Lancashire Care Association Co. Ltd

Representing Providers of Quality Health and Social Care

1st April 2016

Mike Kirby
Director of Corporate Commissioning
Lancashire County Council
County Hall
PO Box 100
Preston
Lancashire
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Dear Mike,

Re: LCA response to "LCC fees re Older People's Residential and Nursing Fee Uplift – 2016-17" Letter Dated 17th March 2016

We welcome the opportunity to give our views on the above letter regarding care home fees.

There has been a crisis in care funding since 2010-11 which has seen in excess of a 20% shortfall in real-terms funding. The average care home fee gap per local authority is £17m (CCN, 2015). There is a funding crisis which is impacting on market resilience to the extent that we are at a 'tipping point' in the balance between sufficiency in fees and the consistent delivery of safe, good quality, care. The latest challenge arises from the impact of the Living Wage which is a major issue for commissioners and for providers dependent in part or whole on local authority funding.

The insufficiency of funding to local authorities to support service users reliant on local authority funding, and the political challenges such a shortfall represents, should not cause anyone to seek to hide the impossible pressures faced by providers nor downplay the fragility in the provider market.

We continue to argue for an independent costing methodology that is fully subject to critical appraisal. The only model we know of to date which meets this important criterion of transparency is the LaingBuisson methodology. The account given in the 2008 update (floor and ceiling prices) and the accompanying toolkit (Laing, 2008) represent a way point on the journey towards fair and adequate fees for efficient providers delivering quality care.

LCA represents the domiciliary care voice as well - itself and with LDCPF and LLDC colleagues - and there are parallel issues and concerns in that area of discourse but this response relates solely to the care home issues referred to in the 17th March letter; in relation to the work of the care home fees subgroup.

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There are some key principles that underpin the way we have been working through the Social Care Partnership (now Health and Social Care Partnership) on fees in relation to the care market over some years. We think it may be useful to set them out here. The extent to which they are currently shared is a matter of discussion at the partnership forum as the setting of fees in 2015 represented break from the past in the approach taken but they are, nonetheless, our understanding of some principles that have informed the partnership work on fees over the years.

Principles

Key Principle 1 - A Fair Rate of Return

(Abbeyfield case) "…efficient operators running at efficient occupancy levels should be able to recover all reasonable costs and achieve a reasonable return…Payment rates need to vary between homes with differing capital values per bed for them to achieve a consistent rate of return. Otherwise a uniform rate will result in homes meeting quality grade 1 achieving a lower rate of return than target, and homes meeting quality grade 4 will achieve a higher rate than target." Mr Justice Norris citing PWC in the Abbeyfield judgement.

Key Principle 2 - Commissioners Must Pay Due Regard to Actual Costs

Impact of the Living Wage. The impact of the Living Wage requirement from 1st April 2016 will represent something in the region of an 8-10% increase on the average social care employer's wage bill (recognising that wages and salaries account for between 60% and 80% of provider costs).

Councils are required to set their usual prices for residential and nursing care for services they commission. In doing so they must have regard to the actual costs of providing care in the market place. Generally speaking councils are required to promote effective and efficient markets in care providing high quality services, choice and resilience.

LAC (2004) 20 "In setting and reviewing their costs, councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to BV requirements under the LG Act 1999." "When setting its usual cost(s) a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs to provide residents with the level of care services they could reasonably expect to receive if the possibility of resident and third party contributions did not exist." 3.3. Judge Lambert (Torbay case) indicates that "if the decision-maker treads the path of economic modelling, then it seems to me it cannot proceed with a model that is significantly flawed." This judgment has relevant to the Fair Price (2004, 2006) and 'actual costs' (2014) research commissioned in Lancashire.

Key Principle 3 - Funding Gap: Monitoring the Gap

The LGA cites the County Councils Network (CCN) - of which Lancashire CC is a member - reporting that their research found that the 'care home fee gap' in counties already stood at £630m during 2014 rising to £756m by 2016/17 "…with the Act indirectly creating further sustainability risks through a process called 'market equalisation'."

The Fair Price model included a Fair Price tracker which allowed us to quantify a gap between fees and what was actually required. There has been something in excess of a 20% real terms fall in fees since the 2010/11 fees round. The council, which purchases 35% of places in residential and nursing home settings and >90% of domiciliary care faces an identified funding gap in the

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council budget of £262m. Quantifying the funding gap is, essentially, akin to measuring 'unmet need' and is important for monitoring what can be done (given the available budget) against what should be done (given a budget adequate to meet quality thresholds and aspirations).

Key Principle 4 – The Changing Role of Care in Residential and Nursing Homes

Increased demand and increased levels of need have meant that those who are resident in care homes have levels of need associated previously with nursing care and those resident in nursing beds have levels of need overlapping with CHC 'population' and each is increasingly addressing dementia challenges and EOL care (noting the fall in average LOS in nursing homes to <12 months). Centre for Policy and Ageing with BUPA have given an account of the new role of the care homes sector addressing the much higher levels of need through physical and mental frailty. The same issue – meeting new and much higher levels of need – applies to the care homes and domiciliary care sectors. This sea change over the last decade requires forward planning so that care fit for purpose for tomorrow's needs can be planned today. This requires a shared strategic vision across health and social care. The relation of fees to quality, diversity and sustainability is a key part of this shared vision.

Key Principle 5 – Addressing Sustainability / Market Fragility

LB actual cost report: this was commissioned by LCC for the work of the Social Care Partnership and the parties to the SCP agreed the validity of its findings. The July 2014 report showed residential care at or fractionally above a 0% rate of return and nursing care below that 0% figure (based on late 2013/early 2014 data). This represents an unsustainable arrangement acting to create unstable businesses and a potentially failing sector. National estimates (ResPublica) report the loss of 37,000 beds nationally over the next 5 years. LaingBuisson research shows that, for the last three years, there has been a shortfall against cost of provision in the average weekly fee paid by local authorities for publicly supported residents of between £31-£50 per resident, per week

Key Principle 6 - Full Engagement with the Provider Sector at a Formative Stage

The IPC note that "It is important for providers to engage with local authorities to understand their current thinking about their care market in order to appreciate the potential impact on their business… However, for the provider, 'engagement' should be more than the receipt of information from the local authority. Providers need to ensure that the local authority understands what the provider needs from it in order to be able to innovate to provide a high quality and locally appropriate service...."

Key Principle 7 – Use of Independent Costings Model

The increasing gap in sufficiency between costs and LA fees needs to be recognised separately from any issue of the ability of the local authority to pay adequate fees. We continue argue, as we have always argued, for the logic of the LaingBuisson 'Fair Price' model which operates with a ceiling (fully compliant) and floor price for providers. The Fair Price gap – which the model tracked – was never used for local authority 'bashing' but, rather, as a marker and a reminder.

Alternative models. We have made some joint initial consideration at the SCP, of costing models that incorporate or are built around needs/ dependency (see Care Homes Staffing model) and may revisit that in a forthcoming joint review along with a review of quality and fees including resident reporting of satisfaction/ QOL. But we have not, to date, agreed an alternative

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independent model with LCC nor do we know of another model that is 100% transparent, as the LB model is, and thus subject to critical analysis.

Recommendations

1. To make up for the shortfall in fees over the period since 2010-11 would require an increase of something in the region (and probably well in excess) of 20%. So the issue is, for present purposes, simply how is the best (fairest and most effective) distribution of the available fees - whatever they are - to be achieved. We consider a flat rate fee inherently unfair in line with the judgment in the Abbeyfield case.

2. Our view is that the LaingBuisson methodology is the most transparent and fair model. We continue to make the case for the authority to return to use this model to shape fee-setting and consider that a flat rate - as paid last year for the first time since 2004 - is unfair and irrational.

3. We argue for 5 bands to the LB model - recognising there would be a need to manage any transition as creating a new band would involve changes that would be unpredictable and that any such changes would need a period of planning and could not be in place for 2016-17.

4. We do believe that the fees for 2016-17, though, could be placed into the extant four bands gearing mechanism or some similar method taking account of easily accessible data to be used in differentiating between the bands. Options were suggested by LCA to LCC at the HSCP Steering Group in March. We see in the appendices below that band 1 homes, whose cost profiles are going to be highest, have had much smaller increases than band 4 homes. We think this is a flawed, irrational, counter-productive and, ultimately, indefensible (given the operation of the Fair Price model in the Lancashire area).

5. We recommend that standard rate be abolished as it is now an irrelevant category. It is also is a significant distraction in practice as SWs use the category (under instructions, we hear) to place at lowest cost.

6. LB shows the **dementia premium** falls far short of what is required - particularly for nursing, (presently £27/£28 when it was in 2014 required to be £80).

7. The shortfall is much greater in nursing than residential. This needs to be addressed. We think this explains the loss of nursing beds over the last year and the gain in residential (as providers exit the nursing market because of the increased cost and risk). This is highly problematic given the level of need now of residents in the care home setting.

8. Moving towards greater equality across the 4 bands (working towards each achieving 100% of the price for their band) was one of the achievements of the Fair Price model 2005-2011. Since then, the residential no/lower bands (as were) have had an extraordinary and disproportionate increase **(22% for band 4 as against 1% for band 1)**. This is irrational in our view and contrary to previously agreed approaches between LCC and LCA.

9. Room premium at £10 is far short of actual cost and does not provide an adequate return or provide an incentive to develop improved facilities.

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10. A higher premium on that would take relatively little out of the pot and move towards providing the appropriate return and incentive. (Market shaping - avoiding the Blackpool stagnation of standard of facilities).

11. RNCC and DWP 'surplus' should be passported to the provider fees' pot and not retained by the local authority. This has been an approach agreed earlier at the SCP and it is now more than ever crucial to the resilience of the market that any surplus is passed through to providers.

12. Our view is that the 2% Council Tax precept as possible should be used to help support and shape the adult care market. We believe that how the funding is to be allocated across adult social care come for discussion at the HSCP.

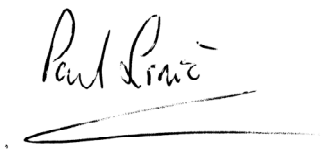
13. Just as a flat fee is unfair and irrational so, we judge, is linking the date of admission to fees. There is no logic to this in our view.

14. The Better Care Fund has to be part of the solution to the viability of the quality independent care sector in Lancashire moving forward. To date, the (H)SCP has not been included in any relevant discussions. We are hopeful this will change.

15. We wish to work with LCC and health colleagues to identify work that can be done to maximise other (non-fee) ways of securing the financial position of quality providers in the current crisis. This was raised at the March HSCP Steering Group and we (LCA) will present a separate discussion paper on this to the HSCP SG for consideration.

16. We need to quickly address some joint work for April 2016 if there is to be a partnership approach. We need to focus that work in May/June and in September/October in order to complete work for year end and factor in the Cabinet approval timeframe (Jan/Feb) in readiness for April. We are keen to contribute to this shared approach as we have done for some years prior to 2015.

Yours sincerely,



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