COUNCIL OF MINISTERS

Report on Investigation

into Nursing Home Charges

by the Isle of Man Office of Fair Trading

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To : Hon N. Q. Cringle, President of Tynwald, and the honourable Council and Keys in Tynwald assembled.

On the 30th March 2006, the Council of Ministers requested that the Isle of Man Office of Fair Trading instigate an investigation under section 19 of the Fair Trading Act 1996 into nursing home charges.

This Report represents the outcome of the OFT's investigation. The Report's recommendations are set out in section 8 and the response of the Department of Health and Social Security thereto is set out at section 9.

The Report is now laid before Tynwald for the information of honourable Members.

Hon D. J. Gelling CBE CP MLC
Chief Minsiter

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Executive Summary

The market

The Isle of Man Office of Fair Trading (OFT) has undertaken a study of the care home market in the Isle of Man and in particular the fees charged by the seven nursing homes. The Office has modelled care home costs and looked at fees in the UK.

The main conclusions are:

- fees for self-funding nursing home residents are similar to those for residents supported by Social Security and these are determined after negotiations between the DHSS and the nursing home operators
- the nursing home fees charged are higher than is necessary for the owners to receive a fair return on the capital invested based on the Fair Price model
- average nursing home fees in the Isle of Man are lower than the averages in Greater London and the Home Counties and higher than the averages of each of the other English Government Office regions, Wales, Scotland and Northern Ireland.

There is little competition in the nursing home market, for reasons of geography, pricing structure and capacity.

Demand for nursing home places at current patterns of care is projected to grow by nine percent over the next five years and by 22 percent within ten years.

Conclusions, comments and suggestions

The OFT has come to two conclusions related to nursing home fees:

- the Office's investigation has produced no grounds for awarding the 13.9 percent increase in Social Security funding demanded by nursing home operators
- the Office is minded to advise nursing home operators that they should set fees for self-funding residents individually.

The Office has made further comments and suggestions in relation to the policies and practices of the DHSS.

The DHSS may wish to consider-

- introducing an assessment of older people's care needs before it funds them in a care home
- offering a needs-assessment to any self-funding older person who wanted one
- encouraging the development of intensive homecare as an alternative to care homes
- encouraging the development of extra-care housing as an alternative to care homes
- basing Income Support levels for people in nursing and residential homes on earnings increases as well as price increases
- investigating the legislative and other changes that would be necessary to permit it to offer nursing care from its four residential homes if necessary
- paying benefits directly to care homes rather than to a relation in order to prevent relations misappropriating or unreasonably delaying benefits payments.

1. Introduction

At their meeting on 30th March 2006 the Council of Ministers requested that the Isle of Man Office of Fair Trading instigate an investigation under Section 19 of the 1996 Fair Trading Act into the appropriateness of the level of charges being imposed by Isle of Man nursing homes. Section 19 of the Fair Trading Act states that "The Board may carry out an investigation into any price, with a view to providing the Council of Ministers with information relating to that price, if it is satisfied that the price in question is one of major public concern."

In 2001 the Fair Trading Act was amended to provide an additional stage of the investigation and where the subsequent report finds that particular prices are excessive and against the public interest the Council Of Ministers now have powers to make a Tynwald Order that can either fix prices or require them to be determined in a particular way.

At their meeting on 6th April 2006 Council issued the following Terms of Reference to the OFT:-

- Establish how the nursing homes have determined the level of their charges to be charged from 10th April 2006;
- Determine if the level of IOM nursing homes fees are fair and reasonable;
- Consider whether the differential between nursing and residential care charges in the Isle of Man are appropriate or otherwise;
- Compare the level of IOM nursing home charges with those being charged or to be charged in nursing homes operating in the United Kingdom; and
- Identify the costs of providing nursing care and health care products (where appropriate) which are being passed on to residents as part of the nursing homes fee in the Isle of Man.

In addition the Council also requested the Office to investigate, under Section 9 of the Fair Trading Act the question of "…whether the IOM Nursing Homes Association has been or is pursuing a course of conduct which does amount to anti-competitive practice."

The Office instigated a competitive tendering process to select a company to provide expert support and advice during the investigation. The successful tenderers were Laing and Buisson, a UK consultancy company which specialises in the analysis of non-clinical aspects of health and social care markets. Laing & Buisson carried out a detailed survey of the operating costs of the nursing and residential homes during June 2006.

The information obtained from that survey was then fed into what is known as the "Fair Price Model" which was developed by Laing and Buisson for the Joseph Rowntree Foundation in the UK. The model is used for setting a fair price for a UK local authority with social services responsibility to pay for care but has been significantly modified to reflect the different circumstances in the Isle of Man.

Laing and Buisson drafted a report on the survey and the "modelling" exercise (entitled, "Appropriate fees in Care Homes for Older People in the Isle of Man") and this was first circulated to the nursing homes involved in July 2006 to clarify the technical detail, clear any commercial confidences and to seek their general comments. Detailed responses were received from the nursing homes and a lengthy meeting was also held with one of the leading providers to discuss some of the financial items appearing in the "model" that were used to establish the "fair price" for both nursing and residential homes. Laing and Buisson together with the Office of Fair Trading considered these responses and re-drafted the report where appropriate.

The second draft of the report was circulated to the nursing homes, and the residential homes on this occasion, but it was only the nursing homes that made any significant comment and these mirrored many of those from the first round of consultation.

Laing and Buisson have studied these comments with the Office at length and obtained further expert opinion on such matters as land values and comparator building costs. Having satisfied themselves that the figures used in the report are accurate for the purposes of the "model" they decided not to make any substantial amendment in the final report.

That final report from Laing and Buisson has been used to inform the relevant sections of this report from the Office of Fair Trading which covers a much wider range of issues.

2. The care home market

2.1 Profile of the supply market

2.1.1 Care homes

The Island has seven nursing homes for older people with 365 available beds, an average of 52 beds, and nineteen residential homes for older people with 571 available beds, an average of 30 beds. The number of available beds is lower than the number of registered beds in Table 1 as some rooms registered as doubles are only ever occupied as singles. Two nursing homes are registered for some dementia residents as well as frail elderly. Residential homes vary widely in the degree of dependency that they can handle; some cannot take people who are wheelchair bound. On average voluntary sector residential homes are said to take the more independent residents and private sector ones the most dependent.

Table 1 Care homes in the Isle of Man

Home name	Location	Registered type and beds		Sector
Abbotswood House Nursing Home	Ballasalla	Nursing Home	64	Private
Brookfield Residential & Nursing Home	Ramsey	Nursing Home	56	Private
Elder Grange Nursing Home	Douglas	Nursing Home	82	Private
Kings Reach Care Home	Lezayre	Nursing Home	53	Private
Marathon Court Nursing & Residential Home	Douglas	Nursing Home	35	Private
Saddle Mews Care Home	Douglas	Nursing Home	36	Private
Springfield Grange Nursing Home	Braddan	Nursing Home	61	Private
Anfield Manor	Douglas	Residential home	31	Private
Beach View Residential Home	Castletown	Residential home	22	Private
Beaconsfield Towers	Ramsey	Residential home	12	Private
Brinnington	Douglas	Residential home	18	Private
Corrin Memorial Home	Peel	Residential home	52	Voluntary
Cubbon Residential Club	Douglas	Residential home	10	Voluntary
Cummal Mooar	Ramsey	Residential home	50	Government
Eastfield House	Douglas	Residential home	25	Private
Ellan Vannin Home	Douglas	Residential home	38	Voluntary
Glen House	Laxey	Residential home	17	Private
Glenside	Douglas	Residential home	90	Government
Grest Cottage Home	Lezayre	Residential home	17	Voluntary
Grove Mount Home	Ramsey	Residential home	23	Voluntary
Park Crest	Ramsey	Residential home	10	Voluntary
Reayrt ny Baie	Douglas	Residential home	48	Government
Southlands Resource Centre	Port St Mary	Residential home	48	Government
Shenn Valley	Douglas	Residential home	12	Private
Sunnydale	Douglas	Residential home	43	Private
Tudor Lodge	Douglas	Residential home	17	Private

Tudor Lodge is registered primarily for younger adults and its owner has recently acquired Sunnydale
Source: DHSS Inspection Unit.

All seven nursing homes are privately operated. Four of the residential homes are operated for the Government by Social Services (41% of beds), nine within the private sector (34% of beds) and six are voluntary sector homes (25% of beds). The nursing homes are mostly

fairly recently purpose-built as nursing homes, whereas the bulk of independent sector residential homes are extended conversions from residential properties.

2.1.2 Extra-care housing

Extra-care housing comprises self-contained flats for older people with a range of communal services, a homecare team based on-site during the working day and support available on-site at night. A successful extra-care scheme should be able to replace residential and nursing home care for the majority of tenants/owners. Extra-care is, therefore, a great deal more than sheltered housing. In the UK extra-care is generally developed for renting by housing associations and for leasehold sale by private operators.

The DHSS would favour the use of extra-care housing as an alternative to care homes but at the moment there is no provision in the Island.

2.1.3 Homecare

There are twelve independent (private and voluntary) sector homecare businesses based in the Island which deliver homecare to older and disabled people who wish to purchase their own homecare. These homecare businesses are not registered with the Inspection Unit, other than two that are also nurses agencies and do have to register.

Table 2 Homecare providers in the Isle of Man

AllCare Nursing Agency	Angels
Caring Companions	Christie's Care
Cornerstone Agency	Crossroads Caring for Carers
Helping Hands	Homelife
Island Care	Maintain
Manx Homecare	Trinity Homecare

The DHSS provides homecare to clients that it assesses to need it and makes a charge depending on the client's financial circumstances. With the exception of one independent sector business that has a contract to provide basic housework only, almost all the DHSS homecare is delivered by its in-house domiciliary care team, with the independent sector being used only when the in-house unit is unable to provide the service. The in-house service supports 611, mostly older, clients with 2,059 hours of care, giving an average of 3.4 hours per client per week.

Homecare in the Island has not yet been developed as an alternative to care homes as it has been in the UK since 1993. Only thirteen percent of clients receive ten or more visits per week in the Island, whereas in the UK the figure is 42 percent. The average number of hours provided to clients in the UK in 2005 was 9.7 per week, having increased from 3.2 hours per week in 1992 before the 1993 community care reforms, and is almost three times the level in the Island. Care in the Island remains mostly practical rather than personal whereas in the UK it involves mostly assistance with getting up, bathing, dressing, toileting & eating.

Councils with social services responsibilities in the UK use their in-house teams to provide only 27 percent of the homecare that they fund; the other 73 percent is commissioned from independent sector providers.

2.2 Demand and supply of care home places

The nursing homes were operating at 96 percent occupancy and residential homes at 93 percent at the time of the survey in late May. These occupancy rates are both above the level considered within the industry that will ensure a sustainable long-term supply market while allowing flexibility to meet sudden demand and to allow residents a choice of home. Private sector residential homes are operating at low occupancy rates, 87 percent, while Government homes at 97 percent and voluntary sector ones at 95 percent are above the optimum occupancy level.

Table 3 Occupancy rates by bed category in Island care homes

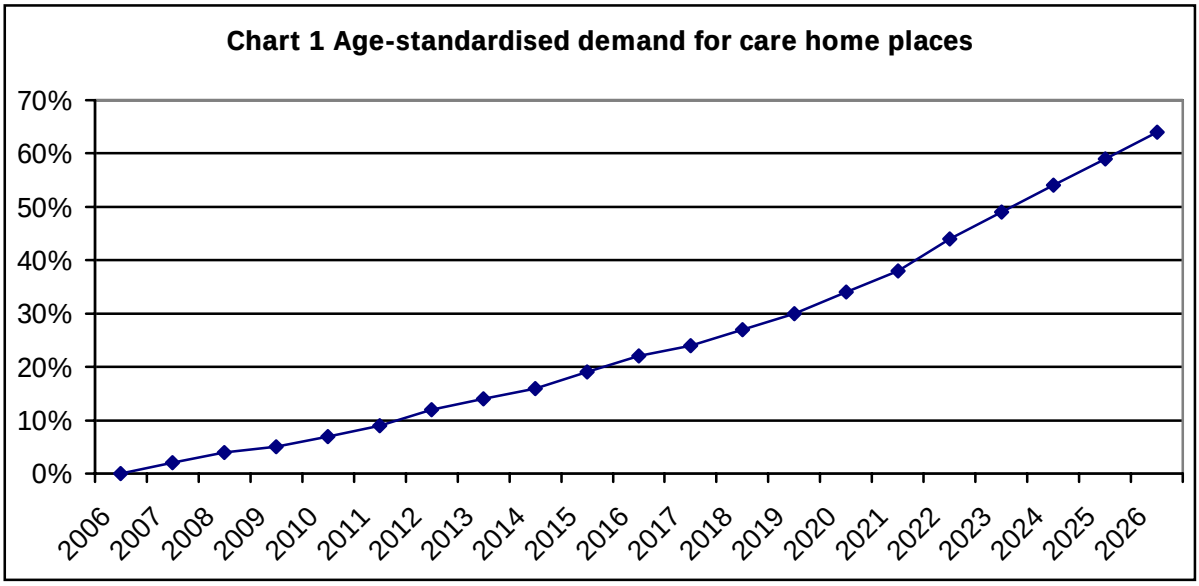
	Nursing beds	Residential beds
Government		97%
Voluntary		95%
Private	96%	87%
All sectors	96%	93%

Source: Laing & Buisson's survey

2.3 Future demand for care home places

The demand for care home places for older people in the future was projected using the method of the health and social care consultancy Laing & Buisson. Known as age-standardised demand (ASD), this is calculated by applying probabilities derived from the whole of the UK to a local population. A formula applies the probability of being in a care home in the age bands 65-74, 75-84 and over 85 in the UK to the resident population of an area. Actual demand is different from age-standardised demand when local factors including the following differ from the average UK pattern:

- if there is less or greater local use of homecare or extra-care housing as an alternative to residential care
- if an area attracts older people who self-fund themselves in care homes with a level of independence such that a social services needs-assessment would indicate that they do not require admission
- if particularly low or high mobility among a population results in lower or higher levels of informal care being available from relations.



The major value of the age-standardised demand calculation is that it can be used to project future changes in demand as we have done below, subject to patterns of care not changing over time. ASD indicates that demand for care home places or alternatives in the Island will have increased by nine percent in five years, 22 percent in ten years and 64 percent in 20 years. The five-year increase represents a need for 86 new beds across the Island at 92.5 percent occupancy, of which at current patterns of care 34 will be nursing home places. The accuracy of the projections decreases, of course, as the projection extends further into the future, and the projections for 2026 must be viewed with caution.

2.4 Demand, need and admission procedures

Older people may be admitted to a care home via Social Services or they may go directly to an independent sector care home. Social Services assess the needs of people whose admissions it arranges, but there is no such procedure for those who self-refer. There is an onus on the care home manager to ensure that the home is registered for the care required and that it can meet the person's needs, but not to assess whether entering the care home is the best option for the older person. A fit and active old person requires less care than a very dependent one and so is a more attractive resident for a care home manager. Social Security pays Income Support and other benefits such as Attendance Allowance to those people who have been admitted to a care home, if their means qualify for it, but Social Security does not assess whether they should be there. Income Support in a care home is not cash-limited and is a right of those who qualify.

A similar situation existed in the UK before April 1993, when responsibility for placing and funding the care of state supported older people was transferred from the (then) Department of Health and Social Security to local councils with social services responsibilities (CSSRs). CSSRs were given the incentive and duty to concentrate their resources on those who need it most and to use alternatives to care homes such as homecare where possible. CSSRs introduced needs-testing for supported clients, with the result that there was a drop in demand for care home places and in particular for nursing places.

It is thought, within the market, that some people who have self-admitted might not need to be in a care home at all and that some people in nursing homes might have been better placed in a residential home. The alternatives to care homes include intensive homecare and extra-care housing. Thus the present level of demand might be higher than the true level of need for care home places.

This is borne out by the age-standardised demand calculations. If admissions to Island care homes were made to the same pattern as in the UK, there would be approximately 600 older residents in care homes. Our survey found that there are 884 older care home residents, a marked difference from ASD that strongly suggests that care homes are being used where extra-care housing or homecare would be used in the UK.

In the UK admission of supported residents is subject to the single assessment process (SAP), which gives an older person a single assessment by a multi-disciplinary team to determine his care needs. The DHSS is considering introducing such a process in the Island and could apply it to self-funding older people too. The effect of this would probably be to reduce the demand for nursing home and residential home places.

3. Staffing care homes

3.1 Staff costs are the main single component of a care home's costs

The survey found that average pay rates are the highest in Government homes and higher in voluntary sector homes than in private sector homes (Table 4). Voluntary sector homes pay basic care staff 19 percent more than do private sector residential homes and Government homes pay 41 percent more. The differences are more pronounced among care staff with an NVQ2, where Government homes pay 63 percent more than private homes. The difference for senior carers is 80 percent but the roles and responsibilities may be different. The conditions of service in Government homes are also more generous, with sick pay and a pension contribution, compared with independent sector homes that less frequently offer these benefits (Table 5). The Office was informed that a Government care worker who is rostered for, say, a Sunday when they would receive double pay would receive double sick pay if taken ill. Government homes appear to be driving the pressure on care wage rates.

Furthermore, it is a concern of independent sector (private & voluntary) homes that they lose non-nursing care staff to these homes. This is matched by a further concern that independent sector homes are losing trained nurses, often after they have "adapted" overseas ones, to the Island's hospitals. Furthermore, the Whitley Council, which has in the past set many health service and local authority pay scales, has been replaced by a new staffing agreement known as Agenda for Change. Care home managers have expressed concerns that this will increase the wages in DHSS care homes and hospitals and put further wage pressure on independent sector care homes.

Table 4 Average pay rates £ per hour in residential homes for hourly-paid staff by sector

Older people	Private	Voluntary	Government
Care staff, no NVQ2	6.08	7.24	8.57
Care staff, NVQ2 or higher	6.39	8.58	10.43
Senior carer	6.69	8.18	12.03
Domestic & catering	6.21	6.87	7.97
Chefs	7.38	7.57	10.29

Does not include pay in nursing homes.
Refers to one daytime weekday hour, which accounts for the most hours provided.
Source: OFT survey of care homes 2006.

Table 5 Number of homes offering routine sick pay and pension contributions for hourly-paid staff by sector and registration category

Type of home	No sick pay	Some sick pay	No pension contribution	Some contribution	All
Government		4		4	4
Voluntary	3	3	5	1	6
Private nursing homes	7		6	1	7
Private residential	9		9		9
All homes	19	7	20	6	26

Source: OFT survey of care homes 2006.

3.2 Staffing levels

3.2.1 In nursing homes

Staffing levels in nursing homes are subject to a staffing notice from the DHSS Inspection Unit. The reported staffing levels in nursing homes are similar to those used in industry national benchmarks.

3.2.2 In residential homes

In residential homes it is the responsibility of the manager to ensure that adequate staff with the right skills are on duty.

In residential homes average staffing levels are 25 percent above UK benchmarks for large homes. This is not what would have been expected given the large number of people in care homes in the Island compared with the UK and the implication that dependency levels are lower than are found in the UK. Notwithstanding the fact that small homes frequently utilise staff less efficiently – a home cannot employ a part person - this may imply that these residential homes have too many staff on duty and are needlessly increasing their costs.

Some residential home operators may argue that extra staff results in a higher quality of care. While it is recognised that under-staffing reduces the quality of care, the Office is not aware of conclusive evidence that over-staffing improves it. In fact, it has been suggested that too many staff can increase the dependency levels of residents as staff perform tasks that residents could do for themselves and under-occupied staff may congregate in offices and so reduce the total time spent in contact with residents.

A more detailed analysis of this would be outside the Office's Terms of Reference.

4. Funding care home placements

4.1 Social Security

It is estimated that half (53% using March Income Support figures and May occupancy rates) of care home residents in both categories (nursing and residential) self-fund and the other half are supported through Income Support, although there is a small number of residents eligible for part of their fees to be paid from Income Support. Income Support is means-tested and since April 2006 has been paid to older people in nursing homes at up to £559.44 per week, in independent sector residential homes at £346.85 per week and in DHSS residential homes at £321.30 per week. In addition there is a Personal Allowance paid to anyone receiving Income Support in a care home of £26 per week but, unlike in the UK, it is not ring-fenced and much of it may be used to pay care home fees. Some care homes make a point of finding out how their fees will be paid but others regard this as a private matter for the resident.

Attendance Allowance (AA) is available to those who qualify on disability grounds, and eligibility for it is not means-tested. Most residents in a nursing home would be expected to receive AA at the higher weekly rate (£62.25) and the DHSS has identified only 13 residents of nursing homes who are not receiving the higher rate of AA (or Disability Living Allowance if they became disabled before age 65). Someone in a residential home would usually receive lower rate of AA (£41.65). AA is taken into account in Income Support calculations if the person becomes resident in a DHSS care home but not if in an independent sector home.

A fully supported older person in a nursing home, therefore, since April 2006 has had a maximum of £647.69 to pay for nursing home fees and to pay for necessary and discretionary living expenses.

The DHSS does not pay the care homes directly. The Income Support payment and other benefits are paid to the older person or to a relation who is responsible for paying the care home. Some nursing homes report that relations sometimes misappropriate or unreasonably delay payments with serious adverse effects on the home's cash flow and profits. This situation does not arise in the UK, where the contract is between the placing social services department and the care home. One side effect of the UK approach, however, is that social services are contracted to pay the third-party top-up if the relations default on it.

4.2 Nursing home charges

There is little difference between the fees paid by self-funding residents in nursing homes and those funded by Income Support. This would be unusual in the UK, where it is generally the case that self-funding residents pay higher fees than CSSRs and therefore subsidise social services.

As demand grows for demographic reasons, unless capacity is increased or there is a change in patterns of care, nursing homes will become full and may find that self-funding residents are prepared to pay above DHSS rates in order to gain a place. There is, therefore, a risk that this equal fee policy may break down in due course even without the influence of this report.

The minimum weekly fee of £640.00 is charged for self-funding and supported residents by all nursing homes bar one that reported charging just under £648. This latter figure equals the sum of £559.44 Income Support payment, higher rate Attendance Allowance (AA) and £26 personal allowance. It is the maximum funding available to a fully-supported resident and would leave the resident with no money for essential personal expenditure. Almost all

residents in nursing homes receive higher rate AA. The maximum figures are slightly higher at £688 for self-funding and £658 for supported residents. This reflects three nursing homes that charge small premiums for particular rooms because they offer better sizes, facilities or views compared with the other rooms in those homes. The unweighted average of all fees reported to the Office is £649 for self-funding and £642 for supported residents.

The average total fee received per resident per week (prpw), taken from the 2005 accounts of the independent sector nursing homes and using the May 2006 occupancy rates, was £614.32 prpw with a range from £574 to £658 prpw.

Table 6 Average weekly care home fees by sector and type

Self-funding	Minimum fee	Maximum fee	Average fee
Government residential homes	321.30	321.30	
Voluntary residential homes	346.00	426.00	381.61
Private residential homes	345.00	500.00	410.89
Private nursing homes	640.00	688.00	648.74
Funded by Income Support			
Government residential homes	321.30	321.30	
Voluntary residential homes	346.00	426.00	378.27
Private residential homes	345.00	486.00	381.31
Private nursing homes	640.00	658.69	641.88

Note: The figures do not take into account Attendance Allowance where this is charged in addition only when received. For this reason a weighted average has not been prepared

Source: Reported by care homes in the OFT survey of care homes 2006

4.3 Residential home charges

Fees charged in residential homes are more varied, because these 19 homes have set a wider range of fees depending on the features of the room and also whether the resident is self-funding or supported (Table 6). They also differ in the way they treat Attendance Allowance. Some homes set their fee and expect only this amount from residents, whereas others set a basic fee and if the resident qualifies for AA they require this also, on the grounds that the cost of caring for someone dependent enough to qualify for AA is higher and the AA offsets this higher cost. From the fees reported to the OFT in its survey:

- Government residential homes charge the least at £321 and AA is not paid to residents in such homes
- voluntary sector residential homes charge an average of £382 with a range from £346 to £426 for a self-funding resident and an average of £378 with the same range for a supported one
- private sector residential homes charge an average of £411 with a range from £345 to £500 for a self-funding resident and an average of £381 with a range from £345 to £486 for a supported one

The average total fee received per resident per week, taken from the 2005 accounts of the independent sector residential homes, was £387.30 prpw with a range from £281 to £558 prpw.

4.4 Fair Price for Care

The OFT prepared indicative costs by applying the Fair Price for Care model to the Isle of Man market. This model was published in 2002 by the Joseph Rowntree Foundation and subsequently updated. It is currently used in the UK to set the prices that Councils with social services responsibilities (CSSRs) should aim to pay for the care home places that they purchase. The model builds up the fair price by looking at the costs incurred by the best and most efficient providers and applying local factors as appropriate. It then adds an allowance to give the operator a fair return on his capital employed in the business.

The theory behind the model is explained in the fair price report and the calculation is set out in the Excel toolkit workbook that accompanies it. Each care home has a slightly different cost structure and will find cost items that do not agree with its experience, but overall the Office considers that the model fairly reflects the costs of an efficient care home operator based in the Island.

The model produces a fair price for a care home place that meets the standards required by the English National Minimum Standards for new care homes and extensions to existing ones, including those relating to the physical environment. Most homes in the UK, other than the very newest, do not meet all of these physical standards and aspects such as room sizes and corridor widths cannot be changed. The model allows for this by introducing a floor level of fee that is paid to homes that fully meet the required physical standards for existing English care homes but do not meet the physical standards for homes built or extended since April 2002. CSSRs are able to set a fair fee for each care home – and differing beds within a home – between these levels by applying one of a range of weighting formulae.

Table 7 The upper and lower fair price levels for Island care homes by registration category

	Post-April 2002 compliance	Pre-April 2002 compliance
Nursing home	£628	£546
Residential home using actual hours	£523	£440
Residential home using JRF hours	£499	£417

Source: Fair Price analysis undertaken for the OFT

The model came up with a fee of £628 per week for a nursing home that meets all of the English national minimum standards (NMS). The Island's Inspection Unit does not yet require such demanding physical standards and it is thought unlikely that any nursing homes have been built to that specification although they were not surveyed. The full adjustment for not complying with post-April 2002 physical standards brings the fair fee down to £546.

Using the hours recorded in the survey gives the fair price for a fully compliant residential home to be £523 and one that does not comply with the post-April 2002 English NMS for physical environment at £440. From observations made of the physical structure of the residential homes while visiting them it is considered probable that an average would be

nearer the lower end of the range. Generally the model can be generous to small converted residential homes as the capital value of the land and buildings is based on a new-build home and exceeds the actual value of the site and home.

It was noted above that the reported staffing levels in residential homes seems high and so the Office re-ran the model using the benchmark hours per resident per week used when setting a fair price for CSSRs. This came out with the lower figures shown in Table 7.

The Office re-ran the fair price model substituting only the pay rates and hours provided in the DHSS residential homes for the usual parameters and found upper and lower fair price values of £729 and £647, for homes that charge fees of £321.30.

4.5 Comparison of fair price with actual fees

Nursing fees charged in Island homes range upwards from £640 at the time of the survey. This fee is £12 above the upper fair price level and £94 above the lower level.

Residential fees vary widely, even without the complication of Attendance Allowance. The Government homes, which have the highest costs and charge the lowest fees, charge well below the fair price. Independent residential homes received on average £387 prpw in the year ending in 2005. This average fee is below the current fair price whichever way it is calculated, but some homes charge maximum fees that are well above the pre-April 2002 compliant level derived from the model. Attendance Allowance if awarded and if not already included in the room fee could take the residential home's receipts even higher.

4.6 Comparison of UK regional fees with actual fees in the Isle of Man

Care home fees in the UK reflect the practice of social services buying some places in a care home at well below the fair price that the Laing & Buisson model would suggest and care homes also selling rooms to self-funding residents above the social services level. It is not unusual for self-funding residents to subsidise those who are supported and a care home with a high proportion of self-funding residents will not have to struggle as would one that relies mostly on fully supported residents.

Nursing home fees in the Island fall between £640 and £688 per week. The best figures available for comparison with the UK are those recorded by Laing & Buisson in its annual surveys and the most recent ones from 2006 are shown in Table 8. Average nursing fees in the Island are higher than Scotland, Wales, Northern Ireland and all English Government Office regions except for Greater London and the Home Counties. The Island's current Income Support payment of £640 for nursing fees is nine percent above the 2006 average for the whole of the UK.

Although the level of nursing home fees is higher than the model suggests it should be, this ranking among the regions is not surprising. The major component of a nursing home's costs is labour. In June 2005 an average full time employee in the Island earned £489 per week; comparable figures for the UK from the Office of National Statistics place earnings in only London, the South East and the East above this level.

The average fee received by the Island's residential homes in 2005 at £387 placed it fifth among regions of the UK, behind Greater London, the Home Counties, the East and the South West.

Table 8 Average fees charged to a mixture of self-funding and supported residents for a single room in UK private care homes for older people, 2006

UK Government Office region	Nursing care	Residential
North	£463	£366
Yorkshire & Humberside	£509	£381
North West	£537	£358
West Midlands	£568	£368
East Midlands	£553	£409
East Anglia	£572	£403
Northern Home Counties	£746	£478
Greater London	£725	£482
Southern Home Counties	£694	£454
South West	£622	£423
England	£594	£402
Wales	£499	£354
Scotland	£510	£425
Northern Ireland	£500	£314
UK	£585	£420

Source: Laing & Buisson's *Care of Elderly People Market Survey 2006* (pre-publication)

4.7 Comparison of nursing home fees with residential home fees

Nursing home fees of £640 to £688 are over £250 more than the average residential home fee of £387. The main differences between nursing home fees and residential home fees are nursing hours, perhaps extra care hours, medical supplies and (in the Island) incontinence products. The model estimates a cost of £101 for nursing hours, an extra £2.75 for medical supplies, £8.05 for incontinence products, less £0.76 for fewer care hours. Thus the difference between nursing home fees and residential fees should be around £110 for medical cost factors plus some more to allow for the differences in physical structures of the care homes and the costs of maintenance. The value of the residential buildings is likely to be substantially lower than the purpose-built nursing homes but even so the actual £250-300 difference is more than would be expected.

5. Competition and pricing strategies

5.1 Competition in the nursing home market

There is only limited competition in the nursing home market, for two main reasons. In areas where there is a choice of nursing homes with vacancies, but no competition on price, the potential resident has to make a decision based on the home's reputation and which he prefers if he is able to visit each one.

5.1.1 Limited competition due to geographical factors

Location is an important factor for older people when choosing a care home. For example, in a recent survey of residents in care homes for older people undertaken for the UK Office of Fair Trading (UK OFT), 57 per cent said that they chose their current care home for its location, because it was near to friends or family or their previous home. Older residents are reluctant to relocate across the Island to enter a nursing home, largely because they will miss the familiar environment, they may lose touch with friends and relations, and those that they do maintain contact with would have a more difficult journey to visit them.

Table 9 compares the population of the four regions in the Isle of Man with the distribution of care homes. A prospective resident has a limited, if any, choice of local nursing homes except in the east of the Island where there are four and between two in the north. There is no provision for a nursing home in the west of the Island and only 1 residential home yet the west has 12% of the resident population. Beneath the table, there is an explanation of which census district fell into which regional grouping.

Table 9 Geographic availability of care homes

District	Population	Percentage	Nursing Homes	Residential Homes
North	12,502	16%	2	5
South	14,470	19%	1	2
East	39,933	52%	4	11
West	9,410	12%	0	1
Total	**76,315**	**100%**	**7**	**19**

North	Ramsey, Andreas, Maughold, Ballaugh, Bride, Jurby, Lezayre
South	Castletown, Port Erin, Port St. Mary, Arbory, Malew, Santon
East	Douglas, Onchan, Braddan, Lonan, Laxey
West	Peel, German, Marown, Patrick, Michael

Population figures are taken from the 2001 Census, Economic Affair Division, Treasury

By contrast, residents in the UK have a greater choice. The UK OFT found that, on average, there are twelve care homes within a three-mile radius of a randomly drawn selection of postcodes in the UK and within a five mile radius 26 homes on average. However, these figures are heavily influenced by dense urban areas and it also found that 32 percent of postcodes have five care homes or fewer within three miles.

The older population of Douglas and Onchan in the east of the Island do have a choice of geographically well-located nursing homes, but for most of the other 48 percent of the population the choice is limited.

Even if there is more than one conveniently-located nursing home, occupancy rates in the Island's nursing homes are high, above the levels needed to give a reliable choice and the ability to absorb fluctuations in demand. A prospective resident may have to be admitted to a home where there is a vacancy rather than where he would like to go.

5.1.2 No competition on price

Nursing homes have accepted (until recently) the Income Support, higher rate Attendance Allowance and most of the Personal Allowance funding offered by the DHSS as an appropriate level of funding for supported residents. The homes' policy is to charge self-funding residents the same sum, apart from small variations due to particular room features. They present two main arguments in favour of this:

- it prevents a two-class system arising in homes
- the fees paid by the DHSS, while not always pleasing to the nursing home operators, have allowed the businesses to remain viable at the levels set by the DHSS.

Nursing homes in the Isle of Man do not, therefore, compete on price.

In the UK nursing homes set their own fees for self-funding residents in accordance with local market forces and the characteristics of the home. Councils with social services responsibilities (CSSRs) set their own upper limits on the fees they will pay; unlike the Island's Income Support for people in care homes, CSSRs' budgets are limited and must be targeted at the highest priority cases. If the home's nursing fee is lower than the CSSR maximum, the client is placed at the home's standard fee. If the home's nursing fee is higher than the CSSR maximum one of the following happens:

- the CSSR persuades the home to take the client at its maximum fee
- the CSSR purchases the place at a rate above its maximum (a fee exemption) with a senior manager's authority
- friends or relations pay the difference between the maximum the CSSR is willing to pay and the minimum the home will accept (third-party top-up)
- the home refuses to take the client.

In the UK one of the main factors that determines which of the above events occurs is the occupancy level of the nursing home. When homes have spare capacity they are more likely to fill it with lower-paying supported residents rather than leave the bed vacant while awaiting a self-funding one.

5.2 Developing competition – the issues

5.2.1 Competition from alternatives to nursing homes

One obstruction to competition between nursing homes is the shortage of spare capacity, which means that homes do not have to compete with each other to fill vacant places.

It is not very likely that any new nursing homes will be built in the Island in the near future. There are few sites available and the one site that is on offer is highly-priced. Assuming that any new home would have 50 beds, it would lower average occupancy in the Island from 96 percent to 85 percent. But, as a new home would have a local catchment area the local occupancy rate would be lower than this, depending on where it was built and how far older people currently have to move to enter a care home. At current patterns of care the ASD calculations suggest that it would be 2016 before the growth in the number of older people brought occupancy rates back to their present level. Furthermore few, if any, of the independent sector residential homes are structurally suitable for conversion to nursing homes.

It is more likely that competition would come from residential homes, extra-care housing and intensive homecare. Each of these could offer an alternative for some, although not all, nursing home residents. The potential for competition from residential homes and intensive homecare is already present, but so far there is no extra-care housing in the Island.

5.2.2 Competition on price

With price competition the fees charged to self-paying residents would be separated from those paid by the DHSS in the form of benefits and nursing homes would set them according to local circumstances and market pressures. The Office would expect these fees to be around, but probably slightly more than, the fair price that the DHSS would pay. (This is because a major purchaser, especially if contracting for a block of beds, would reduce the risk for nursing home operators and so the rate of return such an operator would expect would be lower than the rate used in the fair price model.) If the link between DHSS rates and self-pay rates were broken in the absence of competition from other homes, or from alternatives to nursing homes, there is the risk that they would rise substantially higher than the fair price level.

5.2.3 The role of the Nursing Homes Association

The Isle of Man Nursing Homes Association (NHA) is a loose association of nursing home operators but is not a corporate body and has no formal structure, paid officers or constitution. Although the OFT refers to the NHA in this report for convenience, in fact in doing so the Office is referring to the actions of the individual nursing home operators acting together. The NHA represents the operators in negotiations and discussions with the DHSS.

The Office recognises that it is reasonable for people undertaking similar commercial activities to discuss issues relating to their industry and also that it is usually more practical and efficient for the DHSS to meet the operators together rather than individually.

The nursing home operators meet to discuss the position the NHA will take in its dealings with the DHSS. This was confirmed in the letter of 11th November 2005 from Mr Ned Carroll for the NHA to the Minister for Health & Social Security, in which he wrote *"Prior to the above meeting the operators had their own meeting and discussed their concerns. We all agreed on the issues that we would like to bring to your attention……"*.

The concern arises from certain aspects of the NHA's activities:

- because the nursing homes charge similar fees, and because the DHSS benefits levels determine the fees paid by self-funding residents, the NHA has removed price competition from the market
- the NHA members acted together to apply pressure to the DHSS in relation to the fees, rather than merely presenting the reasons why an increase was desired. (From the same letter of 11th November "*In the event that the DHSS are not in a position to meet an increase of this magnitude regrettably it will be necessary to surcharge our residents in order to make good the shortfall and maintain our existing high standards of care*.")

These concerns are less likely to arise in the UK, because:

- fees for self-payers are usually different from those paid by Councils with social services responsibilities (CSSRs)
- CSSRs specify the maximum fee that they are willing to pay, but in practice they sometimes pay above or below that on an individual basis
- fees for self-funding residents vary between homes and sometimes within homes.

Even so, local care associations are careful to avoid breaching competition law and in paragraph 5.3.4 the Office mentions occasions when this has become an issue in the UK.

5.3 Fee negotiations

5.3.1 Usual Isle of Man practice

The Isle of Man Nursing Home Association (NHA) *inter alia* represents the operators in negotiations and discussions with the DHSS.

It is customary for officers from the DHSS and representatives of the NHA to meet informally in November to discuss the issues and costs facing nursing homes and for the NHA to propose the level of fee increase it considers necessary to cover the cost increases. Social Security officers then recommend to the DHSS the level of Income Support that should be payable to residents of nursing homes from the following April. The DHSS passes its proposal to the Treasury, which presents these to Tynwald in the January or February. The process does not include further consultation with the nursing home operators, but the debate in Tynwald is held in public. The decision of Tynwald is implemented in April.

Tynwald does not always meet the demands of the NHA. For example, whereas in 2004 the NHA called for an increase of fifteen percent in fees from April 2005, the maximum Income Support allowance for a person resident in a nursing home was increased by six percent.

The rate of increase in the maximum Income Support has been consistently above inflation. Table 10, produced in response to a question in the House of Keys, shows that between 1998 and 2006 the increase in maximum Income Support for a resident in a nursing home was 68 percent, compared with an increase in RPI of 30 percent. Around 60 percent of a nursing home's costs are staffing, however, and as earnings tend to outstrip prices it may be fairer to compare a composite figure comprised of 40 percent prices and 60 percent earnings. Treasury figures show that the basic adult rate (excluding overtime) hourly pay for full-time female manual employees rose by 39 percent during that period, partly owing to the introduction of the minimum wage, and such a composite figure would have shown a 33 percent increase in nursing home costs while maximum Income Support rose 68 percent.

Table 10 Increases in Income Support rates for older people in nursing homes compared with RPI, 1998-2006

From April	IS Rate £	IS increase £	IS increase %	RPI increase
1998	333.15	8.75	2.7%	2.7%
1999	348.15	15.00	4.5%	2.4%
2000	364.15	16.00	4.6%	2.3%
2001	428.47	64.32	17.7%	3.3%
2002	452.48	24.01	5.6%	1.2%
2003	476.42	23.94	5.3%	2.6%
2004	502.60	26.18	5.5%	3.0%
2005	532.77	30.17	6.0%	6.0%
2006	559.44	26.67	5.0%	3.2%
Cumulative			68%	30%

Source: Hansard, House of Keys 28 March 2006, Q 7.

5.3.2 The 2005/06 negotiating round

There was a meeting between officers of the DHSS (David Braide and Darrin Oldam) and representatives of the Isle of Man Nursing Homes Association (NHA) at Elder Grange on 8th November 2005. Abbotswood House was not represented there, as the owners were unavailable, but the other nursing homes were:

- for Elder Healthcare: Ned Carroll, Michelle Cubbon, Carol Quayle, Tosh Cairney, Jerry McCreedy
- for Brookfield Nursing Home: Eddie Wade and Neil McLean
- for Kings Reach/Saddle Mews Nursing Homes: Maureen Mills
- for Marathon Court Nursing Home: Jessie Buttery.

It was put to the DHSS officers that, on account of rising fuel, staff and insurance costs, and the costs of meeting the latest fire regulations, the NHA would have to consider increasing the weekly fees for their respective homes from £610 to £695, that is by 13.9 percent. The Office has since been told that this figure was calculated by one leading figure in the NHA who has an accountancy background and most of the other operators were willing to accept his estimate that 13.9 percent was the level of increase needed to compensate for increased costs and the pay rises that the homes wished to give their staff. This was not an unusually high request when compared with earlier years and it was not stated at that meeting that the nursing homes would be unable to maintain operations if the DHSS was not prepared to increase social security benefits to a level sufficient to fully meet their proposed 13.9 percent increase.

Mr Ned Carroll, on behalf of the NHA, wrote a letter dated 11th November 2005 to the Minister for Health and Social Security, which was received on 21st with a copy to the Director of Social Security. This set out the reasons for the increase and stated that *"In the event that the DHSS are not in a position to meet an increase of this magnitude regrettably it will be necessary to surcharge our residents in order to make good the shortfall and maintain our existing high standards of care.*"

There were no further discussions between the Department and the NHA about the future level of fees in the period between the meeting held on the 8th November and the announcement by some nursing homes of the £695 fee on 10th March 2006.

The DHSS advised nursing homes and residential homes of the proposed increases in Income Support with effect from 10th April 2006 by letter dated 21st February 2006. The homes needed to be notified ahead of the March Tynwald sitting (at which the Minister moved the Social Security Benefits Uprating Order 2006) in order that they could give four weeks notice of an increase in fee from 10th April 2006 to their residents or their representatives. The letters made it clear that the proposed rates were subject to Tynwald approval.

On or around the 10th March 2006, four of the nursing homes notified resident or their relations that they were increasing fees to £695 per week with effect from April 2006 (Abbotswood House Nursing Home, Elder Grange Nursing Home, Marathon Court Nursing Home and Springfield Grange).

The DHSS made its recommendation for an increase and the Treasury passed on this proposal for Tynwald to discuss. Tynwald debated and approved a 5 percent increase in Income Support for people in nursing homes and 6.4 percent for those in residential homes on 22nd March 2006.

Kings Reach Nursing Home and Saddle Mews Care Home, both of which are operated by Four Seasons Health Care, gave notice to their residents on 10th March 2006 that they would be increasing their fees to £640 per week from 10th April.

The DHSS met with the NHA on 4th April 2006 when it was agreed that fees would be increased by five percent with effect from 10th April and would remain at that level until 1st July. The DHSS and the NHA met again on 27th April 2006, but a meeting scheduled for 16th June 2006 was cancelled by mutual agreement principally because the OFT investigation was underway by then.

5.3.3 Implications of the proposed higher fees

Fees at £695 would be £47.31 higher than the maximum £647.69 available to someone receiving the full Income Support, Attendance Allowance and Personal Allowance, even assuming they leave themselves nothing for personal expenditure. The cost to the DHSS of paying this extra £47.31 for the 140 supported residents in the five nursing homes (at March 2006) would be approximately £344,000 per annum and if Income Support were to be raised further to allow residents what appears to be considered the minimum reasonable sum for personal expenditure, £7.69, the extra cost to the DHSS would be just over £400,000.

The approximately 130 self-funding residents in these five homes would have to find an extra £55 per week each if fees went from £640 to £695, costing them or their relations approximately £372,000 per annum.

5.3.4 UK practice

In November 2003 UK Health Minister Stephen Ladyman criticised care homes for threatening to refuse to admit local authority residents in order to force up council fee levels. Speaking at one of Laing & Buisson's conferences, he said: “We are aware that some providers are trying to establish local cartels which, by threatening to refuse to take any more local authority-funded residents, attempt to force local authorities to increase the level of fees they pay to care homes. Such activities will only serve to cause older people and their family's unnecessary worry and anxiety and will get no support from the government. Forming cartels may well be breaking the law and I expect the law to be enforced if this is happening.”

A cartel in the UK is an agreement, usually secret, verbal and often informal, between businesses not to compete with each other. Typically, cartel members may agree on: prices, output levels, discounts, credit terms, which customers they will supply, which areas they will supply or who should win a contract. According to legal experts, the actions of some care home associations could indeed contravene *The Competition Act 1998*. A care home could be part of a cartel if it, together with other care homes, entered into discussions about pricing policies or trading terms with the NHS or local authorities. To remain within UK law care homes must always make sure their discussions are about their individual circumstances. In addition, the UK's Enterprise Act makes it a criminal offence for individuals to dishonestly take part in certain specified cartels, essentially those that involve price fixing, market sharing, limitation of production or supply or bid rigging.

The Minister's comments were perceived by some as a criticism of English Care, an organisation set up to fight for an increase in fees for care homes in England, and some of whose members had mooted the idea of trying to force the hand of local councils by not accepting any more local authority-funded residents.

A few weeks later several care homes in the Bury area were raided by the UK's Office of Fair Trading (UK OFT). According to a UK OFT spokesman the sites were searched and investigations were being carried out under sections of the UK's Competition Act. It is believed the UK OFT was looking for evidence of cartels operating in the area to fix residential and nursing home fees. A spokesman for the UK OFT said that it was simply gathering facts and that it could not be assumed that there had been an infringement. The UK OFT is unable to disclose any further information about this at the time of writing.

6. Views of others

6.1 Consultation process

In order to gather the views of local consumers and any other interested parties a public notice and press release was issued on 22nd May 2006. The notice was printed in full in the local newspapers that week along with an editorial piece and it was also publicised on Manx Radio. The deadline for receipt of comments was 16th June 2006.

Some 15 replies were received from the consultation process. The public notice issued was specified that the investigation was into the price charged by nursing homes in the Isle of Man. Anybody who had information which they believed was pertinent to the investigation was asked to contact the Office.

6.2 Views expressed

6.2.1 Erosion of savings

The most commonly raised point in the submissions received was respondent's concern over the issue of the erosion of an individual or family's life-time savings into the provision of a patient's long-term nursing care. Many are dissatisfied that family homes are sold to fund the provision of nursing care. A commonly voiced opinion was that people who had been financially prudent to buy a house or save over their life time were being penalised in their older age. Many also gave the example of the worry and concern felt by their relatives resident in the nursing homes, when they comprehended that any inheritance they had intended to leave had been used to fund their care.

One respondent wrote "*It strikes me that when you have saved all your working life, contributed insurance, tax etc. all your life, given up the luxuries in life and own your own house it does you no good at all. Neither of my parents much to my regret have ever been abroad because they considered it out of their reach - they did without - along with may others of their generation - but I wish they had.*"

This specific point was re-iterated by three other respondents. A wife writing with regard to her husbands presence in a nursing home wrote that she objected *"…to the taking of his lifetime saving to help pay for his nursing home care as he has worked for over 45 years and is now being penalised for having a small amount of savings."*

6.2.2 The funding question

Several respondents raised the issue of the method by which long-term nursing care is funded. One respondent made the suggestion of *"…a compulsory extra payment of NI contribution to cover any future nursing home/residential fees a person may require in old age and if they never required that service, the unused contributions used to assist those in genuine need…"*

Two respondents specifically raised the issue of the Coughlan judgement in the UK and how the adoption of its principles would affect the situation on the Island. One respondent gave the example of an 81 year old friend who suffered with Pulmonary Fibrosis. After spells in hospital, the doctors advised that he required 24 hour nursing care and had to move into a nursing home on health grounds. In response to an edition of the BBC documentary programme, Panorama, the respondent phoned the number given for a helpline (0800 155327) and received the opinion that in the UK, the gentleman would be classed as a patient and "*should not have had to sell his home and that he should be receiving free*

nursing home care. However, Panorama exposed the NHS is doing it's best to ensure that assessments lean heavily against any financial assistance and, despite there being cases with obvious primary health care needs, there are very few cases where NHS actually pays the cost of health care in nursing homes".

Another respondent raised the issue of patients who have been sent to EMI (Elderly Mentally Infirm) units of nursing homes by DHSS or hospital staff. The respondent writes *"…I would respectfully submit that all charges for this type of inmate as by the very nature of their confinement makes them a patient who has effectively been sectioned albeit not lawfully or indeed no better that a 'prisoner behind bars' and must therefore be a health provision and be covered by government health provisions."*

The issue of introducing the principle of the Coughlan judgement to the funding of long-term nursing care in the Isle of Man was addressed when the following motion, moved by the Minister for Health and Social Security, was approved by Tynwald at the April 2006 sitting.

The motion was "That Tynwald resolves –

> 1. to support the Department of Health and Social Security in its policy intention to provide assistance to those in nursing homes with the costs of nursing care, in accordance with the principle of the *Coughlan* judgement in the United Kingdom; and
>
> 2. that having regard to the public concern in respect of a possible significant increase in nursing home fees in the near future, the Department takes account of the outcome of the ongoing OFT investigation into Isle of Man nursing homes charges when assessing the levels of financial support which it would be appropriate to provide to residents of such homes."

Two respondents felt that the issue of funding services for pensioners fell low down on the Government's list of priorities. One respondent writes "*…I am very angry and upset that when it comes to meeting the needs of our elderly or infirm or mentally ill, the only time the state shows any concern, it is over the financial burden of this group of people."* The other respondent compares the cost of the provision of long-term nursing care with the cost to the DHSS of the provision of services for children and young persons taken into care. She writes "*The bill for babysitting some of these wayward teenagers (not necessarily Manx) round the clock seems to be huge but I wonder if the Government Departments asks their families for contributions?"*

6.2.3 Government failure

Four respondents voiced their opinion that the Government had failed them and their relatives by no longer providing long-term nursing care through the public sector. The opinions voiced are detailed below:-

- *"I blame the Government, who have failed to provide nursing homes, instead opting to rent beds from private nursing homes, who run them as a business and in a positions to do as they please."*

- *"Why is a nursing home operated by UK based company operating as a business? They want to make as much money as possible to satisfy their share holders and directors."*

- *"…I cannot believe the state did not recognise that due to their policy of closing all the government run nursing home facilities that these needs would have to be met by the private sector. This then leads to fees being charged that do not just cover the costs of providing the care but also generating enough fees to cover investors a return on the investments."*

- "*As there are no government funded Nursing Homes on the Island and there is no alternative – perhaps there should be."*

6.2.4 Quality of care

Whilst the public notice made it clear that submissions were requested in relation to the *price* charged by nursing homes, a number of respondents made observations about the quality of care. These were balanced between positive and negative observations.

Three respondent made positive observations about the quality of care received by patients and referred to *"…excellent care"* and the *"…kindness and understanding*" shown by staff. One wrote in observation of the care given to her husband at a nursing home *"… I am extremely pleased with the care and attention he receives."*

On the negative side, three respondents raised concerns about the quality of care being given. The most commonly expressed concern was an inadequate amount of staffing levels, especially at certain times of the day. Other concerns noted were the quality of food, the security of premises and the language barrier found when overseas staff are used.

Any concerns regarding the quality of care given in a nursing home should be referred to the care provider in the first instance. All homes are obliged to have a complaints procedure and the procedure should be on display in a conspicuous position in the home. Should a complainant feel uncomfortable in making a complaint to the provider then they can make a complaint to the DHSS Inspection Unit who are responsible for monitoring the standard of care given in the Island's homes.

6.2.5 Minimum Wage Committee

The Chairman of the Minimum Wage Committee forwarded the Minimum Wage Recommendation for 2005, where consideration was given to nursing home costs. In its Recommendation the Committee stated the following:-

"We have considerable concerns about funding in the Social Care sector. We feel that it is an anomaly that Care Homes, who in the last 5 years have suffered a considerable decrease in their numbers, should be funded by the Department of Health and Social Security in such a manner that does not appear to us to recognise and fully reflect the impact of the Minimum Wage. We also recommend that Government actively monitor the approach taken to the funding of social care. These difficulties in the Social Care sector have had a considerable influence on us in making our recommendation."

6.2.6 Voluntary sector residential home

A submission was received from the Chairman of a voluntary sector residential home. The home is a registered charity that has always relied on donations and legacies to supplement their income. They advise that they "…*cannot charge more than stated by local government, even through our staff ratio to residents is 2:1."* The home's concern is related to their funding, as they are increasingly failing to cover their operating expenses, they have to use capital which is reducing accordingly. They advise that it is many years since they have

received a legacy and that they do not make any profit at all. They close by saying "*This is a very grey area of financial aid for our type of home. We need the staff to look after the residents but we are not permitted to charge more for those who need the extra help."*

7. Findings

7.1 Growth in older population will increase demand

Unless patterns of care change, there will be a need for 34 new nursing beds and 52 residential beds for older people in five years' time as a result only of demographic changes and 84 new nursing beds and 126 new residential beds in ten years time.

7.2 Occupancy rates are high

An occupancy rate of around 90-92.5 percent is thought to be the optimum to allow flexibility in the market, to offer residents a choice of homes, to absorb sudden increases in demand and to ensure that homes run cost-effectively. Care homes in the Island, other than private residential homes, are operating above this level.

7.3 Apparent overuse of care homes rather than alternatives

If admissions to Island care homes were made to the same pattern as in the UK, there would be approximately 600 older residents in care homes rather than the 884 found in the Office's survey. This suggests that care homes are being used where extra-care housing or homecare would be used in the UK. The effect is that older people are unnecessarily losing their independence when they could be assisted to continue to live at home.

7.4 No "gatekeeping" to care home admission

While Social Services assesses the needs of people who may be admitted to its four resource centres, there is no requirement for a formal assessment of those who admit themselves to independent sector care homes, whether self-funding or funded by Social Security. This is a similar position to the UK before 1993. This may explain the observation above that there is an apparent overuse of care homes and also may lead to people going into a nursing home when a residential home would be more appropriate.

7.5 Limited competition in the nursing home market

There is only limited competition in the nursing home market, for a number of reasons:

- Islanders are reluctant to relocate across the Island to enter a care home, so residents have a limited choice of places
- Nursing home fees for supported residents are set at DHSS benefits rates and similar fees are charged for residents who pay their own fees, so there is no price competition
- Occupancy rates are high, so a prospective resident may have to be admitted where there is a vacancy rather than where he would like to go. There are few opportunities to increase nursing home capacity.

7.6 Wages are high in the Island

Pay rates are higher in the Island than in the nearby regions of England, Scotland or Northern Ireland. Payroll costs can account for more than half of a nursing home's costs, so this has a marked impact on care home viability and profitability. High wages are partly the result of a labour shortage in the Island, one effect of which has been to make it necessary to import overseas nurses to staff nursing homes.

7.7 Government care homes are putting pressure on independent sector care home wages

Government homes pay basic care staff 41 percent more than do private sector residential homes, and for care staff with an NVQ2 and senior carers Government homes pay 63 percent and 80 percent more than private homes respectively. The conditions of employment in Government homes are also more generous, with sick pay and a pension contribution, compared with independent sector homes that less frequently offer these benefits. This can not only cause staff to want more money when working in a care home, but can lead to them leaving for better pay in the Government homes.

For similar reasons many nurses leave to work in the Island's hospitals when their contracts with the care home are over. The rates paid to nurses in hospitals are higher than those paid in nursing homes and the terms and conditions tend to be more attractive.

7.8 Independent sector homes are resentful of the Government's care homes

There is a degree of resentment among independent sector operators that the DHSS residential homes are expensive to run but are subsidised so that they can charge low fees. The Office re-ran the fair price model, substituting only the pay rates and total hours provided for the usual parameters, and found upper and lower fair price values of £729 and £647, an indication of the cost of operating care homes that charge fees of £321.30.

7.9 Residential homes may be overstaffed

Average staffing levels in residential homes are 25 percent above UK benchmarks for large homes. This is not what would have been expected, given the large number of people in care homes in the Island compared with the UK and the implication that dependency levels are lower than are found in the UK. Despite the fact that small homes frequently utilise staff less efficiently this may imply that these residential homes have too many staff on duty and are needlessly increasing their costs. It should not be assumed that higher staffing automatically means a higher quality of care. The model has used the actual staffing level, excessive or not, to calculate the fair price.

7.10 Nursing home fees are high by various measures

Nursing fees charged in Island homes range upwards from £640. This fee is £12 above the upper fair price level and £94 above the lower level.

Average nursing fees in the Island are higher than those in Scotland, Wales, Northern Ireland and all English Government Office regions except for Greater London and the Home Counties. The Island's current 2006 price of £640 is 20 percent above the average for the whole of the UK in 2005.

Nursing home fees of £640 to £688 are over £250 more than the average residential home fee of £387. The difference between nursing home fees and residential fees would be expected to be around £100-£150 depending on individual factors such as the quality of the accommodation. The actual £250-300 difference is more than would be expected.

7.11 Residential fees vary

There is wide variation in independent sector residential fees, with the average fee being below the lower fair price level but some homes charging some residents close the upper fair price level. Care home fees should vary where there is competition, giving residents a choice between affordable homes for those with fewer resources and luxurious ones for those who wish to pay for extra comforts.

The average fee received by the Island's residential homes at £387 places it fifth among regions of the UK, behind Greater London, the Home Counties, the East and the South West.

7.12 Inefficiencies in nursing home operations

A relative lack of competition on price appears to have allowed nursing homes to have become less efficient in their operation than homes in the more competitive UK market. This is apparent from the wide variation in expenditure disclosed in the homes' accounts and the differences between some of the homes' costs and those in UK homes. For this reason not all of the higher fees become extra profit for the Island's operators and operating more efficiently could generate similar profits for the operators at lower fee levels.

7.13 DHSS funding of the nursing component

The Government is considering funding the nursing care component of nursing home fees through the Isle of Man DHSS, as the NHS in England has funded the nursing care of English residents through its registered nursing care contribution (RNCC) since April 2003. In England this is paid at three levels: high rate £133 per week, medium rate £83 and a low band from £40 to £83 per week. In Wales a flat rate is paid and in Scotland personal care is also paid for all residents.

According to the fair price analysis, eight hours of nursing care in the Island at a composite rate of £10.67 and with on-costs would amount to £101 per week on average. Fully funding this for the 352 nursing home residents identified in the survey would cost the NHS £1.85 million per annum. In England the full cost is not covered; the payment is seen as a contribution to the nursing care component.

When the RNCC was introduced in England there were complaints that some nursing homes, instead of reducing their charges to residents, merely added the RNCC to their current fees.

8. Recommendations

8.1 Supported fee levels

The Office's investigation has produced no grounds for awarding the 13.9 percent increase in Social Security funding demanded by nursing home operators.

Future increases should be considered in the light of the actual costs and fee levels rather than the increase in costs since the last fee rise.

8.2 Fees for self-funding residents

The Office is minded to advise nursing home operators that they should set fees for self-funding residents individually.

The current practice whereby all nursing homes set their fees for self-funding residents is anti-competitive and discussions between homes to set these fees may constitute a breach of the Section 8 of the Fair Trading Act 1996 and be regarded as an anti-competitive practice. Nursing homes should set their fees according to local market circumstances and with regard to their own cost structure.

8.3 Changes to care and market practices

It is not, of course, appropriate for the OFT to involve itself in Social Services policies and practices. The Office recognises that the Division's operations should put the welfare of their clients foremost and any actions to improve the operation of the market should be secondary to that. There are aspects of Social Services operation that do affect the nursing home market, however, and the Office has drawn attention below to areas where a change in DHSS practice or policy could improve the market. Some of these may be changes that the DHSS is already implementing or considering and others may be changes that the DHSS might now wish to consider in the light of this report. Many of the changes would bring practice in the Island more into line with UK practice.

8.3.1 The DHSS might introduce an assessment of older people's care needs before it funds them in a care home.

A needs-assessment to determine the form of care that is most appropriate for a client could be made mandatory before Social Security funding was available for people wishing to enter a care home. The effects of this ought to be to:

- improve older people's lives by encouraging them to retain their independence at home rather than enter a care home unnecessarily
- ensure that older people received the form of care that was most suitable for them. For instance, only those needing nursing care would be admitted to nursing homes; others might be better placed in residential homes
- reduce the capacity problems that are imminent in the nursing home market, if older people are currently inappropriately being admitted to nursing homes.

The OFT is aware that Social Services is exploring the possibility of introducing a single assessment process for use in certain cases and this might be extended to fulfil this wider need.

When needs-assessment was introduced in the UK in 1993 the responsibility for funding the care of older people was transferred from the non-cash-limited Social Security budget to the

cash-limited Social Services one. The DHSS might wish to consider the merits of doing the same in the Island, in which case the Division would become a commissioning body as well as a providing one.

8.3.2 The DHSS might offer a needs-assessment to any self-funding older person who wanted one.

Self-funding potential residents could be encouraged to undergo a similar needs-assessment, which would bring similar benefits to those Island residents who do not become clients of Social Services or Social Security. In this case the needs-assessment could be separated from any stigma associated with Social Security or needing help from Social Services by setting up an assessment unit within the DHSS but not as part of Social Services or Social Security. The assessment would be the same; the new unit need not know whether the person being assessed was self-funding or supported. The new unit would assess older people's needs on one or more scales and Social Services or Social Security would set the point on the scale(s) where they thought it appropriate to take responsibility for the care of those who would not be self-funding.

8.3.3 The DHSS might encourage the development of intensive homecare as an alternative to care homes.

Social Services are favourable to extra-care housing and the use of intensive homecare, both of which allow people to stay in their own homes. Research shows that this is the preference of older people if they have a choice. It appears that intensive homecare is not automatically considered as an alternative to care home admission by supported residents or by self-funding ones.

Social Services might wish to develop a formal strategy to expand the use of intensive homecare as an alternative to care homes. It might wish to commission some of the homecare for its clients from independent sector businesses, which would probably enable total provision to expand more rapidly that if the department tried to deliver it all itself.

8.3.4 The DHSS might encourage the development of extra-care housing as an alternative to care homes.

Social Services might wish to develop a formal strategy to introduce extra-care housing onto the Island, perhaps in partnership with the Department of Local Government and the Environment and relevant Housing Authorities. This could include a mixture of extra-care for rent and leasehold extra-care for purchase. The Division might seek partners, such as not-for-profit UK housing associations, to develop and/or manage the schemes. The Government might wish to make some of its land bank available for this purpose, land currently earmarked for sheltered housing could be re-designated for extra-care or sheltered housing schemes could be remodelled into extra-care.

8.3.5 The DHSS might base Income Support levels for people in nursing and residential homes on earnings increases as well as price increases.

Earnings generally rise more rapidly than prices, although this was not the case in 2004/05, and so taking earnings levels into account when setting fees would more fairly reflect the cost pressures on care homes. The Income Support levels for people in nursing and residential homes might be calculated as 60 percent of the increase in female manual earnings taken from the Treasury's Isle of Man Earnings Survey and 40 percent from the RPI for the appropriate period. At the moment the RPI is taken as the basis for the Social Security recommendation.

8.3.6 The DHSS might investigate the legislative and other changes that would be necessary to permit it to offer nursing care from its four residential homes if necessary.

The Department's four homes are distributed across the Island and may be large enough to allow nursing care to be provided as part of their service if it were necessary to meet demand or to give a choice of nursing place. This would be a temporary position as the cost of providing it would almost certainly be higher than in the independent sector homes.

8.3.7 The DHSS might quantify the reported problem of relations misappropriating or unreasonably delaying benefits payments to care homes and consider whether payments should be paid directly to the home rather than to a relation.

This abuse is detrimental to all parties, including those who misappropriate money and later regret it, and it may not require major changes to enable Social Security Division to pay the care home directly if the older resident is unable to do so.

9. DHSS Response

The Council of Ministers sought comments from the Department of Health and Social Security (DHSS) on the recommendations contained in the section above. Responses were received on behalf of the Social Services and Social Security Divisions.

9.1 Social Services Response

The Social Services Division state that they have previously met and have a commitment to meet again with the Social Security Division to consider a more flexible use of DHSS Income Support budget for the care of older people.

Recommendation 8.3.1
"The DHSS might introduce an assessment of older people's care needs before it funds them in a care home."

The points highlighted in this recommendation relating to the assessment of older people's care needs before it funds them in a care home have already been identified as key aims and objectives by the Division as this would offer choice to older people and also meet the Departments Community Objectives.

The Division's long term aims would be to create a budget for flexible use of community support and to create the criteria of eligibility/needs and the establishment of the consequential financial criteria. This might be based on a system similar to that pertaining in the UK and described in the Fair Access to Care Report (UK LA. Circular- 2002) which provides a framework based on needs that are described as: Critical, Substantial, Moderate or Low.

The immediate or short term aims include piloting a scheme subject to finance being available and making better use of existing financial support. This and other measures would mean they were able to offer more appropriate packages of care and greater choice to people. The Department would also need to consider and work through the need for legislative change.

Recommendation 8.3.2
"The DHSS might offer a needs-assessment to any self-funding older person who wanted one."

The DHSS welcomes the raising of this issue and agrees with the principle that all people should be professionally assessed for need to ensure their particular situation is addressed by the provision of appropriate care and support, regardless of who is paying for the services. The proposal will increase the volume of assessments required and involve resource implications and changes in organisational structure.

Recommendation 8.3.3
"The DHSS might encourage the development of intensive homecare as an alternative to care homes."

The DHSS points out that intensive homecare exists already, but in a limited format from within the Division. It is offered where possible and when demand can be met. Intensive care is considered and offered to those who are self funding either from in-house Home Care service, or from the Private Sector, where there are a number of agencies offering services from domiciliary care to 24 hour nursing care.

Access to a flexible budget would stimulate the market in the private sector but there would be a need for registration.

Recommendation 8.3.4
"The DHSS might encourage the development of extra-care housing as an alternative to care homes."

Consideration of extra care sheltered housing has already been raised with DOLGE and housing authorities throughout the Island via the Housing Seminars which have been involved the Department since last year.

Recommendation 8.3.6
"The DHSS might investigate the legislative and other changes that would be necessary to permit it to offer nursing care from its four residential homes if necessary."

The DHSS welcomes the raising of this issue and agrees with the principle that its own capacity for care in residential settings be developed to meet changing needs. However it questions whether it should enter a field currently catered for by the private sector and believes its resources may be better directed towards innovative services that prevent entry into expensive long term nursing care.

Recommendation 8.3.7
"The DHSS might quantify the reported problem of relations misappropriating or unreasonably delaying benefits payments to care homes and consider whether payments should be paid directly to the home rather than to a relation."

Care Homes have on occasions been paid directly, but this carries its own problems re giving the Provider ownership of the service user's finances. Already, the personal element of a claim which is allowed to benefit claimants is used in many instances to make up the cost of care, leaving the service user with only a pound or two for all their personal needs.

9.2 Social Security Response

Recommendations 8.1 and 8.3.5
"The Office's investigation has produced no grounds for awarding the 13.9 percent increase in Social Security funding demanded by nursing home operators."

"The DHSS might base Income Support levels for people in nursing and residential homes on earnings increases as well as price increases."

In relation to income support maxima, the OFT recommends that for people in nursing and residential homes future increases might be calculated using 60% of the increase in female manual earnings taken from the Treasury's IOM Earnings Survey and 40% of the annual increase in the IOM RPI for the appropriate period.

Information supplied by the Economic Affairs Division suggests that there would be problems with this approach due to there being relatively few female employees in full-time manual work in the Isle of Man. Consequently there are very small numbers of females who carry out this type of work job included in the Earnings Survey. In the five years up to 2005, the number of full-time manual female employees in the Earnings Survey has varied from 34 to 46 compared with a total sample of around 750. The small size of the sample has resulted in wide fluctuations from year-to-year in average earnings of this group. The

increase in the average has varied from 1% in 2001 to 12% in 2002, 7% in 2003, 15% in 2004 and a fall of 10% in 2005. The small size of the sample together with the consequent inaccuracy of the sample estimate for this group makes use of this indicator questionable.

In formulating the Department's annual uprating proposals in respect of residential and nursing homes residents, the practice had been until 5 or 6 years ago to simply increase these in line with the increase in IOM Retail Price Index. However, representations were received from the nursing homes operators that the bulk of their costs were labour costs, and as such it was inappropriate to have regard to only the RPI. During the last 5 or 6 years we have had regard to both increases in average earnings on IOM (as a whole) and to increases in IOM RPI.

The increases afforded to income support maxima during this period have been by at least IOM RPI and (more commonly) where IOM average earnings have increased ahead of RPI, by the % increase in average earnings. If the Department had used, say, a formula which prescribed an equal split between the increase in average earnings and the annual increase in RPI, then the IS increases would have been less than those actually afforded. In hindsight, given the findings of the report, perhaps this is what the Department should have done and the Department could see merit in this approach for the future (if the Department is unable or not minded to use the fair price toolkit as the basis of future IS upratings).

Recommendation 8.2
"The Office is minded to advise nursing home operators that they should set fees for self-funding residents individually."

The Department agrees with this recommendation. It has been acknowledged at least within the Department that the nursing homes operators are setting standard fees for all residents (including self-funders) according to the maximum levels of IS available. As has been noted in the Laing and Buisson report, in the UK it is not uncommon for self-funders to pay more than the amount set by the relevant local authority in return for superior accommodation (e.g., a bigger room, an en-suite room, room with a view etc.). How much a self-funder is prepared to pay for their accommodation is a private matter between them and the service provider and is outside the control of the Department.

Recommendation 8.3.7
"The DHSS might quantify the reported problem of relations misappropriating or unreasonably delaying benefits payments to care homes and consider whether payments should be paid directly to the home rather than to a relation."

This recommendation is agreed in principle. There is already in place a working party to drive it forward. It is a complex matter requiring legislative and operational changes for Social Services (Inspections Unit) and operational and IT changes for Social Security. The Department envisages that it will take at least several months to achieve.