decisions about what care and support may be right for them. DEWIS Cymru provides a single on-line portal for Wales containing information which can help individuals think about what matters to them, along with information about local organisations and services that can help.

Improving consumer decision-making in respect of care homes will also be supported by the implementation of the annual returns regulations developed under the 2016 Act, the detail of which was referred to previously in response to recommendations 14.9(a) and 14.10 and is also relevant here. Under these regulations, providers of regulated services will be required to produce an annual return. This must include key information such as how the service is staffed, what facilities it has, details of the scale of the charges payable, the number of formal complaints made, the languages used in the provision of the service and the arrangements in relation to consulting service users.

Annual returns will be published on the service regulator's website alongside the service provider's latest inspection report for the service. They are intended to provide greater transparency about the nature of regulated services and ensure people have access to relevant information to help them determine the best service to meet their needs.

The 2017 Regulations also ensure providers are not passive in the process of an individual choosing a home. Providers must make their own determination as to the suitability of the service in relation to a prospective service user to ensure that they can meet their care and support needs and can support them to achieve their personal outcomes. In circumstances where the individual lacks the mental capacity to make specific decisions about their care and support and no lawful representative is appointed, their best interests should be established and acted upon in accordance with the Mental Capacity Act 2005.

Overall these requirements aim to support older people, their families and their representatives in making decisions about which care services are right for them.

Section 2 – Response to detailed recommendations in body of the CMA report

Approach

This section sets out the Welsh Government response to the detailed recommendations within the body of the CMA report which have a direct relevance to Wales.

Section 12 – Measures to enhance consumer protection:

Recommendation 12.119 We also think that the Welsh Government should consider whether there is a need to review its existing guidance ('Continuing NHS Healthcare: The National Framework for implementation in Wales') in light of the issues we have identified in England.

The Welsh Government accepts this recommendation and is already taking the action set out below.

Review of the National CHC Framework

The arrangements for continuing healthcare ("CHC") in Wales are set out in the National CHC Framework. This was issued in 2014 and work to review it is currently underway in partnership with stakeholders and the public via consultation. The updated framework will be published in the summer.

We equally recognise however that there is little appetite for a wholesale rewrite of the Framework. We worked with bodies such as the Wales Audit Office and Public Service Ombudsman for Wales to ensure the core elements contained within the existing version provide clear, practical and user-friendly guidance. We will look more broadly at improving arrangements around assessment and eligibility, retrospective reviews, and links to wider policies such as mental health and children's continuing care. Our focus will, however, be on ensuring practitioners are able to implement this guidance fully through training and support.

Role of the NHS in CHC and Top Up fees

The NHS provides a comprehensive service available to all. Access to NHS services is based on clinical need and not on an individual's ability to pay. When a person is eligible for CHC, we would expect the health board to be providing advice and support to help find the most appropriate nursing home placement that can provide appropriate care and support to meet their specific needs.

Welsh Ministers do not support 'top up' fees for core NHS care. Public funds for healthcare will be devoted solely to the benefit of people that the NHS serves. As overriding principles, it is essential that the NHS should never subsidise private care with public money (which would breach core NHS principles) and patients should never be charged for their NHS care, or be allowed to pay towards NHS care (except where specific legislation is in place to allow this) as this would contravene the founding principles and legislation of the NHS. Unless it is possible to separately identify and deliver the NHS funded elements of the service, it will not usually be permissible for individuals to pay for extra services, such as

higher cost accommodation. Health Boards have a responsibility for securing an appropriate range and quality of services to meet the needs of the people they serve.

Section 3 – Response to ‘Short summary for Wales’ document

The Welsh Government has considered the key issues the CMA has identified specific to Wales. The response reflects the structure of that document, focussing on:

1. Support and protections for those requiring care
2. Capacity in state-funded care now and in the future

Some of the points raised in this document have been addressed in the response to the main CMA report (“The main report”) in Sections 1 and 2 above. However, for completeness, all the points raised in the Wales-specific document are listed below with a reference given where appropriate to where points have been addressed in the response to the main report.

1. Support and protections for those requiring care

4. Those entering a care home face very significant barriers in making good choices. They often need to choose a home under extremely stressful circumstances, in a very short period and with very little knowledge of how the care system works or their eligibility for funding. Furthermore, they are unlikely to have given the matter prior consideration or planning, and will not know how to find the right kind of home.

This has been addressed in Section 1 in response to Recommendation 14.9 in the main report. The requirements of the 2017 Regulations, referenced in response to that recommendation, will support people in choosing the best home for their needs.

5. Once established in a home very few residents are willing and able to move. Therefore, they are unable to rectify a poor choice of home and are more vulnerable to unfair practices. While many residents are state-funded and may benefit from oversight of local authorities and Regional Partnership Boards, some people, particularly self-funders, may experience issues. Problems may include a lack of indicative pricing information on websites, non-provision of contracts and the charging of large upfront fees and deposits. Some residents and their representatives may also find it difficult to make complaints, partly because complaints systems can seem complex to use, but also because residents do not want to complain against their carers or they may fear reprisals. Given the vulnerability of residents, the protections they are entitled to under consumer law and sector rules and legislation are especially important here.

In respect of residents being vulnerable to unfair practices, this is addressed in the response to paragraph 9 on page 16 of this response, specifically the requirements under the 2017 Regulations in respect of complaints and reviewing the quality of care and support provided.

In respect of protections under consumer law, this has been addressed in Section 1 in response to Recommendation 14.7 of the main report, particularly in respect of requirements in the 2017 Regulations about the provision of information to individuals at the

service, service agreements (contracts) and complaints procedures, all of which support individuals to understand their rights and what to expect from the service.

The 2014 Act delivers additional protections for individuals through clear rights and responsibilities for how people's care and support needs are assessed, their preferred outcomes identified, and recorded in their individual care and support plan. Each plan must include the date on which it will be reviewed with the individual.

Additionally, the 2014 Act provides clear rights for individuals to express a preference for a care home where their identified care and support needs require the provision of accommodation. Our Codes of Practice are clear that choice must be genuine.

7. We are calling on the Welsh Government to work with the NHS, local authorities, Local Health Boards and Regional Partnership Boards, care homes and the third sector to deliver a programme of actions to help people make good decisions about their care needs:

(a) requiring local authorities to provide clear information to prospective residents on how the care system works and their entitlements, and on choosing care homes in the local area to prospective residents. Some local authorities already do this well, but they should all effectively match best practice;

(b) increasing the use of supported decision making to help people understand their care options. Such support could be provided via online tools, telephone advice, leaflets and/or by trusted professionals; and

(c) undertaking a programme of work to promote awareness and encourage and support people to consider potential care options in advance. This will help people make better decisions – and potentially take steps to avoid a need to enter a care home - when a need for care becomes evident.

Empowering individuals with clear voice and control is a key principle of the Welsh Government revised framework for social care in Wales. Through the 2014 Act, we have set out clear duties for local authorities to provide and maintain a service for providing people in its area with information and advice in relation to care and support. This must include information and advice about the different care providers available in the local area to enable choice, as well as information and advice to help people to understand care charges, different ways to pay and money management.

This includes local authorities' role in facilitating access to financial information and advice provided independent of the local authority, including regulated information and advice where appropriate, to support people in making informed financial decisions. For example, this may be particularly appropriate when a person is considering paying an additional charge, in order to help them understand what they would be paying this for, and come to a judgment about whether it would represent good value for money for them.

DEWIS Cymru, previously referred to in relation to recommendation 14.13 is also relevant here in terms of providing individuals with information about their care and support needs. This includes services and support in their area to help individuals prevent, reduce or delay needs for care and support. We will enhance the functionality of DEWIS Cymru as part of Prosperity for All, the Welsh Government's strategic vision for public services in Wales.

The new requirements under the 2016 Act for providers to produce annual returns, referred to previously in relation to recommendations 14.9(a), 14.10 and 14.13 are also relevant here, particularly the requirement for them to be published along with the provider's latest inspection report. Again, this will ensure that comparable and consistent information about a care home service is readily available in one place, helping people make decisions about their own care or that of a family member.

8. (d) recommending that the Welsh Government introduce stronger sector rules so that compliance with consumer law is embedded into the existing regulatory regime for care homes and is monitored by the CSSIW as part of its inspection regime.

This recommendation has been addressed against recommendation 14.7 above.

8. (e) recommending additional sector regulations requiring care homes to have indicative fees and terms and conditions available on their websites, to safeguard deposits and to notify the regulator when they ask residents to leave.

This recommendation has been addressed against recommendations 14.7, 14.8 and 14.9 above.

9. To address the short-comings in the current complaints and redress systems, our recommendations include that the CSSIW includes in its inspections an assessment of how complaints and feedback systems are working so that a culture of listening to and acting on feedback prevails

The Welsh Government has addressed this recommendation in the regulations developed under the 2016 Act, as set out below.

As referred to in relation to recommendation 14.7, the 2017 Regulations include specific requirements for providers to have a complaints policy and procedure in place which is appropriate to the needs of individuals for whom care and support is provided. Service providers are required to ensure that the service is provided in accordance with this policy and procedure. There is also a regulation in relation to a duty of candour requiring both providers and responsible individuals to act in an open and transparent way. The regulations require that the written guide to the service contains information on how to raise a concern or make a complaint, and information about the availability of advocacy.

The 2017 Regulations also place specific duties on the designated responsible individual of the service in relation to the quality and compliance of the service. As referred to in relation to recommendation 14.12(b), the regulations require that the responsible individual puts arrangements in place for obtaining the views of people receiving care and support and others on the quality of care and support provided and how it may be improved. The responsible individual must report these views to the service provider in order that they may be taken into account when making decisions on plans for the improvement of the quality of care and support provided by the service.

The responsible individual is required to ensure that there is an effective system in place to record complaints. They are also required to undertake a review of the quality of care and support provided as often as required but at least every six months. This must include

arrangements to analyse the aggregated data on, amongst other matters, concerns and complaints and reviewing any action in relation to complaints.

CIW will be ensuring compliance with these requirements as part of its inspection of regulated services. It will expect to see that there are effective systems in place for individuals to raise concerns and make complaints (and to escalate the matter if they are not satisfied with the response). The regulator will also expect to see evidence of the changes and improvements which have been made in response to concerns and complaints.

4. State funded care now and in the future

The Welsh Government is appreciative of the recognition the CMA has made of the actions we have already taken to address the issues of planning, commissioning and funding in the social care sector in general, and in particular the care home sector. The regional partnership boards established under the 2014 Act will continue to plan and commission appropriate care for their resident populations in a partnership approach, while the Care Home Steering Group is finalising its consideration of a toolkit to assist commissioners and providers in the agreement of fees for residential care.

From a wider public funding perspective, as a government we fully recognise the challenge an ageing population brings in terms of the increase in the demand for, and the funding of, social care. This remains an unresolved challenge throughout the UK and taxation is one possible response to this funding challenge. We will continue to work throughout 2018 to explore whether taxation could be used to raise the necessary additional funding for social care in Wales in the longer term.