



Care Home Commissioning for Older People

May 2022

Introduction

The Older People's Commissioner for Wales welcomes the opportunity to respond to the Public Accounts & Public Administration Committee Inquiry into Care Home Commissioning for Older People.

Social care is a broad and diverse sector, within which good quality care homes will always be needed for some older people to be supported to live lives with value, meaning and purpose.

Staying well, feeling good and being able to do the things that matter to us are vitally important to everyone in Wales. The need for additional support to do this can increase with age. Even with an increasing emphasis on prevention and early intervention, the ageing of the population means that the number of older people needing additional support is likely to increase over time.

Social care is a broad and diverse sector which needs to be flexible, person-centred and outcomes-focused. It should be appropriate, timely and easily accessible, and consistent in both the services provided and the criteria for accessing them. Older people should be at the centre of all decisions about the social care that they receive.

Good quality care homes are one form of social care which can have a major beneficial impact on the lives of older people. Even with the development and diversification of housing provision for older people with care needs, care homes will continue to be the best way for some people to receive the care and support they need and to be supported to live lives that have value, meaning and purpose.

Care homes are part of the wider health and social care system and subject to system-wide issues, such as staffing or winter pressures. A crisis in one part of the system can have a knock-on effect on the whole system. For example, a lack of domiciliary care services can lead to an increase in the numbers of people entering care homes, as well as in delayed transfers of care from hospital, among other things. An outbreak of infection in a care home can also lead to delayed hospital discharge. Commissioning care home places therefore

cannot be entirely separated from commissioning other services, such as domiciliary care services and step-down care.

Assessment of Population Need

In 2014, the Commissioner's *A Place to Call Home?*¹ Report called for a national plan to be developed to ensure the future supply of high-quality care homes. The report called for this plan to include a national demographic projection of need and outline anticipated trends in, and changes to, the type of provision required. Section 14 of The Social Services and Well-being (Wales) Act 2014 (2014 Act) subsequently placed a duty on local authorities and health boards to produce an assessment of their population's need for care and support, the extent to which that need is not being met and the level of services required to meet the assessed need. The first Population Assessments were published by Regional Partnership boards in 2017 with the most recent publications in 2022.

Population Needs Assessments vary across Wales and more robust data is required to accurately assess the social care needs of the population and the extent to which those needs are currently unmet. Much of the data that is currently collected under the 2014 Act relates to existing service provision, and population data is not sufficiently disaggregated by age. There is not a clear picture across Wales of the number of older people waiting in hospital and in the community for domiciliary care, or the numbers who are frail and at risk of a life-changing event which may lead to their needing social care.

Forecasts of likely future need for care homes tend to be based on simple age-based projections. Robust data collection that reveals the characteristics of the people using, in need of, or at risk of needing, social care is essential if we are to effectively assess and meet the needs of the population. Data collection should also include factors such as the numbers of people living alone, the provision of accessible housing, and what types of services older people want to use. It is vital also that data is collected to ensure that social care services can respond to cultural needs and language needs.

Engagement

Older people are 'experts through experience' and should be equal partners in decisions taken which affect them. Older people may be: care home residents, for whom the care home is their home and who want to do all the things one would normally do at home; relatives and friends of care home residents, who want to maintain their family and social relationships; current or former employees or volunteers with experience of working in care homes; or funders, who pay part or all of the costs of care themselves or on behalf of someone else.

Older people therefore have a wide range of valuable insights and perspectives which should be brought to bear on care home commissioning at all stages of the process. Older people should be engaged, and their voices should be heard, throughout the commissioning cycle, from population needs assessment, through commissioning strategy

development, service planning and design, procurement and the monitoring of service delivery, to reviewing and distilling the learning to inform the next commissioning round.

The Commissioner engaged extensively with care home residents and their families as part of the *A Place to Call Home?* report and found that priorities for residents included social participation, meaningful occupation, a homely environment, personal hygiene, cleanliness and comfort, a positive dining experience, and access to healthcare.

In June 2020, the Commissioner published *Care Home Voices*,² to give a voice to people living and working in care homes and their friends and families, and to provide a snapshot of their experiences during the Covid-19 pandemic, the issues and challenges they faced and the changes and improvements they wanted to see. These included staying safe, being informed and seeing and staying connected with loved ones.

The report highlights how difficult lockdown was for many people living in care homes. People highlighted issues around access to health services, particularly visits from GPs, and the impact this was having on the physical health of residents. However, there was also a significant focus on the impact that Covid-19 was having on the mental health and well-being of residents.

Service quality and outcomes

The focus of commissioning processes to date too often has been on contractual frameworks and service specifications rather than the quality of life of older people living in care homes. The Commissioner agrees with the Welsh Government that commissioners' focus should be on commissioning for service quality and the outcomes that matter to older people. In the Commissioner's view, those outcomes should include:

- upholding older people's rights;
- protection from service termination;
- ensuring that everyone has access to their own funds;
- access to independent advocacy to ensure people are able to participate in decisions that affect their lives.

It is essential that the aims of service quality and outcomes are consistently applied throughout the commissioning process, from population assessment, strategy and planning through procurement, service delivery and monitoring, and review and implementation of lessons learned. Currently commissioning intentions can be diluted or negated by the procurement process, and there is a lack of shared intelligence and joint working in contract monitoring to ensure that older people are safe, well cared for and enjoy a good quality of life, and that lessons learned are used to inform the next iteration of commissioning. Contract monitoring should gather data which indicates to what extent commissioning intentions, quality and outcomes are being delivered, and should be analysed and used to inform the next commissioning round. Indicators could include, for example:

- visits by friends and family;
- visits by healthcare and other professionals;
- evictions – actual and potential;
- residents with and without deputies;
- the extent to which rights are upheld.

Upholding Rights

The Covid-19 pandemic has shone a light on the rights of older people living in care homes and the extent to which they are upheld.

To identify action that can be taken to strengthen the rights of older people living in care homes, the Commissioner has established a UK-wide group of expert organisations. One of the areas of exploration has been in relation to introducing a 'rights-based contract' in care homes. A rights-based contract would clearly set out the duty on the care home provider to uphold specific rights. Such an approach would embed human rights (and other legal rights) into day-to-day service delivery, ensuring that upholding residents' rights is at the centre of everything that staff do.

Strengthening residents' protection against 'eviction' or service termination is a vital part of strengthening older people's rights in care homes. The Commissioner is aware of instances where a resident has been asked to leave a care home, their home, because of a disagreement about the way in which a service is delivered or a breakdown in relationship between the care home and the resident's family. It cannot be acceptable for an older person to be asked to leave their home because they or their family have sought to uphold their rights.

Currently, residents are given 28 days' notice of service termination, often because the care home has stated that they can no longer meet the resident's needs. Whilst it is appropriate for a resident to move to a different care home if their needs can no longer be adequately met, care home residents and their families should not fear eviction from their care home in response to a dispute between the home and the resident and further monitoring is needed to ensure that instances do not go unchallenged if they occur. The lack of appropriate alternative care home accommodation with vacancies in the desired location can act as a major deterrent to people in upholding their rights as they fear losing their home as a result.

Care home market

The fragility of the care home market has a direct impact on the Welsh Government's ability to drive change and, consequently, has a direct impact on the lives of older people. Striving for high quality should not have to be curtailed by fear of market collapse. Similarly, older people should not be reticent about enforcing their rights because they fear being asked to leave the service and that the lack of appropriate alternative provision would leave them with nowhere to go.

The Commissioner is aware of instances where a social worker has advised residents and their families not to ‘rock the boat’ as there is no other appropriate care home provision available. Commissioners’ failure to ensure a stable care home market should not be forcing people to accept poor quality care and potential breaches of their rights.

Funding

The care home market is fragile partly because the arrangements currently in place for funding care homes are inconsistent across Wales, and do not always reflect the true cost of care. Decisions on whether someone is eligible for NHS Continuing Healthcare or the NHS funded Nursing Care Contribution, in particular, are complex and contentious, and mean that a care home resident with healthcare needs either has all their care costs, including “hotel” costs, paid by the NHS or only receives a contribution of £179.97 a week.

Because the current public funding arrangements do not always reflect the true cost of care, the care home market is being sustained by inequitable fee structures in which self-funders may be subsidising the costs of publicly funded placements, and care homes charge top-up fees – the latter sometimes explicitly forbidden in guidance. There is a concerning lack of readily available redress for people who wish to dispute top-up fees. Many older people and their relatives making the life changing decision about entering a care home are doing so without adequate information and advice.

Cross-subsidisation

There is anecdotal evidence within Wales that self-funding individuals are charged more for their place at a care home compared to an individual who is supported by the Local Authority, which is, in effect, cross subsidising the rates paid by local authority placements. The Competition and Markets Authority also found an average price differential between self-funded and local authority funded places across the UK.³

Top-up fees

Although the Social Services and Well-Being (Wales) Act 2014 Code of Practice⁴ requires authorities to assess an individual’s and their relatives’ ability to pay prior to placing a person in a care home requiring third party payments, the Commissioner has heard from relatives who have been issued with unexpected bills. It appears that in some cases, local authorities are failing to explain the requirement for relatives to pay top up fees and are simply passing the additional payment requirements to relatives without their prior agreement or knowledge.

The contract price paid to the care home by the local authority has an impact on staff recruitment and retention and therefore can also undermine care homes’ ability to provide good quality and continuity of care. This is especially problematic for the growing number of people living with dementia and can lead to the levying of top-up fees, sometimes well after the individual has taken up residence. Although the Code of Practice on charging for social care services states that “an additional cost payment must always be optional and never as

a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs", early in the pandemic the Commissioner received inquiries about care homes who were doing exactly that, in order to fund PPE and other infection control measures. The top-up fees ceased when local authorities made PPE freely available to care homes.

The Commissioner's Advice and Assistance team has also received inquiries from worried relatives who had been asked by a care home provider to pay additional fees on top of Continuing Health Care funding by the Health Board. The reasons given by the provider for levying the top-up fees were contradictory. Relatives said they had been told that the fees were for additional benefits such as access to the garden (which their relatives, who were confined to bed with late-stage dementia and approaching the end of their lives, could not use), or for accompanied visits to a GP, (which the Commissioner regards as a basic essential, not an additional luxury). However, the Commissioner has seen a letter from a care home manager which states that the fees were being levied because the Health Board rate for Continuing Health Care funding was not sufficient to cover costs.

It is concerning that residents and their families have found it challenging to dispute care home top-up fees. Individuals can take cases to local authority Trading Standards Departments for action by them and can take legal action themselves. However, care home funding is a complex area, and the level of expertise needed is not always available. This means that personal legal representation is the most likely route, but it is expensive and difficult to find an appropriate solicitor.

Need for greater investment

Improving the commissioning of care homes can only go so far in the absence of greater and sustained investment in social care across the board, which would enable local authorities to pay an improved rate for care home services. With the current levels of investment, some older people unable to obtain domiciliary care are entering care homes earlier than they otherwise would, whilst others with complex needs are being sent out of area for a care home place, away from their families and friends, and those who need services delivered in Welsh (or other languages) may be in localities where services are delivered only in English.

The Commissioner welcomes the Welsh Government's introduction of the Real Living Wage into the care sector, to address issues of recruitment and retention, but this should be viewed as a first step and further increases are needed, particularly in light of rising inflation.

Alongside greater, sustained investment in care homes, there should be more consistency across Wales in what local authorities pay as fees to local authority run and independent sector care homes. The Commissioner hopes that the forthcoming National Framework for Care and Support will ensure greater consistency in contract pricing, transparency about what is and is not included in fees and discretion for residents and families to purchase

additional services which are genuine additional enhancements and only if they choose to do so.

Profit for purpose

Greater, sustained investment of public funds raises questions about what constitutes an acceptable level of profit for private sector providers. It is crucial that priority is given to improving the quality and delivery of care, including through invest in the social care workforce, ahead of increasing profits for private sector providers.

Care home residents, their loved ones and wider society must be broadly accepting of the balance between public funding, provider profit and social return on investment.

Access to own funds

Finally, the Commissioner has been deeply concerned to hear that there is evidence across Wales of older people in care homes who are unable to access their own funds to pay for personal items such as clothes and toiletries because they lack mental capacity but have no-one to act as their deputy to authorise transfer of funds from their bank accounts. This situation compromises older people's dignity, health and wellbeing and cannot be allowed to continue. There is an opportunity to address this through the commissioning process.

Conclusion

The Commissioner looks forward to hearing in more detail the Welsh Government's proposals for the National Framework for Care and Support and to seeing the results of the Health and Social Care Regional Integration Fund's new national models of integrated care in residential settings. It is essential that care home commissioning reduces complexity and rebalances commissioning to focus on quality and outcomes, with what matters to older people at its heart, if we are to ensure the provision of the good care homes we will always need in the future.

References

¹ Older People's Commissioner for Wales (2014) *A Place to Call Home?*. Available at:

https://olderpeoplewales.com/en/news/news/14-11-10/A_Place_to_Call_Home_Care_Home_Review_Report.aspx

² Older People's Commissioner for Wales (2020) *Care Home Voices: A snapshot of life in care homes in Wales during Covid-19*. Available at:

https://olderpeoplewales.com/en/news/news/20-06-21/Care_Home_Voices_A_snapshot_of_life_in_care_homes_in_Wales_during_Covid-19.aspx

³ Competition and Markets Authority (2018) *Care Homes Market Study*. P.39. Available at:

<https://assets.publishing.service.gov.uk/media/5a1fdf30e5274a750b82533a/care-homes-market-study-final-report.pdf>

⁴ Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 2 – April 2017). Available at:

<https://gov.wales/code-practice-charging-social-care-services>

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales protects and promotes the rights of older people throughout Wales, scrutinising and influencing a wide range of policy and practice to improve their lives. She provides help and support directly to older people through her casework team and works to empower older people and ensure that their voices are heard and acted upon. The Commissioner's role is underpinned by a set of unique legal powers to support her in reviewing the work of public bodies and holding them to account when necessary.

The Commissioner is taking action to end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner wants a Wales where older people are valued, rights are upheld and no-one is left behind.

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