

RESPONSE TO THE OFFICE OF FAIR TRADING REPORT ON THE CARE HOMES MARKET

1. The Department of Health, Social Services and Public Safety welcomes the Office of Fair Trading (OFT) report as a basis for ensuring that vulnerable people are given high quality advice, assistance and protection at what can be an extremely difficult and stressful time in their lives. Responses to those recommendations impacting directly upon the Department and the Health and Personal Social Services (HPSS) are set out below.
2. A number of the problems highlighted by the report relate to the inconsistent application of existing legislation and guidance, raising the issue of inspection and improvement. The Department welcomes the Regulation and Improvement Authority's commitment to addressing these problems and we shall be working closely with the Authority in taking this forward.
3. The strategy for promoting the social inclusion of older people, 'Ageing in an Inclusive Society', sets out our commitment to ensure that "age related policies and practises create an environment which offers everyone the opportunity to make informed choices so that they may pursue healthy, active and positive ageing". Within this context many of the recommendations made by the report are already being acted upon and enforced.
4. The recommendations of the OFT Report require action from all the stakeholders in the care homes market including the Department, HPSS bodies, the Regulation and Improvement Authority and independent care home providers. In formulating its response the, Department has taken

account of views expressed by the wider HPSS and the Regulation and Improvement Authority.

5. The Department recognises the need to act as quickly as possible on its stated intentions, especially where they can have an immediate beneficial impact on the problems identified by the OFT Report. There are some recommendations, however, where further time will be required to assess all of the available options to ensure that the best approach is selected and that older people get the high quality service they deserve.

Information about moving into a home

OFT recommends that all care home directories cover all care homes for older people in their area, that they contain information about the services offered by the care homes, about the level of funding that their Authority generally make available for care home places for older people, and that they identify all homes that require additional top up payments above the amount the Authority is prepared to pay (so called 'top-ups'). Regulators and inspectorates should monitor that Authorities provide this information.

6. The Department accepts that directories such as those recommended by OFT are an extremely helpful source of information for someone choosing a care home. The HPSS already maintains directories of care homes in local areas but relies upon the independent sector to provide accurate and up to date information on services and prices. The Department will review the content of existing directories and issue further guidance on how they can be enhanced in line with the OFT recommendation.

7. The Department will consult with the Regulation and Improvement Authority how best to monitor that such information is provided under the respective responsibilities of the HPSS and independent sector providers.

OFT recommends that all care home regulators should make their care home inspection reports available online, and make them more user-friendly, for example by including a short summary at the beginning. Regulators and Authorities should support and encourage older people and their representatives to use these reports.

8. The Department supports this recommendation both as a helpful source of information for anyone considering entering a care home and as a means of making the complaints process more transparent. The Regulation and Improvement Authority has indicated a willingness to accept this recommendation. The Authority also accepts the need to make the reports more user-friendly and is currently considering reviewing the format of reports.

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

10. The Department welcomes and supports the intention of this recommendation to ensure that the public have easy access to an authoritative and comprehensive information source. It is felt, however, that the one stop shop format is not appropriate in Northern Ireland for a number of reasons.

11. Northern Ireland has a relatively small population and a less complex structure in comparison to that in the rest of the UK. Unlike England, Scotland and Wales, social care services in Northern Ireland are provided by the HPSS, rather than locally elected authorities. All of the necessary information is readily available from the relevant HPSS body and can be provided in a way that is relevant to the assessed care needs in individual cases. A one stop shop would be unable to provide information in the same depth and may require a client to subsequently contact a Trust for further information. Therefore, in the Northern Ireland context, a central information source may complicate access to appropriate information rather than making it easier.

12. A one stop shop could only be established and maintained at considerable expense and would, in effect, be duplicating a service already provided by Trusts. In Northern Ireland, the different legislative and organisational structures mean that relatively few people arrange care home placements without the involvement of the HPSS. Even those who do arrange their own care are free to seek advice from the HPSS as necessary. The Department therefore does not consider the one stop shop to be an efficient use of public resources.

Authority Obligations

OFT recommends that Government should clarify the guidance to Authorities on Choice of Accommodation to make it clear that self-funded older people with an assessed need should have access to the same advice, guidance and assistance on choice as older people receiving public funding. We also recommend that Authorities ensure that self-funded older people get advice after the test of their financial assets and entitlements and are supported during the

whole process of getting their care needs met. Regulators and inspectorates should monitor that Authorities do this.

13. The Department accepts this recommendation because it is important to ensure that everyone thinking about moving into a care home has access to impartial advice and guidance.
14. The Department is currently reviewing its guidance on care home placements and this position will be fully reflected in the revised guidance. This is reinforced by the care management process in Northern Ireland where ability to pay is assessed only after the care needs have been addressed.
15. It is recognised, however, that the monitoring of this process may prove sensitive and the Department will be discussing further with the Regulation and Improvement Authority how this can be best achieved.

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

16. The Department supports this recommendation, which is already reflected in current guidance to the HPSS. In view of the serious concerns raised in the OFT Report, the Department has embarked on a full review of its guidance on care home placements. The review is focusing on many of the areas identified by OFT and will provide clarification on all outstanding areas of concern.

Price Transparency

OFT recommends that care homes should provide the price of accommodation and residential or nursing home fees promptly and prior to the older person making the decision to enter a home. It is also recommended that Government amend relevant regulations to include this as a requirement.

18. The current Nursing Home Regulations and Residential Care Homes Regulations require that a person is provided with a statement specifying fees payable for accommodation and personal or nursing care no later than that person's date of entry into the home. The Department accepts the OFT recommendation that earlier notice is required for a person to make an informed choice about which home to enter and will look for an early opportunity to amend existing regulations.

Written Contracts or statement of terms

OFT recommends that care homes ensure urgently that all their residents are provided with written contracts or statement of terms and that regulators and inspectorates monitor this to ensure significant improvements are delivered in the shortest possible time.

19. This recommendation is already a requirement of existing legislation. Article 4 of the Nursing Home Regulations 2005 and Residential Care Home Regulations 2005 require that homes provide a written guide which details the terms and conditions in respect of accommodation including the amount and method of payment. It also requires the inclusion of a contract for provision of services and facilities.

OFT recommends that the Department of Health and devolved administrations amend relevant legislation so that Authorities are responsible for contracting and paying for the full costs of accommodation, including any top up fees. The Authority will recover the top up fee from the third party as set out in the guidance.

20. The Department accepts that when the HPSS contracts for the full fee of a placement, regardless of who is paying for the services, residents may gain a degree of protection from illegitimate top-up demands. It is also recognised that this should help inform the HPSS about trends in the charging of fees, including top-ups. The Department disagrees, however, with the recommendation to amend legislation and believes that the tighter enforcement of existing legislation and guidance which allows for a choice of payment method would be more appropriate.

21. The Departments extant guidance, based on the provisions within the Health and Personal Social Services (Northern Ireland) Order 1972, allows two methods of payment of top-ups where residents choose more expensive accommodation. The recommended method is for Trusts to contract for the full cost of placement and then seek to recover the top-up from a third party. Guidance also allows a third party to pay the top-up directly to the home where there is agreement between all parties that this is their preferred choice. It is the Department's view that this option should remain and people should not be forced to pay a top-up through a Trust if they do not wish to do so. In these circumstances Trusts have no role in negotiating or agreeing any change to the level of top-up requested by the home.

22. We are concerned, however, that some Trusts may not be explaining the choice available to residents and may be imposing net payments on them. The Department is currently reviewing guidance on this point to provide clarification and will work with the HPSS Regulation and Improvement Authority to ensure that legislation is fully implemented.

OFT is alerting care homes to their guidance on unfair terms in care home contracts and their intention to take enforcement action against potentially unfair terms in care home contracts. OFT also encourages Trade Associations for care homes to draw up model consumer contracts or model terms for such contracts so that their members can adopt these.

23. OFT's guidance, which aims to ensure that private residents have fair contracts, is welcomed by the Department.

OFT supports and is currently contributing to the guidance and model terms for Authority contracts currently being developed by the Department of Health and devolved administrations.

24. The Department welcomes OFT's support in this area.

Access to Redress

OFT recommends that care home regulators across the UK should improve their collection and use of complaints data for older people in care homes so that they can quickly recognise any significant rise in complaints, whether local or in aggregate, and make an efficient and targeted response appropriate to the problem.

25. The Department welcomes the commitment of the HPSS Regulation and Improvement Authority to take this recommendation onboard in their future work.

OFT recommends that care home regulators should produce an easy-to-understand document that provides practical information to all older people living in care homes and their representatives about the redress options open to them. This should include information about when and how they can complain to the care home, the Authority, the regulator, the Local Government Ombudsman and the Parliamentary Ombudsman, or seek judicial review. Regulators and inspectorates should provide care homes with this information and monitor that this is included as an annex to the older person's contract or statement of terms, as well as signposted in suitable places in the care home. Department of Health and the devolved administrations should amend the relevant regulations to make this a requirement.

26. The Department welcomes any measure which will improve access to the complaints process. Much of what OFT is suggesting is already required in current legislation. The Nursing Home Regulations 2005 and Residential Care Home Regulations 2005 require residents or their representatives to be provided with a summary of the complaints procedure and the address and telephone number of the Regulation and Improvement Authority. Care Homes are also required to provide access to the most recent inspection report, information on how to access earlier reports and a copy of the residents guide to the Regulation and Improvement Authority. In addition, the HPSS complaints procedure is currently under review both to take into account the role of the newly established HPSS Regulation and Improvement Authority to ensure that the procedure is more accessible and easier to understand.

OFT recommends that the Department of Health and the devolved administrations should run pilot projects to measure the benefits to older people, care homes and authorities of advocacy services being provided to older people entering or living in care homes as well as the costs of doing so.

27. The provision of advocacy services is key to ensuring that people not only have access to the complaints procedure, but also that they feel able to make use of it. This recommendation is based on the concern that most advocacy organisations are too small and cannot undertake the necessary cost/benefit analysis needed to compete for central government funding to so that their service can be offered to more people. The pilot study recommended is intended to provide this data in order to secure future funding of advocacy services.

28. The situation is different in Northern Ireland because advocacy is provided in a more structured way by HSS Councils and large voluntary bodies such as Age Concern and Help the Aged which receive funding from the Department for this purpose. With this in mind, the Department feels that the most appropriate action is to work with the other UK health departments to establish the benefits of these existing advocacy services before committing to further investment.

OFT recommends that care home regulators should make public the outcome of non-trivial substantiated complaints about care homes by including a short summary with key information in inspection reports.

30. The Regulation and Improvement Authority has indicated that it is willing to accept this recommendation and make this information available as part of a

wider process of encouraging the public to have access to and make use of inspection reports. The Department welcomes this commitment.