

The Competition and Markets Authority's 2017 study in care

The Competition and Markets Authority announced last year that it will begin its investigation of the care home sector this month. Stephen Tupper explains what this study is, how it will operate, and the likely outcomes for those who fall short of expectations

At the beginning of December 2016, the Competition and Markets Authority (CMA) announced the launch of a market study into care homes (CMA, 2016a). This news will, undoubtedly, have sparked some degree of bewilderment, along with questions of what the CMA is and what it wants from the investigation.

The Competition and Markets Authority

Clues as to the role of the CMA can be found in its name. At the highest level, it is the 'watchdog' charged with ensuring that markets in the UK work well and operate in the interests of the general public. This is a broad remit, but also one that, over time, has been reduced to two key tasks: consumer protection (the identification and elimination of any commercial practices that seek to cheat the consumer); and competition enforcement (ensuring that 'free' markets are not rigged by businesses, either acting together or apart, as the equivalent of private sector monopolies).

The consumer lies at the heart of both strands of the CMA's work. Businesses looking to boost their profits inappropriately, at the expense of their customers, run the risk of getting a call from the CMA, which then comes armed with a very impressive array of investigatory powers and a bevy of eye-watering sanctions, such as financial penalties, divestment and cease and desist orders.

The crisis in care

It is probably not a coincidence that the CMA is intervening at the same time as the so-called 'crisis in care' is on the front pages (BBC, 2016; Sodha, 2016; The Economist, 2016).

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Although, in principle, the CMA is meant to be above the fray, it is increasingly looking to be more responsive to issues that appear to be of concern to the public at large. In this case, the topical nature of the subject matter is accompanied by several complaints filed by Citizens Advice, among others, about what it considered to be wrong-doing in the sector, which is the more traditional way to trigger CMA action.

This, of course, is not the first time that care provision for older people has been subject to an investigation of this kind. The last time was in 2005 by one of the CMA's predecessor bodies, the Office of Fair Trading (OFT). Anyone looking for relevant background reading on process and likely outcomes for this new review could do a lot worse than getting hold of a copy of the OFT's final report (GHK Consulting, 2011).

The investigation

The CMA has until 1 December 2017 to conclude its study. The likely outcome, however, will become relatively clear when the CMA issues its preliminary findings, scheduled for May 2017. The process throughout will be fairly interactive: the CMA generally wants to hear about real issues from real people, as opposed to sanitised views submitted by paid-for consultants.

A Statement of Scope (CMA, 2016b) is available and has been subject to consultation before the launch of the market study on 2 December. Key players need to take every opportunity to engage to stand any chance of having their voices heard and taken into account. The CMA has already identified a number of concerns. These include:

- The extent to which care home providers are treating their residents fairly
- Whether suppliers are sufficiently transparent about the service they supply, such that families can make intelligent decisions about which care home to choose
- The efficacy in the way that local authorities discharge their obligations to provide information and guidance to older people
- The roles of competition and regulation in driving quality and value for money
- The impact of changes in cost and regulation



The roles of care home competition and regulation in driving quality and value for money are concerns for the Competition and Markets Authority

- Whether the market's structures, policy and regulatory frameworks are effective, efficient and sustainable.

One of the key issues that the CMA has already struck off its list is the examination of levels of public spending on geriatric care, and whether they are adequate. Likewise, care quality issues, according to the CMA, are the exclusive province of other regulators. Any would-be commentators should note, therefore, that any submissions made on these points will effectively be an exercise in futility.

The likely outcomes of the investigation

As a general rule, market studies do not end with the CMA issuing a clean bill of health. In the author's opinion, the CMA is always keen to demonstrate to the public that it can make the difference they are looking for. As a result, it is likely that aggrieved consumers are likely to gain in the final analysis and that suppliers can safely assume that they are going to be regulated more robustly going forward. It is worth noting, however, that the CMA rarely opts for extreme measures and will, more often than not, go for something in the middle of the spectrum of options.

The CMA has already identified some of those possible remedies in its scoping document, namely:

- Improving availability and increased transparency of information for consumers
- Recommendations for changes to regulations
- Taking consumer or competition enforcement action, including significant fines for any perpetrators identified
 - Publishing guidance on compliance
- Encouraging more self-regulation
- Instigating an even more in-depth and prolonged investigation (called a 'market reference')
- Entering into a negotiated settlement with the industry.

Care home involvement

By the time this article goes to print, key players in this investigation will have been asked to participate; some may have received extensive information requests. As always, honesty is the best policy. If the CMA ever gets the impression that a player is being economical with the truth, the company or individual may well find themselves 'in the dock', at worst, or simply ignored, at best.

Similarly, excessive defensiveness and outraged indignation will not play well. It is strongly advised that straight-talking with a strong dose of self-awareness is likely to be the most productive approach.



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Key points

- The Competition and Markets Authority will be carrying out an investigation of the care sector in 2017
- The investigation will focus on consumer welfare
- Without positive engagement from the sector, fresh regulation will be the inevitable outcome
- The conclusion of the investigation is expected before the end of 2017

Real-world experiences from the individuals at the coalface are particularly treasured by the CMA, not least the people in care and their relatives. Actually obtaining such input, however, is easier said than done. It would reflect well on the supplier's side if it were to offer to help in this task from the outset; perhaps this transparency would help show that those actively assisting have nothing to hide.

Conclusion

This is a big event for the sector and one that should not be taken lightly. It is time indeed for carers to be careful. While this is, on the face of it, a formal procedure, the CMA is keen to live up to its reputation as being a 'seeker after the truth'. Consequently, if any market participant has something important to add to the debate, they should not stand on ceremony: they should make contact with the CMA and not worry about issues such as missed deadlines. Bombarding the CMA will not be a good idea, but careful, considered commentary that takes proper account of the CMA's remit will always be welcome. Above all, the importance of engaging cannot be understated—silence speaks louder than words. **NRC**

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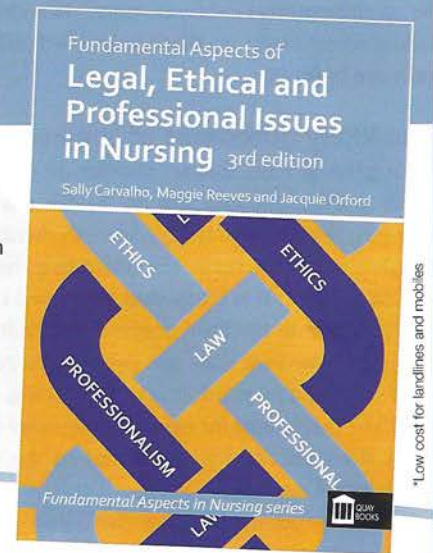
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