



CARE ASSOCIATION ALLIANCE

STATE OF COMMISSIONING SURVEY

by Charles Taylor



Care Association Alliance State of Commissioning Survey

Introduction

The Care Association Alliance is a national body that represents over 80 local Care Associations from across England. There has been considerable anecdotal evidence of poor commissioning practice within health and social care. This has reached new levels over recent years, with a number of local Care Associations taking Councils to judicial review to challenge the lawfulness of decisions made when setting fees. However, there is very little evidence from providers regarding their experiences of commissioning practices. We therefore prepared a survey for all of our members and asked for their views. We have also incorporated information from a number of sources, highlighting key problems currently faced by health and social care, from a provider's perspective.

We received a total of 224 responses from over 50 different Local Authority areas and from a wide range of providers. The providers represent care homes, home care agencies and learning disability service providers. Over 90% of the respondents provided services in elderly adult social care, therefore this commentary will focus on this area of care provision.

Executive Summary

95%

Of providers surveyed believe that fee increases proposed by Councils in 2016 will not meet the additional costs of the National Living Wage.

76%

Of providers that responded to consultations from their Local Authority believe that their Local Authority did not make any noticeable changes to their fee proposals based on provider feedback.

77%

Of providers surveyed stated that pre-admission information sent to them by Councils which was used to set initial fees was not accurate.

70%

Of providers surveyed said that when NHS services stopped providing equipment to homes the provider was expected to fund this with no increase in fees.

60%

Of providers surveyed would cease to do business with their Local Authority if they were able to attract business from another source.

58%

Of providers surveyed rated their Local Authorities commissioning practices as poor or extremely poor.

£2.5bn

The amount of money Local Authorities spend on administration of social care each year. This equates to 25% of the total social care budget spent by Councils each year.



Local Authority Commissioning – A provider’s view

The social care market has changed dramatically in the past few decades. For many years, Local Authorities were a direct provider of services, however they have changed their role dramatically and are now purchasing the vast majority of services from external providers. In care homes for example, there are almost 490,000 registered beds available in the UK, of these only 21,700 beds are provided directly by Local Authorities^{iv}. Twenty years ago, only 5% of hours in the home care sector were provided by external providers. Last year this had risen to 92% of all hours provided^{iv}. This picture shows the increasing importance that external commissioning has within social care.

58% of providers rated their local authorities commissioning practices as either poor or Extremely Poor.

60% of providers would cease to do business with the Local Authority if they were able to attract customers from any other source.

In order to see what being on the receiving end of this commissioning practice was like, we asked our providers how they would rate the performance of their Local Authority in commissioning care from providers. Responses were ranked between ‘Extremely Good’ and ‘Extremely Poor’. 58% of providers surveyed ranked their Local Authorities commissioning performance as either ‘Poor’ or ‘Extremely Poor’. Only 10% of providers asked rated their Local Authorities performance as ‘Good’. We also asked providers whether they would continue to do business with the Local Authority if they were able to attract customers from other sources. 60% of providers asked stated that they would NOT continue to do business with the local authority if they were able to attract any other customers. Both of these sentiments show an extremely negative view of commissioning with the Local Authority. To explain the reasons for these judgement, individuals provided specific comments, a selection of which can be found below.

“Essex County Council have made their thoughts very clear. They have stated "ECC do not pay fees to providers so that they can make profits. My thoughts are that without profits there can be NO future for this industry and certainly no reinvestment”

“It would be impossible to remain in business without self-funder cross-subsidy. LA fees are totally inadequate. Instead of facing up to what is the true cost of care they manipulate care cost data to give them the lowest possible cost”

“[There are] Discrepancies in information received from LA and the client once we visit. Due to the costs minimising approach, person-centred care is almost impossible to deliver because of the prescriptive, limited nature of the LA assessments.”

“[Local Authority commissioning practice is] Very poor - if we were not a charity and able to source funds from elsewhere we would be forced to close”

“It is causing the collapse of the health and social care sector”

“LAs add no value. They introduce parallel inspection regimes, reviews, localised unrealistic specifications and contracts etc. If funding was centrally determined taking account of local factors, LAs would be released from their costly self imposed regime”

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These comments are a small selection of a much larger body of concerning comments which highlight many of the key problems faced by providers. One provider went so far as to say that current commissioning practice is causing the collapse of the health and social care system. Whilst it is easy to ignore comments like these as scare-mongering from providers seeking to increase their profits, hopefully over the course of this report you will begin to appreciate that this isn't as far-fetched a claim as you might initially think. Local Authorities seem to ignore data when this is presented by providers. Furthermore, it is frequently felt by providers that figures are conveniently contrived to support a case for retaining low fees and this leads to distrust between the parties. It is evident across almost all Local Authorities that they do not understand profit and the vital place it holds for business sustainability, despite the terms of the Care Act 2014, which places a requirement on Local Authorities to ensure sustainability in the sector.

Setting Fee Rates – The one-way negotiation

Often the most negative interactions between providers and Local Authorities revolve around fees, and more specifically the fee rates set by Local Authorities. With the introduction of the National Living Wage, one of the most significant increases in staff costs in a decade, we wanted to see whether funding for this had been met by Local Authorities. Providers were asked whether they believed Local Authority fee increases were sufficient to cover the additional costs of the National Living Wage. 95% of providers stated that the uplift in fees offered by Councils would not be enough to meet the additional costs incurred.

95% of providers stated that the additional fees offered by the councils would not be enough to meet the additional costs of the National Living

95% of care home providers and 88% of home care providers stated that fees needed to increase to meet their costs.

Councils are currently under a legal obligation to take into account providers costs when setting fee rates. We asked providers whether they thought the set fee rates took this into account, were too high or too low. 92% of care home provider's opinions was that current fee levels paid by Local Authorities were too low, with 43% of providers feeling that fees were between £100 to £199 per week too low. An additional 33% of providers stated that Councils need to increase fees by over £200 per week to meet the actual costs incurred by providers. We asked the same question of home care providers. In total 88% of them stated that fees paid per hour were too low to meet provider costs. 47% of these providers stated that fee rates were between £1 and £4

per hour too low and a further 35% stated that the fees were between £5 and £9 per hour too low. We asked providers to comment on their experiences of fee levels and have included a selection of these below.

<p><i>If we were not a charity and able to source funds from elsewhere we would be forced to close</i></p>	<p><i>Rates paid to providers are low hence calls getting cut short in order to fit enough visits in to earn enough to pay workers and still make a profit"</i></p>	<p><i>"After travel and carer cost there is little in the pot to pay for supervisors (spot checks etc), rota organisation and training plus office costs"</i></p>
<p><i>[fees are] below costs. Way below what the council paid for care in homes it ran. It's price fixing which is illegal. They have been too low for many years</i></p>	<p><i>"They are underhand and biased to benefit the local authority. They use aggressive, bullying tactics. They lie to relatives. They refuse to negotiate. They refuse to cover even the government imposed cost."</i></p>	<p><i>"LAs add no value. They introduce parallel inspection regimes, reviews, localised unrealistic specifications and contracts etc. If funding was centrally determined taking account of local factors, LAs would be released from their costly self imposed regime"</i></p>



Care Home costs have increased significantly due to increases in the nation minimum wage, withdrawal of NHS services & supplies, increased care requirements as a consequence of the national care standards and increases in utilities and food etc. Local authority fees over the same period have attracted almost no increases with the exception of this year. As a consequence, local authority fees are significantly lower than the rate required to provide an appropriate level of care. In our Home privately funded service users now pay an average of 50% more in care home fees compared to our local authority funded service users. In meetings with KCC representatives, they have openly admitted that as care home providers, we should look to make our profit from our privately funded service users and it is because of this that they set their fees so low. As KCC are the largest purchaser of residential care within the market place, could it be argued that they are using this dominant position to drive their fee down and as a consequence are guilty of institutional financial abuse against those individuals who pay for their care privately?

Providers have very strong views on fee levels and any that you ask will take as much time as you are willing to give discussing these. We have selected a sample of the comments made by our providers regarding fees to highlight some common themes.

Firstly, since the early 2000's there have been increases in costs caused by:

1. increases in statutory holiday,
2. the introduction of statutory pensions,
3. Steady increases in the National Minimum Wage with much more significant increases due as the National Living Wage is introduced.

These represent the most significant increases in provider costs over the past decade and are all imposed by central Government. What particularly annoys providers is that they have to pay these costs with no matching increase in fees from Local Authorities.

Secondly, some providers have even admitted that home care visits are cut short because the price per visit is so low that companies wouldn't be able to survive without doing so. The service expected, and which providers would like to give, simply is not possible on current rates. This practice is frequently carried out with the implicit agreement of the Council, so that they can pay a lower hourly rate.

Finally, the issue of cross-subsidy was regularly raised by providers. To explain this in simple terms, private payers in both the home care and the residential care home sector are paying higher fees which keep providers in business. If providers were solely dependent on Local Authority business, they would cease to exist. This is a well known factor that many Local Authorities take into account when setting their fee rates, but is effectively charging a care home tax on prudent individuals who have spent their lives saving for their old age.

Provider Engagement

We also asked providers about their engagement with the Council when consulting and setting fee rates. Only 53% of providers asked were invited to comment or consult with their council on fee uplifts. Of the providers that were consulted with, many did not believe their voice would be heard. 76% of providers felt that the council either never listened to providers or only very occasionally made slight changes to their proposals after feedback. Only one provider out of the 220 that answered the questionnaire felt that commissioners listened to and responded to providers concerns.

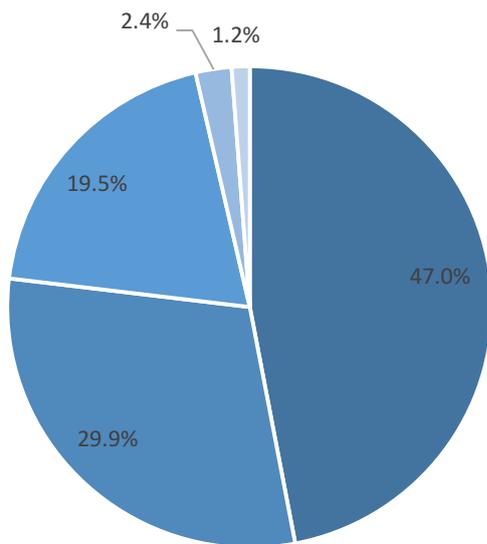
Only one of the 220 individuals surveyed felt that their concerns were listened to when consulting with Local Authorities on fees.



77% of providers said that Pre-admission assessment at best only sometimes reflected the actual needs of the client.

Another area of commissioner engagement that providers were surveyed on, was assessment and arranging placements. A pre-admission assessment is a document prepared by a Local Authority which contains information enabling a provider to assess whether they can provide care. Significantly this is also to allow a provider to cost the care demands effectively. We asked providers whether pre-admission assessments accurately reflected the needs of clients once they were either in the residential setting, or had care arranged in their home. 38% of providers stated that the pre-admission assessment ‘rarely’ or ‘never’ reflected the needs of clients, with a further 39% stating that the assessment only ‘sometimes’ reflected the needs of the individual. Providers are increasingly finding that Local Authorities are not providing full information up front to try so they may obtain a lower quote from providers. Providers we also asked to judge how much of the Local Authorities decision to arrange a service was based on cost and how much was based on quality. The question produced the graph below, reflecting the belief that cost is the key driver for Local Authority placement decisions. Tellingly, 47% of providers stated that the decision is 100% cost based, with no notice taken of quality at all.

When commissioning services for individuals, Local Authorities are required to assess both the quality of services and the cost of services. From your experience, what weighting do you feel local authorities give to their placement decisions?



- 100% of the decision based on cost and 0% based on quality.
- 75% of the decision based on cost and 25% based on quality.
- 50% of the decision based on cost and 50% based on quality.
- 25% of the decision based on cost and 75% based on quality.
- 0% of the decision based on cost and 100% based on quality.

Equipment costs

In recent years a number of cost saving decision made by NHS trusts across the country have directly affected providers of social care services. These services include the provision of beds, mattresses, specialist pressure relieving cushions and nutritional supplements. All of these were originally supplied by NHS trusts, however were removed without consultation with providers and amounted to an increase in costs of over £100 per week. We asked providers of services whether they received increased fees from Local Authorities when local NHS trusts removed provision of services. 70% of providers responded by saying that the provider was expected to bear the full costs of these items. As NHS trusts continue to look for methods to cut costs, they have decided to discriminate against elderly patients within care homes by removing services that would be provided if they remained within their home. If this trend continues then the likelihood is that additional costs will be transferred to care home providers, Local Authorities will continue their existing practice of failing to recognise these additional costs in fee increases. This would further worsen the already precarious position of providers with regards to fees. It is a tenet of Health and Social Care integration that matter these matters are properly balanced and the funds set aside by the NHS for integration are properly utilised to support this.



What effect does poor commissioning have on the health and social care sector?

Social care is not a stand-alone system and commissioning decisions have a major effect on the whole health and social care system. Most recently, light has been shone on the bed blocking crisis that is occurring in hospitals across the countryⁱ. In March this year the number of delayed transfer days hit a 5 year high of 169,000 daysⁱⁱ. This means that over 24,000 weeks of hospital based care was provided to individuals who were medically fit for discharge into other settings. Of these, 6,000 weeks were for patients just waiting for a care home bed and a further 4,000 weeks were patients waiting for a home care package. A Government report estimated that the cost of bed blocking was around £900 million per yearⁱⁱⁱ and this figure is rising year on year.

As a provider organisation we firmly believe that these delays are often caused by poor commissioning practice on behalf of Local Authorities. Occupancy rates varied slightly during the year in care homes, however on average these were around 89%^{iv}. This means that at any given time there were around 50,000 beds across the country unfilled, more than enough to place all of the individuals in hospitals ready to be discharged. The bed blocking in this case is not caused by the unavailability of beds but is in fact caused by the low fees paid by Local Authority commissioners. Many care homes are making the decision not to accept Local Authority fees or are asking for more reasonable fee levels. This is leading to lengthy negotiations and an ever increasing backlog of patients that require care home beds.

In home care, Local Authorities have been paying well below the United Kingdom Home Care Association (UKHCA) fair hourly rate for care calculator^v, put together by industry experts for many years. This is leading to providers being unable to create sustainable businesses in many areas of the country, particularly rural areas where travel time (very rarely paid for by councils) is extensive. In some counties across England, providers have been put out of business by Local Authority decisions. Local Authorities have agreed block contracts with the lowest bidder to provide most, or in some cases all, of their home care hours. This decision has often taken business away from local providers that have operated for many years and caused them to shut up shop. This then puts Local Authorities at the mercy of a single company. When some of these companies are unable to meet their contractually agreed hours of provision, the Local Authority decision to award the contract has meant that there are no other providers available to fill any care gaps. If decisions continue to be made based entirely on cost, ignoring providers history of provision within an area, or the track history of providers, then the home care industry will continue to be unable to deliver required services to some of the most vulnerable people in our communities.

Legal battles between providers and Local Authorities

Another effect of poor commissioning is the increasing number of legal challenges to Local Authorities regarding their fee setting decisions. Commencing in 2003, the Northern Irish company, Better Care, challenged the lawfulness of the Northern Ireland Health Trusts fee setting. The court ruled that the Health Trust had used its dominant market position as a monopoly buyer to set market fees, which was deemed illegal^{vi}. In more recent years a number of legal challenges have been brought to judicial review, the first of these in 2010 with Forest Care Homes. These challenges have centred around a requirement within national guidance for Local Authorities: "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 and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist."^{vii} These legal challenges have been predominantly won by Care Associations, with Local Authorities ordered to redo the fee setting exercise on top of paying substantial legal costs. This was seen by providers within the care sector as a call for change. Providers were sure that, having proved Local authorities were acting illegally, there would be changes introduced to stop this reoccurring in the future. Instead these legal challenges have cost many hundreds of thousands of pounds and yet have led to no changes in national policy, no amendments to the laws governing local authority commissioning and no change in Local Authorities' behaviour towards providers. Disappointingly, the only change to be introduced is a watering down of the above mentioned guidance document so that judicial reviews are less likely to succeed in the future.



It's not our fault, there just isn't enough money...

When fees are being discussed, this seems to be the go to answer for most Local Authorities. They do have a point. According to Age UK, funding in the UK has stagnated over the past decade (table shown below taken from Care in Crisis 2014). There has been a huge increase in the elderly population, linked to subsequent increases in demand for all social care services. Yet there is almost exactly the same amount of money (taking into account interest) in the pot. This does represent a very challenging picture for Local Authorities to work within.

ENGLAND 2004-05 TO 2014-15		£ MILLIONS
FINANCIAL YEAR	CASH TERMS	REAL TERMS
2004-05	13,498	17,053
2005-06	14,357	17,622
2006-07	14,898	17,762
2007-08	15,275	17,706
2008-09	16,096	18,154
2009-10	16,807	18,541
2010-11	17,040	18,250
2011-12	17,229	18,171
2012-13	17,159	17,772
2013-14	17,249	17,496
2014-15	17,043	17,043

However this picture is not telling the whole story. Inefficiencies within the commissioning process are costing the country millions of pounds per year.

The first example of how to potentially save money within social care is to complete the externalisation of Local Authority care services. Over the past 20 years, Local Authorities have had to make the decision to sell or close care homes and make home care teams redundant in order to try and save costs. When looking at home care HSCIC data^{viii}, this shows an average cost of provision of £29 per hour for in-house services compared to an average cost of £14 per hour for external services. In care homes, there is a slightly less dramatic difference with in-house services costing £919 per week, versus external provision at £520.95 per week.

Costs are also understated due to Council financing arrangements. Capital funding for land / buildings, human resources, law and finance are provided from different teams within the Council that do not appear within the HSCIC costs data. The table below uses Liang and Buisson's Older Peoples Market Report from 2015 to provide data for the amount of in-house services still provided by Local Authorities, and the potential savings if these were externalised.

		COST OF IN HOUSE PROVISION	COST OF EXTERNAL PROVISION	POTENTIAL SAVING
NO. OF HOURS HOME CARE PROVIDED IN-HOUSE	15000000 (hours) ^{iv}	£ 29.00	£ 14.00	£ 225,000,000.00
NO. OF CARE HOME WEEKS PROVIDED IN-HOUSE	1128400 (weeks) ^{iv}	£ 919.33	£ 520.95	£ 449,537,236.90
			Total Savings:	£ 674,537,236.90

In 2014/15 £10.6 billion was spent on adult social care according to HSCIC. £2.6 billion of this (25%) was spent on administration.

Another area of potential savings within Local Authority budgets is the amount spent on commissioning, care management and assessment. HSCIC data from 2015 shows the total Council spend on adult social services was £10.2 billion^{ix}. Of this a staggering £2.6 billion was spent on commissioning and administration.



The table below shows the total spend on direct care (split into short term and long term) and the spend on administrative functions (combining commissioning, care management and assessment). The final column in the table shows this as a percentage of the total cost.

REGION WITHIN ENGLAND	LONG TERM CARE SPEND (£ '000s)	SHORT TERM CARE SPEND (£ '000s)	OTHER COSTS (£ '000s)	ADMINISTRATION COSTS (£ '000s)	ADMINISTRATION COSTS AS A % OF TOTAL COSTS
NORTH EAST	300,530	44,594	47,019	121,652	23.68%
NORTH WEST	871,831	74,649	106,818	341,138	24.46%
YORKSHIRE	565,706	72,778	97,454	247,061	25.13%
EAST MIDLANDS	454,363	76,346	69,566	203,362	25.31%
WEST MIDLANDS	588,205	6,395	86,574	298,484	30.47%
EAST	772,431	32,418	83,553	266,868	23.10%
LONDON	1,019,264	62,668	125,954	473,113	28.14%
SOUTH EAST	1,033,099	101,237	125,149	430,127	25.46%
SOUTH WEST	635,487	59,145	72,061	232,310	23.25%

This data shows the fairly large variation in the amount of money spent by Local Authorities on the management and administration of services, ranging from 23.1% in the East of England to a high of 30.47% in the West Midlands. Using this data, if all Local Authorities were able to match the East of England and spend only 23.1 % of their total budget on administration then this would represent a national saving of almost £260 million.

The final area of savings that could be realised are the Deprivation of Liberty Safeguards. These are a controversial and very misunderstood part of social care. In essence, if a provider uses a certain amount of restraint when caring for an individual who lacks capacity, then you are “depriving someone of their liberty”. In this instance, providers are required to go through a formalised process and apply for a Deprivation of Liberty permission from their Local Authority to continue to provide care in this way. The controversy and misunderstanding has come since a recent court ruling which indicated that the level of restraint needed to meet the Deprivation of Liberty threshold could be something as small as having a locked front door in a care home. This has led to a massive rise in the number of Deprivation of Liberty applications being made, with 192,134 applications in 2015^x. To carry out all of the necessary checks for these to be completed, the estimated cost to Local Authorities is around £400 per application, or £80 million in England per annum. This is a cost that is bringing no real improvements to practices within the sector and instead seems to be red tape gone mad. The interpretation of the law has been so twisted that it should be repealed and re-written from scratch, saving the social care economy £80 million per annum (another figure that is increasing year on year). Importantly this figure does not include the cost to care home providers for the staff time required to fill out the extensive paperwork, assist with the assessments and then manage the orders once in place.

In total there is a potential saving of over £1 billion per annum simply from more efficient use of the social care funding already provided. This would go a long way towards closing the ever widening funding gap within the sector.



Conclusion

The common theme throughout our survey has been the disappointingly negative relationships between providers and commissioners. Providers feel disempowered, ignored and are often treated dishonestly, or even illegally. Even when providers have taken the expensive option of challenging Local Authorities in the courts, this has not led to material improvement in working practices in the social care sector. For a profession that is trained to put people first and is judged on its ability to treat individuals with dignity and respect, it seems highly ironic that the evidence shows that the private social care sector is treated in the opposite manner in our dealings with commissioners. For the charitable and private social care sector to survive it must receive the same degree of respect and responsibility that it is expected to deliver.

Social care is an invaluable part of our society, often providing care for individuals that would not be able to survive without assistance. However, in the last decade no independent provider has built a care home aimed at housing Local Authority residents. Looking at the home care sector, there are currently over 200 home care businesses for sale in the UK. In 2014/15 two of the top ten largest home care companies in the UK sold up shop as they could not see a future in the sector. If the current trend continues, within a short amount of time there will not be enough social care providers to serve the ever-growing elderly population within our society.

In order to reverse this downwards spiral and stabilise a sector that always seems to be on the verge of collapse, we believe two major changes are required:

1. Providers need responsible funding. The current fee levels are not sustainable in the long term. If central government wishes to continue to raise remuneration for staff employed in this country and employer pension contributions, then providers must be paid to cover these increases.
2. During our survey we have highlighted examples of Local Authorities acting outside guidelines that should govern their behaviours, and in a number of cases acting unlawfully, in their dealings with providers. There is a growing school of thought that Local Authorities will not change the way that they act towards external providers unless there is independent oversight of their interactions. We would call for the Local Government Ombudsman to be empowered to investigate provider complaints where they feel that Local Authorities have not acted in-line with nationally set guidelines.

References

ⁱ <https://www.nao.org.uk/report/discharging-older-patients-from-hospital/>

ⁱⁱ <https://www.england.nhs.uk/statistics/statistical-work-areas/delayed-transfers-of-care/>

ⁱⁱⁱ <http://www.bbc.co.uk/news/health-35481849>

^{iv} Laing and Buisson Older People Market report September 2015

^v <http://www.ukhca.co.uk/pdfs/AMinimumPriceforHomecareVersion1020140202.pdf>

^{vi} <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1125109/>

^{vii}

<https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwiT5vH8vNnNAhWMAAKHQ5UDT4QFghAMAU&url=http%3A%2F%2Fwww.11kbw.com%2Fuploads%2Ffiles%2FELPaper.pdf&usq=AFQjCNHn2mEfxwbtgM9Gi5SsqIZ9tFrM3PQ&sig2=FdT3TJNLtA1Dh6oELeP4kQ&cad=rja>

^{viii} HSCIC Personal Social Services expenditure and unit costs report 2014/15

^{ix}

<http://www.hscic.gov.uk/searchcatalogue?productid=19459&topics=2%2fSocial+care%2fSocial+care+expenditure%2fPersonal+Social+Services+expenditure&sort=Relevance&size=10&page=1#top>

^x <https://www.gov.uk/government/statistics/deprivation-of-liberty-safeguards-dols-july-to-september-2015>