

Children's social care market study

Interim report

22 October 2021

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The Competition and Markets Authority has excluded from this published version of the market study report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

1. This report provides an update on the interim findings from our children's social care market study. These findings are based on our initial analysis and therefore do not necessarily reflect the positions we will reach in our final report. We are currently just over halfway through our study and will publish our final report by the statutory deadline of 11 March 2022.

Background to our market study

2. On 12 March 2021 we launched a market study into the supply of children's social care placements in England, Scotland and Wales. We did this because of concerns about a shortage of appropriate places for looked-after children and high prices paid by local authorities. Just over seven months on, we are now in a position to set out our interim findings and seek views from stakeholders.
3. Our decision to launch this market study was strongly influenced by the fact that looked-after children are among the most vulnerable people in our society, and the impact on them of poor outcomes in the placements market are potentially extremely far-reaching and life-changing. Our role, primarily, is to consider how social care placements operate as a market, for example by looking at overall levels of supply and the cost of these places, but we have remained acutely aware throughout that behind these issues are real and deep impacts on the lives of vulnerable young people throughout the country, and those who care for them. Risks that might be readily acceptable in other markets, such as a temporary mismatch between supply and demand, or the failure of certain providers, could have far more serious consequences in this market. We have taken an evidence-based approach, but in the full knowledge of the importance of getting the right outcomes for so many people, many of whom are young people who may have experienced trauma and neglect and whose future prospects are at stake.
4. Local authorities in England, Scotland and Wales have statutory duties in relation to the children taken into their care and are obliged to safeguard and promote their welfare, including through the provision of accommodation and care.
5. In discharging their duties, local authorities provide some care and accommodation themselves, and they purchase the remainder from independent providers, some of which are profit-making. Local authorities rely on independent provision more for residential placements than fostering placements, and more in England and Wales than in Scotland.

6. Children's social care is a devolved policy responsibility, with key policy decisions being made by the Welsh, Scottish and UK governments. We recognise that the placements market is just one aspect of the wider children's social care system and the economic considerations that we are focusing on are not the only relevant policy considerations. Our analysis, and any recommendations we make, will be based on the outcomes we see being produced by the placements market. It will, of course, be for the three governments and other stakeholders, taking into account wider policy goals and the context within their own nations, to decide how these should fit within their wider approach to the children's social care system.

Concerns about the placements market

7. The quality and appropriateness of the placements which children receive is extremely important to their experience of care and future outcomes. Regulators assess most residential placements and fostering services as being of good quality, and where they are not there is pressure for this provision to improve or leave the market. We do not see significant differences in assessed quality between local authority and independent provision.
8. However, the concerns about a shortage of appropriate places and high prices appear to be supported by the evidence we have seen so far. Based on our initial consideration of the way the placements market is functioning, we have concerns that it is contributing to poor outcomes for children and local authorities in two ways.
9. First, it seems clear that the placements market overall is not providing sufficient appropriate places to ensure that children consistently receive placements that fully meet their needs, when and where they require them. This is resulting in some children being placed in accommodation that, for example, is too far from their home base, does not provide the therapy or facilities they need, or separates them from their siblings. Given the impact that poor placement matches have on the well-being of children, this is a significant concern.
10. Second, there is evidence that some prices and profits in the sector are above the levels we would expect in a well-functioning market. Our analysis of the largest fifteen independent providers indicates that they are earning significant and persistent economic profits. Our analysis so far only covers providers responsible for around a fifth of placements in children's homes and slightly over half of fostering placements, so it is too early to give a definitive view on the overall levels of prices and profits in the sector. However, it does indicate that some providers are able to earn significant profits, paid for by local authorities, through the provision of children's social care placements. If this market were functioning well, we would not expect to see under-supply and elevated prices

and profits persisting over time. Instead, we would expect existing and new providers to create more places to meet the demand from local authorities, which would then drive down prices and profits. The fact that this does not appear to be happening suggests that there must be factors that are acting to deter new provision.

11. Identifying and addressing these factors should lead to a better functioning market, offering more places that better match the needs of looked-after children at reduced cost to local authorities. Our primary focus has been on doing this.
12. In any market, buyers and sellers must be able to interact effectively to generate positive outcomes. For buyers, they must be able to effectively signal their likely demand, now and in the future, and purchase the product or service that best fits their needs from those available. For sellers, they must be able to recognise and respond to buyers' needs, adjusting the amount and type of the product or service they supply to meet these. Our view is that the placements market, as currently constituted, inhibits the effectiveness of both of these functions: local authority engagement in the market is not as effective as it could be and there are barriers to new supply being brought to the market.

Local authority engagement with the market

13. Local authorities face challenges procuring the best placements for their looked-after children. In some respects, their position is inherently weak as they must make sure a placement is provided for every child, often under considerable time pressure. This difficulty is made worse by the ongoing under-supply of appropriate placements, meaning that local authorities may end up paying a lot of money for places which are not ideal matches for the children they are placing.
14. One key strategy that local authorities can adopt to strengthen their position as buyers is to try to move away from purchasing each placement completely separately, instead linking them, for instance by using block contracts or procurement frameworks, or by seeking bulk purchasing discounts. However, the extent to which local authorities are able to employ these approaches effectively is limited by the small scale on which they are operating. Smaller numbers make it less attractive for providers to limit themselves in these ways.
15. Local authorities in some areas have tried to overcome these difficulties by cooperating with each other to form joint procurement approaches of various forms, including via national bodies in Scotland and Wales. To date, however, the success of these approaches in improving local authorities' position in the market has been mixed; in England, for example, a large proportion of children's home placements are currently spot-purchased.

16. On top of these concerns, it is widely recognised that the purchasing decisions made by local authorities today do not provide current and potential independent providers with good information about their future needs. Given the under-supply of appropriate places, places may still be filled even if they are not in the best location or provide the most suitable environment for the children placed in them. As a result, providers face weaker incentives to create new provision that is more appropriate to children's needs.
17. This issue is made worse by the impact of timing; there is an immediate need to find appropriate placements for the children who need them. In the recent past, both the overall number of looked after children, and the needs of those children, has changed significantly. This is particularly important, because the creation of new placements (opening residential settings or recruiting foster carers) is both time-consuming and costly. As a result, when considering creating new provision, providers find it difficult to predict what the likely demand will be by the time those places are available to children.
18. Local authorities in England have a "sufficiency duty" to take steps to secure, so far as reasonably practicable, sufficient accommodation within each local authority's area to meet the needs of the children it looks after. Local authorities in Scotland and Wales have similar duties. These duties ought to operate over time to ensure that local authorities are generally able to place children locally in a setting that is appropriate to their needs. However, the concerns we have around under-supply of appropriate places in the market suggest that this is not consistently happening. There is clear variation in the extent to which local authorities act to encourage sufficient provision to meet the future needs of children in their care, suggesting that spreading best practice, resource and expertise could lead to some benefits. However, our current view is that there are intrinsic limitations to the extent at which these functions can be effectively carried out at local authority level.
 - a. As a pre-requisite to doing this effectively, local authorities must be able to effectively forecast the number and type of placements they will need in the future. The numbers of children that local authorities will place in a given year are relatively small and variable, particularly for residential care. This problem is magnified when we look at children who have particularly complex needs requiring very intensive support, where the numbers per local authority are very small and the provision is expensive.
 - b. Once they have made forecasts, local authorities have to be able to meet any expected shortfall by creating placements themselves or encouraging such provision from the independent sector. For local authorities considering block contracts or other means of providing certainty of take-up to potential providers, there is a trade-off between their potential to create new places

and the risk of paying for provision that is not needed by local children. In addition, for each local authority, the cost and management time of doing this market-shaping themselves can be significant in a context where the financial pressures on local authorities have increased significantly in recent years.

19. To address these persistent concerns about the inherent constraints that local authorities face in delivering effective forecasting, market shaping and procurement approaches, we are exploring potential recommendations around the need for larger-scale national or regional bodies with a remit to help ensure that children are able to access the right placements for them. There are a range of options to consider. At one end of the scale, these bodies could act as a support function for local authorities to carry out their own market-facing activities and collaborate with each other. At the other, the bodies could take on the responsibility for delivering placement sufficiency across their geographical remit, or even placing the children themselves, with associated budget. Similarly, local authority engagement with collaborative approaches run by these regional bodies could be voluntary or mandatory.
20. In examining these options, we recognise that effective engagement with the market is far from the only aim of the children's social care system, and there may be concerns that moving away from a locally-focused service may harm the effectiveness of support offered for children and families. These concerns are best assessed by other policymakers, regulators and stakeholders. However, it is important that we understand these concerns as we shape our recommendations.

Barriers to new supply being brought to the market

21. Returning to the second issue that we are concerned is inhibiting the effectiveness of the placements market, we believe there are factors that are reducing the ability of suppliers to efficiently bring new supply to the market to meet emerging needs. These factors may be leading to provision being created more slowly, or even deterred completely, contributing to the overall undersupply of appropriate places.
22. One area we have considered is whether there are aspects of regulation which may be counterproductive. Regulation is a vital safeguard to protect the interests of children who are in an extremely vulnerable position. Clearly, appropriate regulatory standards must be maintained.
23. Our concern is not that regulatory standards are too high. Rather, it is that some aspects of the regulatory regime may be unwittingly creating barriers to providers and local authorities responding effectively to future needs without generating

corresponding benefits for the children whose interests they are supposed to protect. The overall regulatory framework has been in place for more than twenty years, during which time the market has changed very significantly. The number of children requiring placements, and the complexity of the needs of those children, have increased significantly, as has the extent to which independent provision is playing a part in meeting those needs. It would therefore not be surprising if over this period some aspects of regulation have become outdated and inappropriate to the market as it currently exists.

24. To address this, we are considering potential recommendations around the reviewing of existing regulations that apply to providers of children's social care placements. Any final decision on regulations however must be made by a body that has the appropriate expertise and must focus on the protection of children's interests, which should be paramount. It should also, however, take a wider view of regulations, considering where they may negatively impact on the provision of placements. This will allow conclusions to be drawn on how regulation needs to be positioned to drive the best outcomes for looked-after children.
25. We also have concerns that a range of other barriers, including access to staff, recruitment and retention of foster carers, and property acquisition and planning processes may be restricting the ability of providers to provide more placements where they are needed. Policy approaches to the delivery of local children's services and a lack of funds, or uncertainty about funding levels, may also be creating barriers to additional local authority provision. While these reflect broader concerns about labour supply across the economy and the availability of housing and local authority funding more generally, we are investigating whether there are particular aspects of the children's social care system that make these issues especially problematic for the placements market.

Comparing types of provision: local authority and private

26. The considerations above have focused on how independent provision can be more effectively engaged in delivering the best outcomes for children and local authorities. We have also considered whether the involvement of certain types of provision, namely private (for-profit) provision and, within that group, private equity-owned providers, is itself a driver of poor outcomes.
27. First, considering quality, we have not at this stage seen any evidence of significant variations in quality between independent and local authority provision as evidenced by inspection outcomes. We have also seen that there is a significant impact on independent providers of receiving lower ratings. While both local authority and independent providers have told us that their provision is generally better, including in ways that are not consistently reflected in inspection ratings, those inspection ratings are the most comprehensive and comparable

assessments of quality available, and the CMA is not in an appropriate position to second-guess them.

28. Second, we have considered the cost to local authorities of purchasing placements from private providers versus providing them in-house, using our dataset from large providers and local authorities. We have analysed the average operating costs of a number of private providers and compared these to costs of some local authorities' own provision. We are aware that this does not give an accurate like-for-like comparison, mainly due to different average levels of need among the children placed in each type of provision. These outputs should not, therefore, be considered definitive, but are rather a basis for further consideration.
29. For children's homes across England, Scotland and Wales, we have provisionally found that the prices charged to local authorities for private children's homes placements are typically not higher than the cost of providing placements in-house. We note that these figures do not take into account the level of needs of the children and we understand the children placed in independent homes tend, on average, to have more complex needs. Larger independent providers are able to earn significant profits because their operating costs are lower than those of local authorities. This difference appears to be primarily driven by staffing costs, both higher numbers of staff per child and higher cost per staff member.
30. For fostering placements across England and Wales, by contrast, we found that the average price per child that local authorities pay for independent provision from the largest providers is higher than the cost of their in-house provision, reflecting both higher independent sector operating costs and the existence of a profit margin in the independent sector. As noted above, however, these figures do not take into account the level of needs of the children which we understand are generally higher in the independent sector. They also do not cover Scotland where for-profit provision of fostering agency services is unlawful.
31. These findings suggest that there are unlikely to be operational cost savings available to local authorities directly through a shift towards much more in-house provision of children's homes. In fostering, on the other hand, this appears more of an open question. We will investigate the drivers of these average cost differences, and any implications these may have for our recommendations between now and our final report.
32. Turning now to private equity-owned provision, we have heard concerns that the involvement of private equity is driving up prices, driving down quality and decreasing resilience in the sector. In terms of prices and quality (as measured

by inspection ratings) outcomes from private equity-owned provision do not appear any worse than those of independent provision in general.

33. In terms of resilience, we have seen evidence of particularly high and increasing levels of debt being carried by private equity-owned firms, which may leave them vulnerable to having to unexpectedly exit the market in the event of tightening credit conditions. We are less concerned about fostering agencies, as we would expect the foster carers to be able to transfer to another agency (independent or local authority) relatively easily. In the case of residential provision, however, transfer of homes to another provider could be especially disruptive for children. The homes could cease to operate as children's homes altogether, with potentially serious negative impacts on children and the ability of local authorities to fulfil their statutory duties. Therefore, the risk of unexpected disorderly exit as the credit conditions faced by highly-leveraged companies change, is one that needs to be taken seriously. To address this, we are considering recommendations focused on measures that would reduce the risk of unexpected disorderly exit (such as a financial oversight regime with clear limits on leverage and financial risk-taking) and mitigate its effects (such as step-in provisions for alternative providers).
34. Finally, we consider the view that we have heard from some stakeholders that high prices and profits in the placements market should be addressed by directly restricting the prices or profits of private providers. Although at this stage we share concerns that prices and profits for the large providers we have analysed appear higher than we would expect in a well-functioning market, we believe that this is fundamentally a symptom of the underlying problem of insufficient supply of appropriate placements and the difficulties faced by local authorities in engaging effectively in this market.
35. Any moves to restrict prices and profits before we have addressed the supply problem would not address the supply problem and would be very difficult to apply where the needs of children (and the costs of meeting them) is so varied. While this could reduce the prices paid by local authorities for independent provision in the short term, this may be at the cost of further reducing the range of placements available for children and/or creating other cost pressures for local authorities as they had to make greater in-house provision to fill the gap.

Next steps

36. We welcome feedback on our analysis of market outcomes, emerging conclusions on potential drivers of poor outcomes and early stage thinking on possible recommendations. Informed feedback will be extremely valuable to us as we move into the second phase of our study, where we will look to deepen our analysis and sharpen our understanding of any drivers of poor outcomes and

what can best be done to address them. In order to gain more structured feedback, we intend to hold a series of workshops with stakeholders to test our thinking and explore options.

37. Between now and the final report, which we will publish by 11 March 2022, we will develop further our thinking on the extent to which the placements market is delivering poor outcomes, the causes of these and the detail of any remedies required to address them.

1. Background

- 1.1 In the light of persistent concerns around high prices and an inadequate supply of appropriate placements for looked-after children, on 12 March 2021 we launched a market study into the supply of children's social care services in England, Scotland and Wales, specifically considering residential services and associated care and support, and fostering services. The purpose of the market study is to examine how well the current system is working across England, Scotland and Wales, and to explore how it could be made to work better, to improve outcomes for some of the most vulnerable people in our society.
- 1.2 Our [Invitation to Comment](#) set out the scope of the market study and the key themes we intended to focus on, namely: the nature of supply, commissioning, the regulatory system and pressures on investment. On 20 May we published responses to the Invitation to Comment on our [case page](#).
- 1.3 Over the past few months we have gathered information from a wide range of sources to develop our understanding of these particular areas and the children's social care sector more broadly, and to assess outcomes in the sector in terms of the availability of appropriate places, prices paid by local authorities and the resilience of the sector. We received 37 responses to our invitation to comment; we issued information requests to, and received responses from, the 15 largest providers of children's homes and fostering services and received 27 responses to our questionnaire issued to smaller providers; we also received responses from 41 local authorities to our questionnaire. In addition, we have met with a range of stakeholders with an interest in the sector and we have visited a number of children's homes.
- 1.4 This information includes data produced by the relevant regulators and national governments as well as that provided by large providers and local authorities in response to our questionnaires. However, we have found that the data available is generally not at a level of detail sufficient to be able to clearly answer some specific questions, such as whether there is sufficient supply of more specialised provision to meet a particular type of need in a particular location. As such, when we set out our provisional findings, we draw extensively on the experience and expertise of stakeholders in the sector to augment the available data.
- 1.5 On 9 September 2021 we published our decision not to make a market investigation reference. We are required to publish our final report on the market study by 11 March 2022. This interim report sets out our emerging thinking and we welcome submissions on the issues set out in this report by **12 November 2021**. In addition to the information we have already gathered,

those submissions will inform our findings and help shape our thinking on the nature of any remedies that may be appropriate, depending on those findings. We will seek to test our thinking with stakeholders, including via a series of workshops.

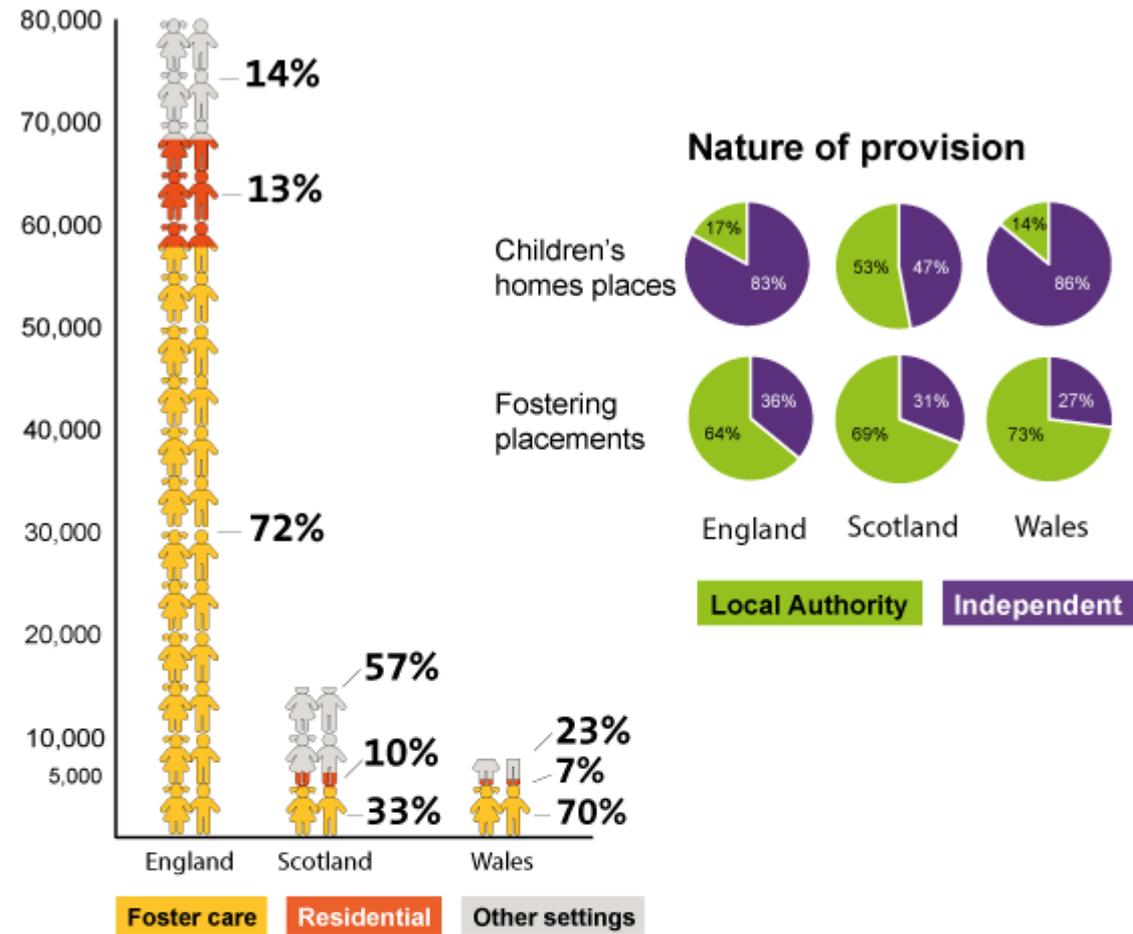
2. Overview of the sector

- 2.1 This section provides an overview of the children's social care sector in England, Scotland and Wales and highlights some of the key differences in the policy, legislative and regulatory frameworks in each nation. It also considers how the sector has evolved over time.

Ensuring children live in safe, caring and supportive homes

- 2.2 All children need a safe, caring and supportive environment. The children's social care system exists to ensure that all children have access to such an environment. For some children in England, Scotland and Wales, their family home is provided by foster carers and, for a smaller group, care is provided by children's homes. In some circumstances, in England and Wales, children may be placed in unregulated accommodation: independent or semi-independent living facilities where they may receive support but not care.
- 2.3 Children may be looked after for a short period of time or there may be a longer-term arrangement, and children may be looked after in different care settings at different times in their lives. For these looked-after children – some of the most vulnerable people in our society – the state, through local authorities, is responsible for providing their accommodation, care and support.
- 2.4 It does this in two main ways: local authorities may use their own in-house foster carers, children's homes and, in some circumstances, unregulated accommodation to provide accommodation, care and support – and tend to do so as their first choice where appropriate local authority placements are available – or they procure these services from independent (private and voluntary) providers.
- 2.5 The necessity of ensuring that children receive accommodation and care as the need arises places severe constraints on local authorities in how they must purchase placements. Time pressure can be immense as children may require placements urgently, often in response to a crisis. The requirements can vary considerably from case to case, due to the particular needs and circumstances of the child. The local authority must therefore seek the best option from among those placements that are available during a limited time period.

Proportion of children in foster and residential care



Policy context

<p>England Children's social care system under review, through Independent Care Review.</p>	<p>Scotland Implementation of The Promise following independent review of children's social care, including intention to eliminate for profit provision.</p>	<p>Wales Commitments made in the Programme for government 2021 to 2026, including intention to eliminate private profit.</p>
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Notes: In the chart showing the proportion of children in care, the 57% of children in 'other settings' in Scotland, represents a broader definition of care than is applied in England and Wales. In the pie chart showing foster placements in Scotland, the independent providers are wholly not-for-profit.

Looked-after children

2.6 There are currently just over 100,000 children in the care of a local authority ('looked-after children') in England, Scotland and Wales. Foster care is the most common form of care setting for looked-after children in each of these nations: over two-thirds of looked-after children in England and Wales live in foster care; around a third of looked-after children in Scotland live in foster care. 13% percent of looked-after children live in residential settings in England, 10% in Scotland and 7% in Wales. Such settings include children's homes, secure children's homes, independent or semi-independent living facilities and residential schools. The remainder of looked-after children live in a variety of settings, for example, living with parents, with kinship carers, placed for adoption or in other community settings.

Table 1: Children in care in fostering and residential settings in England, Scotland and Wales in 2020

Nos. looked-after children	<i>England</i>	<i>Scotland</i>	<i>Wales</i>
- Foster care	57,380 (72%)	4,744 (33%)	4,990 (70%)
- Residential settings	10,790 (13%)	1,436 (10%)	535 (7%)
- Other settings	11,910 (15%)	8,278 (57%)	1,645 (23%)
- Total	80,080	14,458	7,170

Source: CMA analysis of data from various sources.

Notes: In Scotland 16,530 children were looked after or on the child protection register: 14,458 were looked after, 2,654 on the child protection register and 582 in both categories. In addition to the statistics in this table, in Scotland, 31% of looked after children were placed formally with kinship carers in 2020 and 25% were looked after at home.

2.7 Children may become looked after for a number of reasons including as a result of abuse or neglect, family dysfunction, parental illness or disability and absent parenting, as well as where they arrive in the UK as unaccompanied asylum seekers.

Local authorities

2.8 Local authorities have statutory duties in relation to the children taken into their care and are obliged to safeguard and promote their welfare, including through the provision of accommodation and care. Where it is in the child's best interests, this should be provided locally in order to ensure continuity in their education, social relationships, health provision and (where possible and appropriate) contact with their family.

2.9 Specific statutory obligations on local authorities vary across England, Scotland and Wales, and we consider these further in Appendix B, including the "sufficiency duty" placed on local authorities in England, whereby local authorities are required to take steps to secure, so far as reasonably practicable, sufficient accommodation within the local authority's area which meets the needs of the children it looks after.

- 2.10 Each local authority is responsible for providing, either themselves or by purchasing from another provider, the placements they require. There are 152 such local authorities in England, 32 in Scotland and 22 in Wales.
- 2.11 A 2020 survey found that a large proportion of placements (51%) are spot-purchased by local authorities. In such cases the terms for each placement are determined on an individual basis. The survey found that in 47% of cases, local authorities purchase placements using framework agreements, which set out the terms (such as the service offered and the price) under which the provider will supply the relevant service in the specified period. A much smaller number of placements (2%) are block contract placements.¹
- 2.12 There are different approaches to commissioning and purchasing in each nation:
- There is no national commissioning body in England. The National Contracts Steering Group (NCSG) – comprising the Local Government Association (LGA), a group of local authority commissioners, independent providers and trade associations – was established over a decade ago, supported by the Commissioning Support Programme. It developed three national contracts for placements in schools, foster care and children's homes. However, the work of the NCSG ended when the Commissioning Support Programme came to an end, as discussed further in Section 4. Currently in England, some local authorities procure individually, while many form regional procurement groups with neighbouring local authorities. These groups vary in their design and purpose.
 - Scotland Excel is a public sector organisation operating on behalf of Scotland's 32 local authorities. It undertakes strategic commissioning of services and provides a wide range of national contracts for local authorities in Scotland, including contracts for the provision of fostering services and children's residential care. It is up to individual local authorities whether they secure placements through Scotland Excel, and not all local authorities do so for every placement they require to make.
 - In Wales, all 22 local authorities are members of the Children's Commissioning Consortium Cymru (4Cs). Since 2018 the Framework Agreements for both residential and foster care have been reviewed – the All Wales Residential Framework was launched in 2019 and the All Wales Foster Framework launched in April 2021.²

¹ Independent Children's Homes Association (January 2020), *State of the Market survey 6*, page 15.

² 4Cs response to the ITC.

Role of the market and nature of provision

2.13 In addition to local authorities making placements through their own in-house provision (where that is available), the market plays a significant role in the allocation of care placements that can be purchased by local authorities from private and voluntary providers.

2.14 Table 2 below shows that in England and Wales, the largest proportion of children's home places are provided by the private sector – around 78% and 77% respectively. In contrast, in Scotland only around 35% of places are provided by the private sector.

Table 2: Number of children's home places by provider type and nation

	England	Scotland	Wales
Private provision	7555	362	769
Voluntary provision	501	130	89
Local authority provision	1643	556	144

Source:

England - [Main findings: children's social care in England 2021](#)

Scotland - [Children's social work statistics: 2019 to 2020](#)

Wales - [Invitation to comment response: Care Inspectorate Wales](#)

2.15 The majority of fostering placements are provided by local authority foster carers – 64% in England, 69% in Scotland and 73% in Wales, as illustrated by table 3 below. However, a significant minority are provided by private providers (except in Scotland where for-profit provision is not permitted) and voluntary providers.

Table 3: Number of children in foster care by provider type and nation (2020)

	England (2019-20)	Scotland (31st Dec 2019)	Wales (31st Mar 2020)
Independent provision	19,395	1,514	1,355
Local authority provision	34,190	3,396	3,635

Note: "Independent provision" refers to care which is not provided by local authorities. Except in Scotland, it includes both for-profit and not-for-profit provision. For-profit provision of fostering services is not permitted in Scotland.

Source:

England - [Ofsted: Official Statistics Release](#), published 12 November 2020

Scotland - [Care Inspectorate: Fostering and adoption 2019-20 A statistical bulletin](#)

Wales - [Children looked after in foster placements at 31 March by local authority and placement type](#)

Policy context

2.16 Children's social care is a devolved policy area. The current annual cost for children's services in England is around £4.5 billion. In Scotland, the current annual cost is around £650 million. In Wales, the current annual cost is around £320 million.

2.17 All three governments are engaged in significant policy processes to consider wide issues relating to children's social care.

- In England, the [Independent review of children's social care](#) published its [case for change](#) in June 2021. The Review is aiming to publish its final recommendations by Spring 2022.
- In Scotland, the findings of [The Promise – Independent care review](#) are being taken forward by The Promise Scotland. This year it published its Change Programme ONE and [Plan 21-24](#). The Scottish Government has launched a consultation on a National Care Service (NCS) in Scotland, following on from the [Feeley review of adult social care](#). Amongst other questions, the [Scottish Government is seeking views](#) on whether the NCS should include both adults and children's social work and care services.
- In Wales, commitments around protecting, re-building and developing services for vulnerable people were made in the [Programme for government 2021 to 2026](#).

2.18 Both the [Scottish Government](#) and [Welsh Government](#) have expressed an intention to remove profit-making from the provision of care to looked-after children, as is already the case for fostering agencies in Scotland.

2.19 Each nation has its own statutory framework, regulations and guidance applicable to the children's social care sector and where relevant, we draw out key differences in this interim report.

Regulatory environment

2.20 Children's social care provision is highly regulated. England, Scotland and Wales have their own regulators – Ofsted,³ the Care Inspectorate Scotland (CIS)⁴ and the Care Inspectorate Wales (CIW)⁵, respectively. The regulators register and inspect children's social care establishments. Again, we draw out key differences in approach where relevant in this interim report.

Unregulated and unregistered accommodation

2.21 In England, an establishment is a children's home if it provides care and accommodation wholly or mainly for children.⁶ Unregulated accommodation is where accommodation is provided, but not care. Independent living (with or without support) and semi-independent living, fall into this category of

³ Ofsted is responsible, under the [Care Standards Act 2000](#), for regulating establishments and agencies that provide children's social care services.

⁴ The [Public Services Reform \(Scotland\) Act 2010](#) created the Social Care and Social Work Improvement Scotland (SCSWIS), known as The Care Inspectorate Scotland.

⁵ Children's home services and fostering services are included in the list of regulated services which are regulated by CIW under the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#).

⁶ [Care Standards Act 2000](#), section 1.

accommodation. Unregulated accommodation should not be confused with unregistered accommodation (which is where care is provided, but the provider is not registered; this is illegal). Placing children under the age of 16 in unregulated accommodation in England became illegal from 9 September 2021.⁷ In Wales, some accommodation is not regulated or inspected by the CIW.⁸ Unregulated accommodation for children is not permitted in Scotland.

Market oversight

2.22 Unlike for adult social care, in England there is no statutory market oversight scheme for the children's social care sector. In Wales there are statutory market oversight provisions,⁹ but these have not yet been commenced. However, the Welsh Government intends to develop a non-statutory market oversight framework. There is no formal market oversight regime in Scotland. Appendix B provides more information on market oversight.

Evolution of the children's social care sector

2.23 The number of children entering children's social care has increased over time, and the needs of those children have grown more complex. A number of parties told us that the level of individual need is both growing and evolving.¹⁰ There are also increasing numbers of older children being looked after.¹¹

2.24 There has been a trend towards smaller children's homes, as demand for smaller and solo provision has increased over time.¹² In 2020, the average new children's home in England had 3.5 places.¹³

2.25 [The Institute for Government](#) projected in its 2019 Performance Tracker that demand for children's social care placements would grow by 7 to 10% between 2018-19 and 2023-24.¹⁴ More recently, the [Social Market Foundation](#)

⁷ By virtue of [The Care Planning, Placement and Case Review \(England\) \(Amendment\) Regulations 2021](#).

⁸ The [Social Services and Well-being \(Wales\) Act 2014](#), section 81(6)(d). Please note paragraph 180 of the [Social Services and Well-being \(Wales\) Act 2014: Part 6 Code of Practice \(Looked After and Accommodated Children\)](#) which states that "placement in other types of arrangement (provided for in section 81(6)(d) of the Act) will usually only be appropriate for looked-after children who are over the age of 16"

⁹ Under the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) (sections 59-63). These are a series of provisions aimed at identifying those providers of regulated services that provide a service which, if it were to fail, would have an impact on the care and support market in Wales and would be the trigger point for the local authority duties to be exercised under sections 189 to 191 of the [Social Services and Well-being \(Wales\) Act 2014](#).

¹⁰ See eg [Outcomes First Group response to the ITC](#), para 1.1.2; [§].

¹¹ In the [Case for Change](#), The independent review of children's social care highlights an increase of 25% children looked after from 2009/10 to 2019/20 and, over the same period, an increase of 39% of children aged 16+.

¹² See, [Main findings: local authority and children's homes in England inspections and outcomes autumn 2020](#); [Hertfordshire CC response to the ITC](#); [Local authorities in the East Midlands response to the ITC](#); [St. Christopher's Fellowship response to the ITC](#).

¹³ [Main findings: local authority and children's homes in England inspections and outcomes autumn 2020](#).

¹⁴ [Institute for Government performance tracker 2019](#).

projected that, in England, “based on the growth seen in the last five years, we could expect that close to 77,000 children will be in foster care by 2030; an increase of more than 30% from now.” However, as discussed later in this report, we note that while demand for children's social care services is widely expected to grow, there are ongoing efforts to reduce the number of looked-after children, and several other factors that make it difficult to predict the level and profile of future demand with a high degree of certainty.

2.26 There has been an increase in private provision over time, with many voluntary providers leaving the sector (although there has been an increase in the number of voluntary children's homes in Scotland over this time). We heard that, in England and Wales, some local authorities have come back to providing some of their own residential care or are actively considering doing so. [The Fostering Network](#),¹⁵ which operates across the UK, noted that it had seen a considerable rise in the number of independent foster providers in its membership over the years, reflecting the expansion of the independent fostering sector in that time.

Structure of the rest of the interim report

2.27 In the rest of this interim report we:

- Set out our view on the outcomes we would expect a well-functioning placements market to deliver, then set out our emerging findings on how closely outcomes in the children's social care sector seem to approach this, assessing the evidence on the supply of appropriate places, prices and profits, and the resilience of the sector. (Section 3)
- Examine the possible drivers of those outcomes. (Section 4)
- Set out our provisional view on issues that need to be addressed and potential remedies. (Section 5)
- Ask a number of questions in relation to our emerging findings and potential measures and invite evidenced submissions in response to these questions and our emerging findings more generally. (Section 6)

¹⁵ [The Fostering Network response to the ITC](#).

3. Emerging findings – outcomes from the placements market

Outcomes that we would expect a well-functioning placements market to deliver

- 3.1 Children’s social care must aim to secure the right outcomes for children who rely on it. While the determinants of these outcomes go beyond the functioning of the market for placements, that market should contribute to, and certainly not detract from, the ability of the system as a whole to deliver these outcomes.
- 3.2 We have picked out four key outcomes that a well-functioning market for placements would support:
- First, the **supply** of placements must be sufficient so that places are available for children that need them, as they need them. These placements must be appropriate to the needs of the child and in the appropriate location.
 - Second, placements must be of sufficiently high **quality**, tailored to the specific, individual needs of each child.
 - Third, placements must be available at a reasonable **price**, taking into account the costs involved and the quality of the placements.
 - Fourth, the market should have sufficient **resilience** that it allows us to have confidence that the three outcomes above will continue to be met into the future.
- 3.3 In the remainder of this section we consider each of these required outcomes in turn and give our emerging view on the extent to which the functioning of the placements market is contributing to them.

Supply of appropriate places

- 3.4 The evidence we have seen so far raises clear concerns that the placements market is not providing sufficient appropriate places to ensure that children consistently receive placements that fully meet their needs, when and where they require them. This is resulting in some children being placed in accommodation that, for example, is too far from their home base, does not provide the therapy or facilities they need, or separates them from their siblings. Given the impact that poor placement matches have on the well-being of children, this is a significant concern. Local authorities go to great

lengths to ensure that all their looked-after children have a placement when they need it. The alternative to this – children not getting access to any placement – would be an unacceptable outcome, and it is crucial that this never happens.

3.5 Overall, there are more approved places than children deemed to be in need of placements. For example, in England at 31 March 2020 there were 89,200 approved fostering places and only 64% were filled (excluding those where data was not available).¹⁶ Similarly, the 700 children’s homes owned by larger providers that we collected data on had an average occupancy rate of 83%.

3.6 Simply having a number of approved places that is higher than the number of children requiring placements, however, does not mean that there are sufficient appropriate placements for children. First, the overall number of approved places is an overstatement of the number of places that are available at any one time:

(a) At March 2020 in England, 20% of approved fostering places were ‘not available’ (excluding those where data was not available).¹⁷ Approved foster places may not be available for a wide number of reasons including where foster carers are taking a break or are not able to take their maximum approved number of children, for example where this maximum is dependent on the children being siblings.

(b) Similarly, approved places in children’s homes are sometimes not available, for example, where a current resident’s needs mean it is not appropriate to place other children alongside them. The extent to which this is the case will fluctuate over time, and there is no consolidated data on the aggregate position.

3.7 Second, where a place is available, it may not meet the specific needs of individual children who require placements at that time. While comprehensive data about the appropriateness of placement matches for particular children’s needs is not available, we have seen evidence indicating that some children are not gaining access to appropriate placements due to a lack of supply. This may be because of a number of factors, including:

(a) Type of placement: local authorities have consistently told us that they may assess that one type of placement would be most appropriate for a child, but have to place them in a different type of placement due to lack of availability of the preferred option. For instance, this can result in

¹⁶ [Fostering in England 2019 to 2020: main findings.](#)

¹⁷ [Fostering in England 2019 to 2020: main findings.](#)

children for whom foster care would be most appropriate being placed in a children's home. As well as being a poor outcome for the child, this is more expensive for the local authority.

- (b) Location: As of March 2020, in England 44% of children in residential placements¹⁸ and 17% of children in fostering placements were over 20 miles away from where the child would call home (excluding those where distance is not known).¹⁹ As at March 2018, in England more than 2,000 looked-after children were over a hundred miles from home.²⁰ Stakeholders report concerns about children being placed across national borders, particularly placements from England into Scotland where children may be very far from home and in a different legal and educational system. While there can be legitimate reasons why it would be in a child's best interests to be placed out of area (eg to separate them from negative influences), we have been told that it is lack of suitable places available within a reasonable distance that is driving the out-of-area placement of children in many cases. Children moved away from their home area may suffer loneliness and isolation at being separated from their support networks, have their schooling disrupted and may experience difficulty in accessing social services.
- (c) Siblings: Local authorities also report difficulties in placing sibling groups together, particularly larger groups. Ofsted figures show that for fostering in England in 2019/20, 1400 siblings were not placed according to their plan.²¹ This represented 13% of all siblings in care. In Scotland, at 31 December 2019, there were 200 sibling groups separated upon placement in foster care, just over one in five of all sibling groups in foster care.²²
- (d) Type of care needs: We also heard from local authorities that it is especially difficult to find placements for children with more complex needs. Given the particularity of the needs involved, it is very difficult to quantify the extent to which this is happening in aggregate. However, high levels of placement breakdown may be due, in part, to difficulties with finding placements that are appropriate to the needs of individual children;

¹⁸ Secure units, children's homes and semi-independent living accommodation.

¹⁹ [National - Children looked after at 31 March by placement provider, placement type and locality](#) [Secure units, children's homes and semi-independent living accommodation: 4080/(4080+5190); fostering:9520/(9520+45230)]

²⁰ [Pass the parcel: Children posted around the care system](#), Children's Commissioner report, published December 2019.

²¹ [Fostering and adoption agency datasets 2019-20](#) [1430/10975]

²² [Fostering and adoption 2019-20: A statistical bulletin](#). We note, however, that the Scottish government has brought into force legislation to create a new duty on local authorities to keep siblings in care together, where appropriate. Part 13 of the Children (Scotland) Act 2020 and the Looked After Children (Scotland) Amendment Regulations 2021 mean local authorities have a duty to ensure siblings are supported to stay together, where appropriate. See also: [Keeping brothers and sisters together](#).

for example, in England, one in nine children looked after at 31 March 2020 had had three or more placements in the preceding year.²³

- 3.8 One particularly concerning indicator of a lack of supply of appropriate placements is the extent to which children appear to have been placed in unregulated accommodation, not as a positive choice but due to the lack of availability of a suitable regulated placement.²⁴ For example, between April 2018 and March 2019 there were 660 looked-after children under the age of 16 placed in unregulated accommodation.²⁵ In response to these concerns, the Department for Education has recently banned the placement of under-16s in unregulated accommodation and committed to introducing national minimum standards for these settings. Although this should improve the situation by ensuring that one important category of children who were being inappropriately placed in unregulated accommodation are no longer placed there (under-16s), it will not in itself address the supply constraints in the regulated sector that drove local authorities to place them there to begin with and may indeed make them worse.
- 3.9 Taken together, this evidence suggests that the market is providing insufficient places to ensure that local authorities can consistently get access to placements for children that meet their needs. This conclusion is supported by the fact that local authorities, particularly those in England, told us that when they are seeking to place children they often have little or no choice of placement, for example finding at most one available placement that fits their basic criteria, which means that factors such as quality, fit, cost and location are less likely to determine placement decisions.
- 3.10 It is important to note that, while this pattern reflects what we are seeing in aggregate, there are important variations, both geographically and within the whole cohort of looked-after children.
- 3.11 In England, concerns about lack of appropriate supply were widespread. For example, Ofsted told us that it does not believe local authorities are able to meet their sufficiency duties as indicated by, among other things, the use of unregistered provision, the number of children waiting for secure places, and the lack of appropriate provision for children with complex needs. Some regions have far more places than others, for example the North West has

²³ [LA - Children looked after at 31 March with three or more placements during the year, or aged under 16 at 31 March who had been looked after continuously for at least 2.5 years and who were living in the same placement for at least 2 years](#)

²⁴ [Reforms to unregulated provision for children in care and care leavers](#): Government consultation response February 2021.

²⁵ As these placements are typically for a short period, at any one time the number of under-16s in unregulated accommodation will be considerably less, for example there were about 100 at 31 March 2019.

23% of all places in children’s homes and 19% of looked-after children, while London has just 6% of places in children’s homes and 12% of looked-after children.²⁶ However, this does not necessarily translate into sufficient availability of appropriate places for children in areas of “oversupply”, such as the North West, due to children from outside the area being placed there. Also, analysis done by Ofsted in 2018 found that there was wide regional variation in how far children’s homes were located from where children originally lived. Children placed from local authorities in the South West and London had to travel 54 and 60 miles respectively, compared to an average of 36 miles for England as a whole and 21 miles for children from the North West.²⁷

3.12 In Wales, the situation appears to be similar. Stakeholders in Wales also report sufficiency problems particularly in fostering and to meet more complex needs. CIW told us that “most local authorities are struggling to meet their sufficiency duties and find suitable placements to meet the needs of children and young people. This adversely affects placement choice, permanency and stability and consequently outcomes for children.”²⁸ A lack of available fostering places has led local authorities to seek other residential care instead even if this is not as conducive to meeting needs. For residential care, the problem was considered to be not overall capacity but where that care is and having sufficient provision to meet the highest levels of need. As at March 31 2020, Welsh local authorities had placed over 1300 children in other local authority areas in Wales and almost 200 children outside of Wales.²⁹ Unregulated care is used when local authorities could not find regulated provision with timescales put in place to get the service registered.

3.13 In Scotland, by contrast, stakeholders expressed more limited concerns about the supply of placements. As in parts of England and Wales, however, we were told that there were difficulties finding appropriate care placements. We were told there is a general shortage of foster carers and particularly so for children with more complex needs, such as complex disabilities or older children with risk factors, and for family groups. Fewer concerns were raised around the overall capacity of residential care, but shortages were reported for residential care for children with disabilities and for children with mental health issues.

3.14 Moving to variations within the cohort of looked-after children, we received widespread feedback from local authorities that certain factors made it harder

²⁶ [Main findings: children’s social care in England 2021](#) and [Children looked after in England including adoptions](#).

²⁷ [Children’s Social Care in England 2019](#).

²⁸ [Care Inspectorate Wales response to the ITC](#).

²⁹ [Children looked after in foster care at 31 March by local authority and location of placement](#).

for them to find appropriate placements for children from the supply available in the placements market. These included:

- (a) Care needs: children with more complex needs are harder to place.
- (b) Age: for a given level of care need, older children are typically harder to place. This factor also plays into the difficulty of placing unaccompanied asylum seeking children.
- (c) Siblings: as noted above, local authorities can have difficulties placing sibling groups together.

3.15 In sum, there is wide-spread agreement from stakeholders, supported by the available data, that the market is currently failing to provide sufficient supply of the right kind to ensure that local authorities can consistently place children in appropriate placements to meet their needs. Within this picture, there are particular shortages of supply in relation to particular geographic regions and types of need.

Quality of provision

3.16 The quality of accommodation and care that children receive is of paramount importance to their life experiences. However, as with other social services, pressures to reduce costs can adversely affect quality. As a result of this, and the serious consequences of poor care provision for children, regulation is rightly used to ensure that required standards are being met. This is the most important role that regulation plays and we recognise that others conducting work on children's social care, including the Independent Care Review in England, The Promise implementation team in Scotland and officials serving the Welsh Government, are better placed to comment on the approaches to considering quality and the standards set by regulators and legislation.

3.17 Choosing a placement that best meets a child's need is an essential part of the local authority's role. However, assessing the quality of care is difficult for reasons including: the personalised nature of children's needs; the large number and small scale of residential and foster homes; the importance of matching children to the right type of care; that children may be vulnerable and not able to articulate their views; and the long-term nature of desired outcomes. This is part of the challenge for regulators in this sector and we have heard concerns about consistency and occasions where stakeholders do not consider that ratings reflect quality.

3.18 Despite these challenges, inspection outcomes are generally seen as an important measure of quality and used by local authorities when deciding

where to place children. Findings by the regulators suggest that the quality of care in most cases is high. In England at 31 March 2021, 81% of children's homes and 93% of fostering agencies were rated as good or outstanding.³⁰ In Scotland, in January 2021 CIS reported that "overall, the quality of fostering services was high"³¹ and it "evaluates most care homes for children and young people in Scotland as being good or very good."³² In Wales the CIW, in a recent thematic review of care homes for children, found "most children were receiving good quality care and support".³³ However, this still means that regulators consistently find that some provision does not meet the required quality standards and this shortcoming, of course, must be addressed.

- 3.19 Stakeholders consistently told us that there is a significant impact on independent providers of receiving lower ratings. At the extreme, regulators will close children's homes that do not meet the minimum required standards. Further, providers explained there were multiple other potential impacts on their business of having poor ratings, including "requires improvement to be good" ratings in England, which is above the minimum standard. One provider told us that "local authorities regularly take the position that they will not refer/place young persons into a service rated Inadequate or Requires Improvement" and "a number of local authority frameworks will also not allow services to be included" if they have received one of these ratings. Another provider highlighted the impact on their ability to recruit foster carers, because local authorities would generally use agencies rated Good or Outstanding instead, and staff, including that "some social workers did not want to be associated with a [requires improvement] rating." Providers consistently told us that they proactively seek to maintain high quality standards and would always work to improve poor ratings.
- 3.20 Local authorities placing children rely on a wider range of quality measures than inspection ratings, including: visits to homes by social workers and independent visitors, such as the monthly visits by an independent person in England³⁴ and by independent advocacy groups; and experience of past outcomes for other children. The nature of these measures means that we are not able to consider these systematically and, as noted above, others are better placed to do so.

³⁰ Of those with a full inspection outcome. Source: [Main findings: children's social care in England 2021](#).

³¹ At 31 March 2020, 85% of fostering services had evaluations of 'good' or better across all quality themes" Source: [Fostering and Adoption 2019-20: A statistical bulletin](#).

³² In 2021, 75.5% of local authority children's homes, 81.5% of private children's homes and 88.3% of voluntary or not for profit children's homes were graded good or better. Source: [Care Inspectorate Scotland response to the ITC](#).

³³ [Chief Inspector's Annual Report 2019-2020](#), Care Inspectorate Wales.

³⁴ [The Children's Homes \(England\) Regulations 2015, Regulation 44](#).

- 3.21 The situation is different for unregulated accommodation, which is not currently subject to inspection. Individual local authorities make their own assessments of whether unregulated accommodation places are appropriate for the young person they are placing there, and we have heard concerns around high levels of variability in quality, with some instances of very poor quality. Without an external judgement of quality, it will be more difficult for local authorities' activities in the placement market to encourage providers to improve quality. The Department for Education has announced that it will introduce national minimum standards for unregulated settings in England; while the detail on how these will be implemented is yet to be confirmed, this could improve the ability of local authorities to drive up quality via the placements market.
- 3.22 Our provisional view is that the inspection regimes in place for children's homes and fostering agencies, along with their own observations, provide local authorities with an evidence base on which to make judgements on the quality of care provided. These judgements exert a strong influence on their placement purchasing decisions, meaning that there are incentives on suppliers to rapidly improve provision or exit the market. While we are aware of arguments that the standards required by regulators ought to be higher, or inspections ought to be more frequent, these questions do not directly relate to the functioning of the placements market, and are best considered by policymakers, regulators and their independent advisers.

Prices and profits

- 3.23 Based on what we have seen so far, there is evidence that some prices and profits in the sector are above the levels we would expect in a well-functioning market. We have analysed data from the 15 largest private providers of children's social care across all three nations covering the period since financial year (FY) 2016. Our analysis so far only covers providers responsible for around a fifth of placements in children's homes and slightly over half of fostering placements, so it is too early to give a definitive view on the overall levels of prices and profits in the sector. However, it does indicate that some providers are able to earn significant profits, paid for by local authorities, through the provision of children's social care placements. If this market were functioning well, we would not expect to see under-supply and elevated prices and profits persisting over time. Instead, we would expect existing and new providers to create more places to meet the demand from local authorities, which would then drive down prices and profits. The fact that this does not appear to be happening suggests that there must be factors that are acting to deter new provision.

- 3.24 In this section we provide an overview of our initial findings. Appendix A, published alongside this report, provides more data on our methodology and on these initial findings.
- 3.25 Splitting our data by type of placement provided across the 15 providers, we found that:
- (a) For children’s homes, prices increased steadily across the period, from an average weekly price of £2,977 in 2016 to £3,830 in 2020, an average annual increase of 5.2% compared to average annual price inflation of 1.7% over that period.
 - (b) For fostering placements, prices remained broadly the same over the same period, at an average of £820 per week.
 - (c) For unregulated provision the underlying trend is affected by some of the large providers in our sample entering this segment around 2018, but since that point the average price has also remained broadly unchanged at £948 per week.
- 3.26 Changes in prices alone, however, do not in themselves provide an indication of how well or poorly the market is functioning. Price changes can also be due to changes in costs and many providers pointed to cost drivers such as rising National Minimum and Living Wage rates, as well as increasing average levels of need among children entering care. It is therefore important to consider whether cost factors can account for any observed increase in prices.
- 3.27 In order to account for cost factors for private providers, we have considered the operating profit for our set of the 15 largest providers, over the same period. Operating profit indicates a provider’s profitability after deducting its operating (day-to-day running) costs. We obtained operating profitability by subtracting total operating costs from total revenue.³⁵ From this we have calculated the average operating profit per placement and the operating profit margin (operating profit as a percentage of revenue).
- 3.28 Applying this to the three broad categories of placement (ie children’s homes, fostering agencies and unregulated accommodation), we have found that:
- (a) For children’s homes, average operating costs have increased over the five year period from 2016 to 2020 in line with increasing prices, resulting in operating profit margins remaining broadly flat, at an average of 22.6%.

³⁵ Operating (day-to-day running) costs such as staff, maintenance of assets, supplies, utilities, and head office costs. Operating costs exclude capital expenditure to purchase new assets.

Average operating profit has increased over the period from £702 to £910 per placement per week.

- (b) For fostering agencies, operating costs have remained flat over the 5 year period, as have prices, resulting in a steady operating profit margin at an average of 19.4%. Average operating profits have also remained broadly flat over the period at £159 per placement per week.
- (c) For unregulated accommodation, prices remained broadly flat in the period from 2018, but operating costs increased resulting in an operating profit margin that decreased from 39.9% to 35.5%. Average operating profit per placement per week decreased from £381 in 2018 to £330 in 2020.

- 3.29 In addition to operating costs, however, we must also consider the cost of capital for the business. The cost of capital represents the return that equity and debt investors require to invest in a business.³⁶ Deducting the cost of capital from operating profits provides us with a figure for economic profit. Economic profitability indicates a provider's profitability after meeting its operating costs, its capital expenditure and providing a return to its investors. Significant and persistent economic profit is often an indication that a market may not be working well.
- 3.30 Unlike the figures for prices/revenues and operating costs, which can be calculated directly from a firm's accounts, its cost of capital needs to be estimated. The cost of capital will differ between and within different sectors depending on factors such as risk and rates of return available elsewhere.
- 3.31 We have made preliminary estimates of the return on capital employed (without deducting a cost of capital) for the 13 large providers operating in residential accommodation (children's homes and unregulated accommodation), as an indicator of the level of profitability of these providers:
- (a) 11.1% for children's homes for the period from 2016 to 2020; and
 - (b) 16.2% for unregulated accommodation for the period from 2018 to 2020.
- 3.32 For our analysis to find that economic profits were not being made in this sector, we would need to believe that the true weighted average cost of capital was at approximately this level. We have not at this stage taken a view on what we think the true cost of capital is for firms in this sector. Given our experience in other sectors, however, at this stage we consider it unlikely that

³⁶ We have included the property related costs within the cost of capital. See Appendix A for the detailed explanation.

this level is as high as our estimate of the return on capital employed among this set of providers.

- 3.33 As operating a fostering agency is an asset-light business, approaches that look at return on capital employed are less helpful in determining the level of economic profits being made. Instead, we intend to compare margins in fostering agency services to appropriate comparator companies and also use an alternative analysis that estimates the market value of assets and applies a rate of return to these. While we have not yet completed this analysis, at this stage we consider that the average profit margin of 19.4%, which we found in our sample of the largest providers, appears high for a business with relatively few capital assets.
- 3.34 Our provisional view is that, among the 15 large providers in our dataset, there is evidence that profits in the provision of children's social care are higher than we would expect in a well-functioning market. Between now and our final report, we intend to do further work to test that conclusion, including:
- (a) Consider further the cost of capital that is appropriate in children's social care;
 - (b) Carry out financial analysis to examine prices and profits beyond the fifteen largest providers;
 - (c) Examine profitability drivers such as sub-categories of provision, geographical basis, or other factors.
- 3.35 We welcome views on our proposed approach to profitability assessment and on the appropriate cost of capital (ie the level of return that an investor would expect) in children's social care which we use to assess the levels of profitability, which are described in more detail in the financial analysis appendix.

Resilience of the market

- 3.36 For the children's social care market to work well, local authorities must have confidence that it will offer them good options in the future to meet their statutory obligations towards the young people in their care. We have concerns that risks may arise in this regard.
- 3.37 The main source of these risks arises from the fact that local authorities have an obligation to provide suitable placements for children, but are, to varying extents, reliant on placements from private providers to fulfil this obligation. For a variety of reasons, private providers may exit the market at any time. This creates a potential risk that certain external events may lead to

unforeseen and significant market exit, significantly increasing the difficulties local authorities face in finding placements for young people in their care.

- 3.38 To some degree, this will be an issue in any market where significant provision comes from the private sector. In assessing whether we should have particular concerns in relation to children's social care, we therefore need to consider whether the consequences of unforeseen and significant market exit would be particularly damaging, and whether the likelihood of this happening is particularly high.
- 3.39 We do have concerns that an unforeseen disruption in the supply of placements could have a particularly negative impact.
- 3.40 First, the impact of a local authority being unable to find an appropriate placement for a child can be extremely significant in terms of the outcome on that child's life and experiences. While in many markets if there is an interruption in supply due to market disruption a buyer can simply delay or forego a purchase, in children's social care this is not an option as there are real and urgent needs to be met.
- 3.41 Second, given our concerns about the availability of adequate supply of appropriate placements, a sudden reduction in supply caused by market disruption would exacerbate these issues. Any sudden and significant reduction in supply would be likely to impact on local authorities' ability to provide appropriate placements for children in their care as they need them, as they are not facing a market with significant additional supply that is appropriate to absorb such a shock. The consequences of such an event occurring would also be severe for the children affected - potentially disrupting their education, social contacts and therapeutic progress, and seriously damaging their life prospects.
- 3.42 Third, we have heard that the creation of new provision takes a significant length of time, in terms of securing property and/or carers, and meeting regulatory requirements. This would suggest that even where there are suppliers looking to enter or expand to replace lost capacity, this would be unlikely to address any shortfall in placement in the short term.
- 3.43 The level of potential negative effects on local authorities and children in the event of a provider failure will depend on both the scale and nature of the provider and what happens to the business. The failure of a larger provider would generally be likely to have a more significant impact than that of a smaller one, as it would raise the risk of more children needing a new home at once; this would be likely to prove challenging in a supply-constrained market.

Similarly, if one or more local authorities is highly dependent on a provider that fails, this could cause particular problems for them.

- 3.44 The impact of any firm failure will depend on what happens to the placements that firm had been providing. If provision was able to continue smoothly without disruption to the lives of children, this would be much less concerning than if the provision were to cease operation, creating upheaval for children.
- 3.45 This is less likely to be concerning in the case of a fostering agency provider, as the foster carers themselves would not necessarily cease to provide foster care simply because their agency withdrew from the market. Unlike with children's homes, the main pieces of physical capital – the actual homes children live in – are not owned by the provider, but are provided by the foster carers themselves. The main issue would be transferring the foster carers to another agency; if carried out smoothly, this should not directly affect the experience of children. We will investigate further if there would be administrative difficulties with this, or if loss of foster carers would be a likely outcome as this process played out.
- 3.46 Firm failure is potentially more concerning in the case of residential children's homes and unregulated accommodation. In theory, where these properties, staff and other company assets are fundamentally profitably employed as placements for looked-after children, they could be sold to another owner who wishes to use them in this way (either en masse as a trade sale or to multiple buyers); theoretically, this could result in a relatively seamless transition for local authorities and children through the change of ownership.
- 3.47 However, this may not play out as smoothly as the theory may suggest. Given the nature of the children's social care market, there may be a small pool of potential buyers in this sector, especially if external events are putting pressure on multiple providers at the same time. Changes in rental values and costs may make it less attractive for a new purchaser to continue to operate children's homes. Additionally, the process of restructuring could be protracted and disruptive, reducing focus on outcomes for children.
- 3.48 Turning to factors that may make sudden supply disruption more likely in this sector, we have heard concerns that high levels of debt held by firms may leave them particularly vulnerable to changes in external conditions, such as a sudden tightening of credit conditions, which could result in them being unable to service their debt burden and therefore being forced to leave the market. Some stakeholders made comparisons to Southern Cross, a former provider of care homes for older people, which got into severe financial difficulties in 2011. These concerns have been raised especially in relation to private equity

(PE) owned providers; we provide an update on our findings so far about relative debt levels of PE-owned providers in the following section.

- 3.49 All else being equal we would expect high levels of debt to leave providers more vulnerable to tightening credit conditions, and therefore more at risk of unanticipated exit from the market. This analysis, however, does not take into account the wider financial position of the upstream owners of the provider, which may have greater or lesser access to capital to support the business through temporary difficulty. It is therefore not possible to use operating company debt levels alone as a conclusive indicator of the vulnerability of a provider to external shocks.
- 3.50 Taking all of these considerations together, however, the underlying risk of unexpected disorderly exit – which we have seen with highly-leveraged companies in other sectors – is one that needs to be taken seriously in this sector due to the consequences that could result. These could include significant negative impacts on individual children and the ability of local authorities to carry out their statutory duties, at least in the short term.

Types of provision

- 3.51 Concerns have been put to us about the participation of private providers in children’s social care provision and the Scottish Government and Welsh Government have expressed an ambition to end reliance on private provision. Some stakeholders are particularly concerned about the role of PE-owned providers in the placements market. We have therefore looked at the outcomes from:
- (a) Independent provision versus local authority in-house provision; and,
 - (b) Within independent provision, PE-owned versus non-PE-owned providers.

Independent and local authority provision

- 3.52 We found that independent provision can often play a very different role to local authority in-house provision and as a result, comparisons between outcomes are challenging, with neither type of provision at this stage appearing clearly to deliver better outcomes across the board.
- 3.53 First, we have consistently heard that independent providers tend to look after children with more complex needs compared to in-house services. This is the case across nations and in both fostering and children’s homes, although we recognise that there will be exceptions where local authority provision takes on more complex needs and where independent providers take on less

complex needs.³⁷ One exception we heard to this general trend is where local authorities cannot find a suitable independent provider for a child with particularly complex needs and so local authorities have to provide care for that child in-house.

- 3.54 Second, we have heard from local authorities and other stakeholders that local authorities attempt to use their in-house provision first, using independent providers only if no suitable in-house place is available. We have been told that this is because they want to use the capacity that they understand better and over which they have greater control, and for which they are already paying the fixed costs.
- 3.55 Turning first to comparisons of quality, we have not seen evidence of systematic differences in outcomes between local authority and independent provision. In England, the regulatory ratings for children's homes run by private providers and local authorities are broadly in line with each other; local authorities have a greater proportion of outstanding children's homes (22% vs 15%), but they also have a slightly higher proportion of inadequate homes (3% vs 1%). It is not possible to compare ratings in this way for fostering as local authorities' fostering services are rated as part of their overall children's services rather than for their fostering services alone. In Scotland the proportion of children's homes graded good or better is higher for privately owned homes compared to local authority run homes (81.5% vs. 75.5%).³⁸ (In Wales, it is not possible to compare ratings in this way as provision is rated as either compliant or non-compliant).
- 3.56 Despite this, many local authorities and private providers told us that their type of provision was of better quality than the other. Given the relative performance reflected in inspection ratings, for there to be any systematic difference in quality between the two types of provision, there would need to be differences in quality that are systematically missed in inspection ratings. The CMA is not well-placed to assess whether this is the case and we have not seen convincing evidence that it is. As it stands, inspection ratings are the most comprehensive and comparable assessments of quality available, and there is no reason to believe that the CMA could get a more accurate picture by second-guessing them.
- 3.57 Looking now at the cost difference between in-house and private providers, we note that this is highly disputed by stakeholders. Local authorities have

³⁷ The term complex is rather nuanced, this can include providing care for children with sexual trauma through sexual exploitation, mental ill health, learning or physical disabilities, Social, Emotional and Mental Health (SEMH) conditions and others. However, the level of complexity that private providers take on, relative to LAs, will vary locally.

³⁸ [Care Inspectorate Scotland response to the ITC.](#)

told us they believe their provision costs less or is better value for money and the most frequently given reason is that private providers' need to make a profit. Independent providers we have heard from dispute this and argue that local authorities don't always understand their own costs and do not make like-for-like comparisons.

- 3.58 Our financial analysis (see Appendix A) found that for children's homes, local authorities' operating costs were in aggregate approximately the same per child as the fees paid to large providers. However, the fees local authorities pay are higher than private providers' operating costs as they also cover capital costs and profit. We found local authority operating costs have been approximately 26% higher, on average between 2016 and 2020, than the equivalent for the large private providers whose accounts we have examined. It therefore appears that the amount paid for a place in the private sector, even allowing for profits, is not obviously higher than that paid by a local authority to provide an in-house place.
- 3.59 The situation in fostering appears quite different. We found that local authorities' operating costs per child were approximately half the level of fees paid to large providers. We found a narrower gap when comparing local authorities' operating costs with those of large providers, which exclude any capital costs or profit. Local authority operating costs have been approximately 37% lower, on average, between 2016 and 2020 than the equivalent for the large private providers. Therefore, it appears that even excluding the element of profit, the amount paid by local authorities for a fostering placement from an independent provider is higher than the cost of providing their own in-house placement. With profit included, this cost differential is even wider.
- 3.60 However, as recognised by both providers and local authorities, there are many difficulties in making like-for-like comparisons, including:
- (a) The different roles played (which are discussed above) mean one would expect private providers to have some higher cost elements than in-house provision. Meeting more complex needs is likely to involve higher costs, for example in terms of greater or more specialised staffing in children's homes or more expensive support of foster carers. Further, as local authorities prioritise filling their own provision, they are less exposed to the risk of under-utilisation of capacity and so are likely to face lower costs per child.
 - (b) How costs are accounted for differ between in-house and independent placements. While the prices charged by independent providers will include a share of all costs, the 'cost' of internal provision may not include

overheads. This may make sense when comparing an individual placement, as these costs are not directly affected by that placement, but does not reflect the overall costs of the different types of provider. Independent providers also report that they often pay for additional services, such as mental health support, rather than rely on public provision.

- 3.61 Previous comparisons have found different gaps between the cost of care to local authorities of in-house and independent provision. The Personal Social Services Research Unit (PSSRU) found local authorities spent approximately 30% more per child per week on in-house children's homes than on independent sector homes, whereas we found it was roughly the same.³⁹ These figures are based on PSSRU's analysis of total local authority expenditure on children's homes, including some types of care that are out of scope of our study, such as secure units and residential schools. A 2018 review of foster care in England found in-house fostering cost local authorities around 40% less than independent provision, while we found it to be 50% less.⁴⁰
- 3.62 These findings suggest that there are unlikely to be direct operational cost savings available to local authorities through a shift towards much more in-house provision of children's homes. In fostering, on the other hand, this appears more of an open question. We will investigate the drivers of these average cost differences, and any implications these may have for our recommendations between now and our final report.

Private equity

- 3.63 Private equity-owned provision plays a major role in the current provision of placements for children's social care. In England, six of the ten providers with the most children's homes and both the two largest providers of foster care are PE-owned.
- 3.64 Stakeholders have raised a number of concerns about private equity involvement in this sector, including that they drive up costs for local authorities, and following an increase in mergers have led to less competition and limited choice.⁴¹ Most of the concerns we have heard are ones that, in theory, could apply to all forms of private sector provision, but seem to focus

³⁹ £4,971 per child per week in-house compared to £3,847 with the independent sector. Source: Unit Costs of Health and Social Care 2020 (pssru.ac.uk)

⁴⁰ It concluded that "the average weekly cost of a local authority placement was £475 compared with £798 for IFA placements." Source: [Foster Care in England: A Review for the Department for Education by Sir Martin Narey and Mark Owers](#).

⁴¹ [Suffolk County Council response to the ITC](#).

on PE-owned provision, which is alleged to exhibit the concerning traits to a greater extent.

- 3.65 Set against this, however, we have also heard from PE-owned firms that their participation brings benefits to the market. These claimed benefits include introducing new and innovative approaches to, for example, improving quality or recruiting foster carers; and helping to build and take advantage of scale.
- 3.66 We are considering the potential concerns about private equity's role in children's homes and foster care in three broad areas: the impact on quality and price; the impact on the total amount of investment made in the sector; and the financial resilience of the sector. We intend to do further work to get a more detailed understanding of the PE business model in the next phase of our work.
- 3.67 As regards quality, inspection ratings do not appear to indicate any difference in quality between PE and other forms of provision. For example, the five largest PE-owned providers in England had 81% of their children's homes rated good or outstanding by Ofsted, compared to 80% of all private and third-sector homes.⁴²
- 3.68 As set out in Appendix A, in children's homes we found that PE-owned providers' aggregate prices were about 3.9% higher than for non-PE providers, whereas in fostering we found that PE-owned agencies' aggregate prices were about 5.2% lower. We are carrying out further analysis to explore the drivers of these differentials and whether they are likely to persist when placements are compared on a like-for-like basis.
- 3.69 One concern raised about PE-owned providers is that they have a more short-term outlook that is less conducive to the longer-term investment required in this sector. However, we note that PE-owned providers do invest in new capacity and we have not seen evidence that this investment is less as a result of PE-ownership.
- 3.70 As set out above there are concerns about the risks to resilience arising from high debt levels and off-balance sheets liabilities, potentially increasing the risk of unexpected disorderly exit from the sector. As we note, this is concerning given the negative impact this may have on children and the ability of local authorities to meet their statutory duties.

⁴² They had marginally higher proportions of outstanding homes (18% vs 15%) and inadequate homes (2% vs 1%), although these involved fewer homes, eg just 5 inadequate homes in total. The other five largest providers had 83% of their homes rated as good or outstanding. The figures are from March 31 2020, but due to COVID-19 Ofsted were unable to carry out routine inspections during the 2020 to 2021 inspection window. Source: [Largest national providers of private and voluntary social care \(March 2021\)](#) and CMA calculations.

- 3.71 Our financial analysis found that PE-owned providers have had significantly higher financial leverage and lower debt serviceability and solvency indicators than non-PE-owned providers.
- 3.72 As set out elsewhere in this report, these concerns are not necessarily specific to PE-owned providers and could be applied to the role of independent providers in the placements market more generally (although concerns around debt levels are clearly more focused on PE-owned providers). We are interested in receiving any evidence of the specific impact of private equity as distinct from the wider group of private providers, in the areas set out above or other concerns.

Provisional view on performance of the market

- 3.73 At this stage in our market study, we have concerns that the market for children's social care placements is failing to deliver the required outcomes to support a successful children's social care system. In particular, we have concerns that the market is failing to provide adequate supply to allow local authorities to ensure all children they look after can access a placement that is appropriate to their needs.
- 3.74 We also have concerns that the prices local authorities are paying to large providers in the placements market may be higher than we would expect in a well-functioning market. Despite this, average operating costs for residential homes owned by independent providers are lower than for local authority in-house provision. The opposite is true for fostering placements, though we note that there, concerns around the comparability of these figures mean that it is less clear that this outcome is reflecting a like-for-like difference.
- 3.75 The main means of ensuring that placements are of the right level of quality is via the inspections regime, as well as via local authorities' own observations. Our provisional view is that, while there are instances of unacceptably poor quality among independent provision, we have not identified a difference overall in the quality of independent and local authority provision, and market mechanisms appear effective in incentivising providers to improve or withdraw poor provision.
- 3.76 Finally, the high and increasing levels of debt we observe among independent providers may be creating a higher risk of unexpected disorderly exit from the sector. Given the potential negative impact such exit could have on children and local authorities, this is a concern.

4. Emerging findings – causes of the outcomes we observe

- 4.1 In the previous section we considered concerns that the market may not be delivering appropriate outcomes across four areas: sufficient supply of appropriate placements, reasonable prices, consistently high quality and resilience. While our work on this is not yet complete, we have carried out work to consider the elements of the way the market is functioning that may be driving poor outcomes. We set out our emerging findings in this section.
- 4.2 In order for the placements market to work well, the repeated interactions of local authorities and providers must combine to allow local authorities to access consistently good quality and appropriate placements on the best possible terms. In order for this to happen, several important conditions must hold:
- (a) First, from among the provision available to them at any given time, local authorities must be able to **efficiently find and purchase placements** accessing those places that most closely match the needs of children at prices that reflect the cost of care.
 - (b) Second, local authorities must be able to **provide accurate and credible signals of the likely future needs of children** to existing and potential providers, and in particular where these needs are being insufficiently addressed by the current provision.
 - (c) Third, existing and potential **providers must be able to react effectively to these signals**, allowing them quickly to bring new supply to the market that more closely matches the needs of children and local authorities.

Effective purchasing

- 4.3 Local authorities face a wide range of challenges when looking to find a place for a child in their care. First, getting the right match of a child to a place is hugely important but also extremely difficult given the unique needs of each child. Secondly, the options available constantly change, as places are filled, and it can be difficult for local authorities to understand what options are available particularly when looking outside their own area. Further, as we set out above, the options available may be very limited in number, particularly for children with more complex needs. Finally, local authorities must find a placement for each child and often do not have the ability to wait for more suitable options to be available or to seek better prices.

- 4.4 These factors mean that many placements are made in very difficult circumstances with few, if any, good options available to local authorities. They may also be competing with other local authorities for the types of placement they need. As a result of these factors, amongst others, many stakeholders have suggested local authorities lack bargaining power when dealing with independent providers. For example, we have heard from local authorities that “the market is led by the providers and there is little competition in offers and little incentive to negotiate the initial price” and “it is very much a provider-led market and we can find ourselves at the behest of providers, particularly for more niche placements.”
- 4.5 One key factor that adds to the weakness of each local authority’s position when engaging in the market is the fact that they each purchase a relatively small number of placements each year. For the local authorities in our data set, they purchased an average of 49 independent children’s homes places per year and 126 fostering placements a year. As we have noted above, the needs of children can differ widely, meaning that not all children’s home, or fostering placements will be suitable for each child. As a result, local authorities purchase very small numbers of placements within some particular sub-categories of provision.
- 4.6 While to an extent some of these factors are an inherent part of the challenge in this sector, local authorities try to lessen the resultant pressures and improve their bargaining position through their procurement strategies. In the longer term, making sure there is sufficient supply of placements will have a bigger impact on local authorities’ bargaining position and this is considered in the following section. In the sections below we consider ways in which local authorities may be able to achieve better results in interacting with the market that faces them in the immediate term, namely:
- (a) Different approaches to procurement and the extent to which they may be resulting in differences in the ability of local authorities to secure appropriate placements at reasonable prices.
 - (b) Whether local authorities could reduce the operating costs of their children’s homes (while maintaining the same level of quality) and thus improve them as an alternative to independent provision.
 - (c) Whether the high local market shares of independent providers may be a factor that affects the ability of some local authorities to secure appropriate placements at reasonable prices. Some stakeholders have raised concerns that there are providers with high market shares in some areas of the country and that this impacts the bargaining position of local authorities.

Differing approaches to procurement

- 4.7 Collaborative procurement strategies can strengthen local authorities' bargaining position at the point of placement by increasing the visibility of options and prices, agreeing terms of purchase in advance and reducing the risk of local authorities bidding up prices against one another. Such collaboration allows local authorities to take advantage of operating at greater scale. There are different approaches to procurement collaboration across England, Scotland and Wales.
- 4.8 Currently in England, some local authorities procure individually, while many form regional procurement groups with neighbouring local authorities. These groups vary in their design and purpose. Examples include: joint block booking of provision, the operation of framework agreements⁴³ with providers and the joint running of placements for very specific or complex care needs. In contrast, both Scotland and Wales have national approaches available for procurement,⁴⁴ with Scotland Excel and the 4Cs helping collaboration between local authorities and providers. The role of these national bodies includes (alongside those discussed in [Section 2 - Local authorities](#), and below) managing frameworks between local authorities and providers (together with negotiating prices on behalf of local authorities) and providing resources and other support to help local authorities find appropriate care settings for children.
- 4.9 All local authorities which responded to our request for information in England explained that regional procurement groups are beneficial as they allow for the pooling of demand and for local authorities to negotiate better terms with providers. Some local authorities in Scotland and Wales explained that Scotland Excel and the 4Cs benefit the procurement process by: allowing local authorities to easily compare prices of different providers; negotiating prices on behalf of local authorities (allowing local authorities to save time and providing reassurance that prices are likely to be more reflective of cost of provision); providing information to local authorities on placement availability; and holding details on non-framework providers, enabling local authorities to extend their placement search if an appropriate framework match is not available.
- 4.10 As we will discuss below in the section on a lack of effective market shaping, many local authorities in England that responded to our request for

⁴³ A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement.

⁴⁴ These are available to be used or joined by all local authorities and providers but not all take part in these frameworks.

information highlighted that there are barriers to effective regional collaboration and further collaboration occurring on a wider scale. These included concerns that often the contractual terms set out as part of collaborative relationships result in complex care placements falling out of scope of these arrangements, meaning local authorities in England still face the challenge of finding placements for each child with complex needs.⁴⁵ Similarly, local authorities and providers told us that they thought procurement rules can limit local authorities' ability to collaborate effectively.

- 4.11 Various stakeholders have also recognised some limitations in the national approaches to procurement in Scotland and Wales. The 4Cs and Scotland Excel explained that not all providers have welcomed intervention from a national body and have not joined the frameworks. 4Cs said this was for reasons such as struggling with the price transparency or quality requirements set out, and Scotland Excel said this was for reasons such as struggling with criteria for participation, concerns about price variation processes and requirements around financial transparency. The Nationwide Association of Fostering Providers (NAFP)⁴⁶ also told us that not all local authorities in Wales and Scotland utilise the national contracts set up by the procurement bodies, resulting in fragmentation.
- 4.12 England in the past has had national contracts in place for both residential and foster care (as explained in [Section 2](#) - Local authorities) run by the NCSG. The NCSG told us that their work stopped because of a lack of resource backing, with no administration or financial support, or any direction from central government or at the ADCS level. The NCSG also told us that it faced challenges in setting up national contracts in England, including: obtaining sources of funding, getting national representatives on board from care-experienced people and getting backing from directors of children's services. The NCSG are proposing to re-establish these national contracts currently and are in discussion with local authorities and providers. The NCSG told us that local authorities and providers agree that national contracts are needed in England and would be beneficial.
- 4.13 Based on the evidence we have seen so far, our provisional view is that effective collaborative procurement between local authorities is vital to allow them to make use of techniques to reduce the weakness of their bargaining position in the market. While we have seen evidence of a wide range of approaches – with national approaches in Scotland and Wales, and a patchwork of regional and sub-regional approaches in England – these are

⁴⁵ While the national frameworks set up in Scotland and Wales allow flexibility to meet varying needs with a large variety of providers available to meet a range of care needs.

⁴⁶ [NAFP response to the ITC](#).

not as consistent or thorough as they could be. Between now and our final report we will be seeking evidence on the benefits and shortcomings of the various approaches we see, and how they could be supplemented to help deliver better outcomes.

Operating costs of local authority children's homes

- 4.14 The level of local authority costs might also be a factor affecting the overall outcomes in the market. We note there are some differences in operating costs of local authority and independent children's homes - if these were to reflect things that local authorities could do more efficiently without having a detrimental impact on quality then this could be beneficial in that it could allow local authorities to save money and better negotiate with private providers.
- 4.15 Based on a comparison with large independent providers' costs, local authority provision appears to have higher costs. As set out in Section 3, we found that local authority operating costs for children's homes have been approximately 26% higher, on average between 2016 and 2020, than the equivalent for the large providers. This comparison is based on data gathered using identical definitions, ie we asked for the same, precisely defined information from providers and local authorities. Further, given the different roles the sectors play (see [Section 3 - Types of provision](#)), one would expect in-house provision to be cheaper. Indeed, for fostering we found that local authorities' in-house fostering provision was, on average, cheaper than independent provision, albeit with some significant caveats around the comparability of that data.
- 4.16 Our preliminary work suggests that local authorities' higher operating costs in children's homes are driven by higher staffing costs. Local authorities have higher numbers of staff per child and higher costs per staff member than larger independent providers. While there may be operational reasons for this or improved quality as a result, as set out in [Section 3 - Types of provision](#), this does not appear to lead to local authorities having better ratings from regulators. We are interested in better understanding the reasons for these differences and whether there is anything that can be done to reduce local authority operating costs while maintaining quality.

Market shares

- 4.17 Local authorities' bargaining position may also be affected by concentration among providers. If there are too few providers, they may face little competitive pressure to offer the types of services required at reasonable prices, as they do not feel threatened by the risk of local authorities switching to alternative providers. Some stakeholders have raised concerns about high

market shares, for example in one area we were told that “there is a lack of healthy local competition of foster care provision, with market dominance by one private provider.”⁴⁷

- 4.18 In each nation, where data is available, market shares of the largest independent providers do not appear high in either fostering or children’s homes. In England, the largest independent fostering agency (IFA), Outcomes First Group, provides 17% of all places in the independent sector, which is 6% of the total number of places including those provided by local authorities.⁴⁸ The six largest providers have around half of the places provided by independent providers and around one in six of all places.⁴⁹
- 4.19 For children’s homes in England, the largest independent provider, Caretech, accounts for around 8% of places excluding local authority provision and 7% of beds including local authority provision.⁵⁰ The 10 largest companies provide 32% of beds excluding local authority provision and 27% of beds including local authority provision.⁵¹ In Wales, the largest independent provider has less than 10% of beds excluding local authority provision and less than 10% including local authority provision.⁵² The largest provider in Scotland is Care Visions with 7% of beds.⁵³ In both Scotland and Wales the 10 largest companies provide 51% of beds.
- 4.20 In each nation no single provider has more than 10% of children’s home placements in the independent sector. This is well below the level at which we would typically be concerned.⁵⁴ However, the market for children’s social care is local rather than national, as it is typically preferable to keep a child as close to their original home as possible.⁵⁵
- 4.21 We considered whether the largest independent providers’ homes were geographically concentrated. If a large provider was disproportionately concentrated in one area, it could indicate they have a large market share in that region. We mapped the home locations of the 12 largest providers and

⁴⁷ [4Cs ITC response](#).

⁴⁸ As at 31 March 2020, [Fostering in England 2019 to 2020: main findings](#).

⁴⁹ As at 31 March 2020, [Fostering in England 2019 to 2020: main findings](#).

⁵⁰ As at 31 March 2021, [Largest national providers of private and voluntary social care \(March 2021\)](#).

⁵¹ As at 31 March 2021, [Largest national providers of private and voluntary social care \(March 2021\)](#).

⁵² As at 26 May 2021, CMA Analysis of CIW data.

⁵³ As at 30 June 2021, CMA Analysis of CIS data – Datastore (as at 30 June 2021) CSV available from [Datastore \(careinspectorate.com\)](#).

⁵⁴ For example, in the CMA’s assessment of the acquisition by Caretech Holdings plc of Cambian Group plc we ruled out concerns in areas where the combined market shares were less than 30%. See [Completed acquisition by CareTech Holdings plc of Cambian Group plc](#).

⁵⁵ The CMA has previously found both children’s homes and fostering have a strong local dimension. See merger decisions for the acquisition by Caretech Holdings plc of Cambian Group plc ([Completed acquisition by CareTech Holdings plc of Cambian Group plc](#)) and for the acquisition of Acorn by NFA ([Completed acquisition by SSCP Spring Topco Limited of Acorn Care and Education Group](#)).

found some geographic clusters of homes. In 11 local authority areas one of these providers has 10 or more homes. However, in areas where a large provider's homes are clustered together there also tend to be clusters of other large providers' homes. For example, in the local authority area with the most homes, over 20, owned by one of these providers, we found multiple other large providers operating, of which the largest three had a combined total of over 30 homes in the area.

- 4.22 We also considered providers' shares of placements in each local authority area. In each of the three nations there were many local authority areas where the largest independent provider had a high market share.⁵⁶ However, we are doing further work to explore the impact of this on local authorities, particularly because, in practice and notwithstanding local authorities' duties to place children within their area, they are likely to consider placements which are at an appropriate distance from a child's former home, even if these are outside their area.
- 4.23 Although national shares in both fostering and children's homes are relatively low, the higher shares we found in local authority areas could be a concern. Further, the above analysis does not segment by type of care and so market shares in some segments may be higher. We will consider further evidence on market shares and are interested in any evidence of high market shares resulting in worse outcomes for local authorities. However, we also note that the concerns over local authorities' bargaining position with providers, as set out in Section 4 - Effective purchasing, appear to arise in a wider range of areas, including in those where no provider has a particularly high market share. This suggests that they are likely to be more related to a shortage of supply rather than high market shares.

Challenges to understanding needs and incentivising placements

- 4.24 In many well-functioning markets, the ongoing decisions of purchasers provide signals to suppliers about the current and future purchasing preferences of those buying products and services. This provides the firms with both the information and the incentive they need to adjust the amount and nature of the supply they bring to the market to better meet those preferences as time goes on. In the case of the placements market, however, it is widely recognised that the purchasing decisions made by local authorities

⁵⁶ For example, in England, in 52 out of 147 local authority areas the largest provider has a market share of more than 50% and in each of Scotland and Wales there were 8 such local authority areas out of 32 and 22 respectively.

today will not necessarily provide current and potential independent providers with good information about their future needs.

- 4.25 Given the under-supply of appropriate places that we have seen, places are still filled even if they are not in the best location or provide the most suitable environment for the children placed in them. Where this “second-best” placement happens, it is not recorded as such, so the exact extent and nature of how this is happening is very unclear. As a result, providers do not receive strong signals about how they should adjust their provision to meet children’s needs. Nor do they face strong incentives to do so, given their current provision will generally be used anyway, due to a lack of alternatives.
- 4.26 This issue is made worse when we consider the impact of timing. Looking over previous periods, we have seen that both the overall number of looked after children, and the mix of needs within that group, has changed significantly. However, new placements cannot be created quickly, for a variety of factors, which we discuss in [Section 4 – Barriers to providers reacting to signalled needs](#). As a result of these factors, providers find it difficult to predict what the likely demand for provision they may be considering creating now will be by the time those places are available for children to take up.
- 4.27 An understanding of future demand is very important for providers considering investing in new provision because they experience high losses if their capacity goes unused. These losses are high because they face high fixed costs that are still incurred when capacity goes unused. This is particularly the case for children's homes where fixed costs include the cost of finding and paying for the property and the cost of gaining regulatory approval. Staff costs are also largely fixed and other more flexible costs make up a small proportion of total costs. For fostering, fixed costs appear more limited, but still significant; the main upfront fixed cost is recruiting and registering foster carers, which costs around £10,000 to £20,000 per successful fostering applicant.
- 4.28 For these reasons a lack of certainty of future demand is likely to act as a deterrent to the creation of new provision by independent providers. Where demand in a particular region is uncertain, this is also likely to incentivise providers to create provision in lower-cost areas rather than higher-cost ones. Local authorities in England have a “sufficiency duty” to take steps to secure, so far as reasonably practicable, sufficient accommodation within each local authority’s area which meets the needs of the children it looks after. Local authorities in Scotland and Wales have similar duties. These duties ought to operate over time to ensure that local authorities are generally able to place children locally in a setting that is appropriate to their needs. However, the

concerns we have around under-supply of appropriate places in the market suggest that this is not consistently happening.

- 4.29 Given this context, in order to be successful in encouraging sufficient supply to meet their needs, local authorities must be able to do two things:
- First, they must be able to accurately forecast their future needs, understanding both the overall number of children they are likely to need to place and the mix of different types of provision they are likely to need to meet the particular needs of all the individual children within that group.
 - Second, they must be able to perform “market shaping” activities, whereby they communicate these expected needs to providers and incentivise them to create and maintain sufficient appropriate provision to meet these needs.

We have concerns that local authorities are generally unable to carry out either of these functions sufficiently well to ensure that the placements market functions well in anticipating and providing for future demand.

A lack of accurate long-term forecasting

- 4.30 Many local authorities and large providers in England highlighted that accurate forecasting of future demand is challenging. Reasons given included: that demand is inherently uncertain (for example, the needs of individual children change over time as well as the trends in need of children in care overall), external pressures (such as local events, budget/service cuts, changes in staff, change in practices) which are hard to account for let alone predict, and the accuracy of data recorded with regards to unplanned/emergency placements.
- 4.31 A key issue behind these difficulties appears to be the relatively small number of placements purchased by local authorities. Where numbers vary over time, levels of variation in each year are likely to be higher and more uncertain when attempting to forecast smaller numbers. These issues are particularly severe in relation to placements for children with complex needs because there are very small numbers of these cases and they involve very specific needs which are difficult to predict. A lack of scale may also limit the capacity of local authorities to develop cost-effective in-house forecasting capacity to overcome these challenges.
- 4.32 Local authorities and large providers in England, therefore, highlighted that forecasts of future demand are usually based on previous trends and current care needs rather than substantial predictions of likely future needs. Most

local authorities in England who responded to our request for information explained that they do not attempt to undertake complex forecasting analysis beyond that required as part of their sufficiency duties.

- 4.33 As a result, many large providers explained that they do not consider local authority forecasts of their future needs in England to be accurate and so would not use these to inform their capacity expansion decisions. One large provider of both children's homes and fostering told us that the uncertainty of local authority future demand is a significant constraint on their ability to meet the needs of local authorities. Another provider told us that the local authorities do not have a system that allows for the projection of need and that providers must base projected recruitment, skill set and training of foster carers on their own experience.
- 4.34 One way of supporting accurate forecasting is through ensuring local authorities have access to sufficient data. Such data would preferably be at a level of detail that allows stakeholders to understand the likely future requirements for provision covering specific types of care needs. Local authorities and large providers in England told us that the data relating to trends in children's social care which is held by Ofsted, if shared, could assist them with more accurately forecasting future demand. Local authorities and large providers also told us that Ofsted could play a greater role in supporting forecasting, for example by sharing the best practice of local authorities who have done this well. Ofsted, when asked if it provides support to local authorities in forecasting their future demand, told us that supporting local authorities forecasting of future demand is outside its remit and powers.
- 4.35 In Scotland, local authorities explained that they rarely forecast future demand as a result of the difficulties involved, as explained above. Scotland Excel told us that it uses historic placement patterns and changes in policy direction to estimate likely trends for renewal frameworks but does not undertake detailed forecasting on behalf of local authorities.
- 4.36 CIS told us that it promotes the use of a quality improvement framework for self-evaluation which supports local authorities and strategic partnerships to consider future planning of services for their local communities. CIS also explained that with additional resource, more use could be made of this section of the framework as a tool to promote and support forward planning.
- 4.37 CIW told us that it does not have a role in supporting local authorities in Wales in forecasting their future demand for placements.
- 4.38 However, the 4Cs, the national commissioning body in Wales, told us that part of its role is to ensure that local authorities are supported to comply with their

duties of sufficiency, affordability and sustainability by analysing need to identify gaps in the markets and lead developments on a national, regional and local level to respond to unmet needs. The 4Cs also told us that it provides national analysis of trends in data and assists with forecasting future demand based on historic data from Wales, comparable nations and regions, cross referencing multiple sources that project future demographics, current data on emerging trends and where possible factor in anticipated future variables such as policy on refugees. The 4Cs have recently launched the Placement Commissioning Strategy (PCS) template which helps local authorities to better understand the needs of the children in their care, desired outcomes, drivers for change in order for the local authority to be able to shape internal services, work in collaboration with providers and increase placement choice.

- 4.39 This suggests that although accurate long-term forecasting is challenging for local authorities, improved forecasting may help local authorities to understand better their likely future needs. This understanding could enable local authorities to more accurately communicate their demand to providers and so give providers the opportunity to supply appropriate placements to meet this demand.

A lack of effective market shaping

- 4.40 Even where future needs can be anticipated, there are barriers to local authorities converting this understanding into signals that providers will act on. In England, we have heard that most local authorities do not attempt to estimate future capacity or actively shape the market by encouraging providers to invest in new provision. Local authorities highlighted the challenges to them doing so, particularly when acting individually. We found that collaboration in all three nations is more focussed on procurement than market shaping, although there are some steps towards the latter in Scotland and Wales.
- 4.41 In England, most local authorities explained that they generally try to keep track of current capacity in the market (usually via their contractual relationships with providers) rather than attempt to estimate future capacity. Some other local authorities make use of national data (provided by the Independent Children's Home Association (ICHA), the LGA, Ofsted etc) to keep abreast of the bigger picture.
- 4.42 However, the majority of local authorities in England who responded to our request for information told us that they do not attempt to actively encourage capacity expansion externally and instead are increasingly focussing on expanding their in-house provision. Sufficiency statements provided by local

authorities also demonstrated that many local authorities focus their future sufficiency plans on further developing their in-house offering, rather than seeking to influence the expansion plans of providers. Nevertheless, opening a new children's home is a major financial commitment and especially so for local authorities with reduced budgets and multiple competing demands for resources. Many local authorities told us this was one of the major challenges when considering whether to open a new children's home.

4.43 Alongside the difficulties they face in predicting future demand, a lack of scale in local authorities may be limiting their ability to make use of tools that would help them encourage more supply to be created. As noted above, local authorities each purchase a relatively small number of placements from independent providers each year. These purchases cover a wide range of placements and local authorities will purchase a far smaller number of more specialised placements. We were told that even a reasonably sized local authority may only need to place a child in certain more specialised types of care once a year or even less frequently. We consider that individual local authorities face the following challenges when attempting to shape the market that may not be present if they were purchasing at greater scale:

- (a) As highlighted by local authorities and other stakeholders, the demand of an individual local authority for certain types of specialist provision is too low to justify contracting a whole service to meet these needs. This may limit the ability of local authorities to use tools, such as block contracts, that might give providers sufficient certainty that specialised provision would be used.
- (b) Individual local authorities do not appear able to take into account the plans of other local authorities when considering their likely future needs. Local authorities are able to make placements in children's homes and with IFAs located in other local authority areas. This makes it difficult for individual local authorities to understand whether there is sufficient provision in a local authority area or region to meet their needs (and those of other local authorities that may rely on that provision). This may also discourage local authorities from encouraging the supply of placements from providers, because this does not always guarantee the local authority an availability of placements.⁵⁷
- (c) From providers' point of view, there may be benefits to local authorities considering their individual needs at the same time. Where provision will

⁵⁷ This depends on the commissioning approach utilised by the local authorities, for example if local authorities have exclusive contracts with providers then other local authorities would not be able to purchase these placements. However, exclusivity can also cause issues, ie inflexibility and financial risk.

rely on use by multiple local authorities, providers will be able to plan better if they understand all those local authorities' needs rather than just one individual local authority's needs.

- 4.44 It therefore appears that the relatively small scale of activity places inherent limitations on the ability of individual local authorities to accurately forecast their future demand and to then incentivise providers supply the placements needed.
- 4.45 Currently, in England, Scotland and Wales, collaboration between local authorities and between local authorities and large providers is focused on procurement of residential and fostering placements rather than market shaping. In other words, current approaches to collaboration help local authorities to engage with the market as it is rather than to shape future provision of children's home and fostering placements.
- 4.46 Local authorities in England highlighted several challenges to collaboration with regards to market shaping. These included: the lack of willingness of providers to sign up to long-term contracting arrangements; differences in local authority governance limiting their ability to operate jointly; and the role of geographical boundaries (with local authorities wanting to keep children within their local area wherever possible). Local authority funding arrangements also seem likely to prevent local authorities from collaborating with providers in expanding capacity, the short-term nature and lack of available funding limiting their ability to make significant investments for the future.
- 4.47 In Scotland and Wales, national bodies procure on behalf of local authorities (as described in the section on [Effective purchasing](#) - differing approaches to procurement). Both the 4Cs and Scotland Excel have also made steps to assist local authorities with shaping the market, although these have largely launched in the last five years and are relatively nascent.
- 4.48 Scotland Excel explained that, in terms of encouraging providers to supply the right type of placements (in terms of needs catered for and geographic location), its role has generally been to maximise participation on frameworks to enable maximum choice.
- 4.49 The 4Cs⁵⁸ explained that part of its role includes developing and shaping the market to support local authorities' sufficiency duties and develop a diverse range of good quality services for those who require them. In order to do so, the 4Cs provides strategic commissioning support to local authorities to assist

⁵⁸ [4Cs response to the ITC.](#)

them in the development of local and regional Market Position Statements (MPS).⁵⁹ An MPS is intended to set out a local authority's requirements to providers for the development of services, including what they want and what they do not want.

- 4.50 This suggests that, although there are many difficulties faced by local authorities in influencing the decisions of providers in relation to expansion of capacity, more strategic commissioning support could help to ensure providers supply the placements local authorities need. However, while some evidence suggests that the approach taken by the 4Cs appears likely to support local authorities in ensuring their needs are met by providers, it is difficult at this stage to assess the impact of the 4Cs work and further evidence is needed.
- 4.51 We will be seeking further evidence on the extent to which more accurate long-term forecasting and effective market shaping at a national or enhanced regional level would help to ensure an appropriate supply of places in the children's social care market

Barriers to providers reacting to signalled needs

- 4.52 Where providers have clear signals of likely future care needs, they need to be able to act on these signals as efficiently as possible. However, there are barriers to opening new services in response to indications that such services are needed.
- 4.53 These barriers will be easier for providers to address the more the challenges considered in the previous section are reduced, ie the more certainty providers have over future needs and the stronger the incentives that are provided. For example, providers highlighted the link between finding appropriate properties and the fees paid by local authorities, with higher fees increasing the number of properties that were affordable. Similarly, providers stated that they would not open homes in high-cost areas unless there was sufficient support from local authorities or block contracts.
- 4.54 In this section we consider barriers in the following areas:
- (a) Regulation: while regulation as a whole is not considered overburdensome, we heard that providers ability to open new regulated provision is reduced by the registration process and that the regulatory

⁵⁹ Market Position Statements are not specifically a legal requirement although they can assist local authorities to meet their statutory duties.

system (particularly the inspection process) can reduce providers' incentives to provide complex care.

- (b) Property and planning: difficulties finding suitable properties and getting the necessary planning permission is seen by providers as a major challenge to opening new children's homes.
- (c) Recruiting and retaining staff: providers told us that difficulties staffing children's homes can negatively impact their ability to operate existing homes and open new children's homes.
- (d) Recruiting and retaining foster carers: this appears to be the main barrier to being able to expand the provision of foster care.
- (e) The funding arrangements of local authorities: this may inhibit local authorities from opening more in-house provision, particularly children's homes where the financial commitment is greater.

Regulation

- 4.55 In the children's social care sector, it is vital that quality is regulated and that all providers are vetted to safeguard the interests of children. We are not in a position to judge or make any assessment of what constitutes suitable quality, but we are considering how regulation affects the supply of appropriate places to meet children's needs.
- 4.56 Both local authorities and providers agreed that regulatory standards must be kept high and that the current overall level of regulation is not excessive. However, they also told us that aspects of the current regulatory framework and inspection processes can adversely affect the ability of providers to expand their services and their incentives to supply placements for children with complex needs, without necessarily helping to drive better outcomes. These issues were raised consistently with regards to children's homes and to a far lesser degree in relation to foster care.
- 4.57 In particular, two significant issues were raised by stakeholders:
- (a) That the registration process makes opening new regulated provision slow and costly.
 - (b) That the regulatory system, particularly the inspection process, discourages the independent provision of complex care.

The registration process makes opening new regulated provision slow and costly

- 4.58 Local authorities and large providers told us that registering a new children's home can take up to a year as delays to the process are common. Further, stakeholders told us that the requirement to have the home acquired and a registered manager in place prior to starting the registration process results in high costs before being able to take on children.⁶⁰ This potentially deters capacity expansion.
- 4.59 These issues were raised most strongly by stakeholders in England and were raised less frequently by stakeholders in Scotland and Wales.
- 4.60 While stakeholders in England consistently raised concerns about the impact of the registration process as regards children's homes, this was far less of an issue in relation to foster care. However, IFAs in England must also have a registered manager before the registration process begins and before the IFA has the ability to gain any fee income.⁶¹ We welcome further evidence to better understand how significant a burden the registration process is for IFAs.
- 4.61 Ofsted told us that where there is a pressing need, new children's homes can be registered in as little as ten working days, so long as the providers are ready for registration and have everything in place. Ofsted explained that delays in the registration process often occur because of delays in obtaining Disclosure and Barring Service checks and references (which form part of their legal requirements) and checking if those responsible for running the homes are known to local authorities (for safeguarding reasons). Ofsted also told us that one of the most common delays is finding a suitable manager. This is a legal requirement. Ofsted also told us that sometimes applications are incomplete or poor quality and that the required criteria, which are set out in legislation and are on Ofsted's website, are not always followed, resulting in delays to the registration process. Ofsted also highlighted that as the regulator, it must use its powers to maintain standards for children living in children's homes.
- 4.62 Stakeholders in England also said that legislation has not kept pace with developments in the market. For example, the current framework requires that each children's home must have its own dedicated Registered Manager

⁶⁰ We note that in England, the Ofsted registration requirements set out the following conditions be met before the registration process can begin: appointment of a registered manager, a statement of purpose that sets out the overall aims and objectives for the children's home; and, if it is a company, the appointment of a 'responsible individual' who represents the organisation to Ofsted. [Register a children's social care service \(SC1\)](#)

⁶¹ [NAFP response to the ITC. The Fostering Services \(England\) Regulations 2011](#), Regulation 6.

(regardless of the capacity of the home).⁶² This particularly impacts upon the opening of children's homes for complex needs placements which often, by necessity, are smaller and take on fewer children at any one time, as it limits the ability of providers to flexibly respond to demand for these placements.

- 4.63 Ofsted told us that it was aware of local authorities' and providers' views with regards to these issues. They highlighted that they are looking at what is possible within the current regulations but are bound by the legislation.

The regulatory system and the provision of complex care

- 4.64 Both large providers and local authorities told us that the fear of receiving negative regulatory ratings disincentivises providers from taking on the most complex cases or incentivises them to end placements early even when a child's needs are being met. Examples were provided of inspectors explicitly highlighting risks to a provider's ratings of continuing to provide care for children with complex needs and encouraging providers to end these placements. This likely contributes to the lack of supply of placements for children with complex needs.
- 4.65 Stakeholders, both local authorities and providers, suggested this issue results from ratings not taking into account the degree of challenge some children present. Sometimes due to the complexity of a child's needs, bad outcomes, at least in the short term, may be unavoidable. For example, a child with a propensity to run away or to not attend school is, unfortunately, unlikely to immediately stop doing so even with excellent care.
- 4.66 These issues were consistently raised by stakeholders in England, less consistently in Wales (where provision is rated as either compliant or non-compliant so the lack of gradations in the rating system do not lend themselves as much to rating-related disincentives) and were not raised by stakeholders in Scotland.
- 4.67 Where stakeholders raised these issues, they were with regard to children's homes and we have not seen any evidence to suggest these issues also occur with regards to foster care. However, we welcome further views on this issue.
- 4.68 Ofsted told us that it is aware of concerns about children's homes not taking on children with more complex needs due to the potentially negative impact

⁶² Under Regulation 27 of [The Children's Homes \(England\) Regulations 2015](#) every children's home must have a person managing it and that person will either be: the registered provider if they are an individual, and fit person to manage a children's home; or an individual that the registered provider appoints as manager.

on their Ofsted ratings. However, it also told us that it has not seen much evidence of these concerns in practice as it is usually raised as a general issue without concrete examples. Despite this, Ofsted have adapted their approach in light of these concerns, focusing on progress made and experience indicators in relation to the child in care, rather than outcomes.

- 4.69 Although the legislation and guidance in England sets out minimum standards for placements,⁶³ we have heard from local authorities and large providers that the current framework is too rigid in terms of what does and does not constitute appropriate care. For example, stakeholders told us that legislation sets out what types of residence children may be placed in and rules out others, even though these may be reasonable given the care needs of the child. This can hinder local authorities and providers from flexibly offering bespoke placements specifically tailored for complex needs. This likely contributes to the lack of appropriate placements in children's social care.
- 4.70 Ofsted told us that the current definition of a children's home⁶⁴ is not fit for purpose, for example there is no legal window for flexible or emergency provision, with potential workarounds being fraught with complexity for registration and enforcement processes.

Property and planning

- 4.71 Finding a suitable property, either to purchase or lease, is a challenging and essential part of being able to open a new children's home. The property needs to fit certain criteria depending on the type of care being provided. Providers pointed to characteristics properties need to meet, such as being the right size, preferably with en-suite bathrooms, office space, outdoor space and communal space. It must also be in the right area, with security and privacy, near schools and other children's services and away from crime, gangs and the risk of exploitation.
- 4.72 Providers and local authorities both told us that a lack of suitable property and the high price of property can be a barrier to being able to provide children's homes. Although finding suitable property is not always considered a major

⁶³ In England, a local authority can place a looked after child in the following ways: with a local authority foster parent ([Children Act 1989](#), Section 22C(6) (a) and (b)); in a children's home ([Children Act 1989](#), Section 22C 6(c)); or in a placement in accordance with other arrangements which comply with any relevant regulations (made for the purposes of section 22C [Children Act 1989](#). Subject to Section 22D of the [Children Act 1989](#)). In Wales, a local authority can place a looked after child in the following ways ([Social Services and Well-being \(Wales\) Act 2014](#), Section 81): with a local authority foster parent; or in a children's home. In Scotland, when a local authority provides accommodation for a child, whether on a voluntary or compulsory basis, the local authority may place the child in a foster family, or in a residential establishment ([Children \(Scotland\) Act 1995](#), Section 26(1))

⁶⁴ [Care Standards Act 2000](#), section 1 states 'an establishment is a children's home... if it provides care and accommodation wholly or mainly for children.'

challenge, large providers generally considered it to be a problem where residential housing is in high demand, particularly London and the South East of England. While some local authorities outside these areas still considered finding properties to be an issue, others did not, particularly where they had wider approaches to housing that allowed them access to more property, eg council housing stock.

- 4.73 Providers and local authorities told us that planning permission was a more significant issue. It was repeatedly given as the main challenge when opening a home. Issues with planning permission typically delay homes and in some cases providers and local authorities have abandoned plans to open a children's home due to issues with planning permission. Issues with planning permission also increase costs. For example, some providers told us that when purchasing properties they offer higher prices or a non-refundable deposit to mitigate the chance that a seller will back out because of planning risks and delays and sell to an alternative buyer who can move more quickly.
- 4.74 Changing a property from conventional domestic use to a children's home may require planning permission where there is a material change of use.⁶⁵ One of the challenging elements of obtaining planning permission is local opposition from residents to a potential children's home. Many providers considered that areas where there are appropriate properties, eg safe residential areas with multiple bedroom properties, are more likely to have organised opposition. A further potential issue raised with us is lack of coordination within the relevant local authority; for example, we were told that sometimes one part of the local authority has identified the need for the home but may not have communicated this to the planning part of the local authority.

Recruiting and retaining staff

- 4.75 High quality staff are crucial for continuing provision and for expanding supply. We have heard that the requirement for staff both in terms of numbers and of suitable quality has increased as a result of higher regulatory standards.⁶⁶ While some local authorities and providers reported no issues in recruiting

⁶⁵ In England and Wales, depending on the circumstances of each case, a children's home will fall into either a C2 (residential institutions) or C3 (dwelling houses) use classification (as set out in [The Town and Country Planning \(Use Classes\) Order 1987](#)). Planning permission may be required for a material change between these use classifications. In Scotland, houses (which include occupation by a single person, a family or not more than 5 residents living together including a household where care is provided for residents) are a Class 9 establishment. Residential institutions (for the provision of residential accommodation and care to people in need of care other than a use within class 9 (houses); or as a hospital or nursing home; or as a residential school, college or training centre) are a class 8 establishment. Planning permission is likely required for change of use between Class 8 and 9 ([Town and Country Planning \(Scotland\) Act 1997](#) and [The Town and Country Planning \(Use Classes\) \(Scotland\) Order 1997/3061](#)).

⁶⁶ ICHA response to ITC.

staff, many providers and local authorities told us that finding sufficiently skilled staff with the appropriate experience, especially registered managers, is a major challenge to expanding provision in children's homes. Data from Scotland for 2019 showed that 47% of children's homes had vacancies and 70% said recruiting appropriately qualified candidates was an issue.⁶⁷ This can even lead homes to close or run below target occupancy.

- 4.76 As well as the need to compete with other employment options, a specific factor that appears to contribute to a lack of appropriate staff is the relatively high staff turnover rate across the sector meaning experience and skills are harder to accrue. Staff recruitment is more difficult in certain areas. For example, high housing costs can mean salaries must be higher than the sector can pay and one provider stated that there are very few homes in London and the South for this reason. This appears to be more of an issue for more staff-intensive forms of care, such as solo placements for children with the most challenging needs, which can require a full staff team of seven plus a registered manager.⁶⁸
- 4.77 Local authorities and providers consistently emphasised that staffing challenges were particularly difficult in relation to the recruitment of registered managers. These members of staff have substantial experience and have responsibility for the home. This makes them both essential and hard to recruit.

Recruiting and retaining foster carers

- 4.78 Difficulties in recruiting foster carers will limit the number of foster placements and can prevent providers from expanding into new areas. Recruitment of new foster carers is needed not just to expand provision but to offset those foster carers that deregister each year; around one in five registered households in England last year. Local authorities report an aging population of foster carers (for example, more than 50% of one local authority's foster carers are over 55 years old) and a falling average length of service. Polling of former foster carers from the Social Market Foundation found age to be the most common reason for foster carers aged over 55 to deregister, with 61% of this group feeling that they were now too old to foster.⁶⁹
- 4.79 Overall, the factors contributing to giving up fostering were varied with the most common factor, receiving too little training and/or support, being cited by just 21% of all respondents and one in three of those aged between 18 and

⁶⁷ [Care Inspectorate Scotland response to the ITC.](#)

⁶⁸ [Common Thread response to the ITC.](#)

⁶⁹ [Fostering the future, Paper 2](#) Social Market Foundation.

54. Other key reasons mentioned were: not receiving enough respite; not being able to afford it; not receiving enough placements; and being unable to meet children's needs.

- 4.80 Recruitment of new foster carers appears to be a challenge in England, Scotland and Wales. Over recent years, the number of approved foster carers has slightly declined in England and Scotland and risen slightly in Wales.⁷⁰ Local authorities and IFAs market the opportunity to become a foster carer online, on social media and through local events, for example with current foster carers. This can be expensive, with providers reporting large and growing recruitment and marketing costs.
- 4.81 The main barrier identified by providers to recruiting more foster carers is identifying and encouraging the limited pool of people who are willing and able to be a foster carer. We have been told that fostering is life-changing and incredibly rewarding, but also very challenging. Further, not everyone who wants to be a foster carer has the resources, including a spare room, financial stability and time, or personal skills to be eligible. This is also potentially more of a challenge where limited housing stock limits the number of applicants with spare bedrooms.
- 4.82 The difficulty in recruiting foster carers appears greatest for children with more challenging needs. We have been told that it is hard to find families "who are open to looking after a child/children who have experienced trauma and whose behaviour will have been affected by this" and that have the right skill levels to care for these children. Sibling groups are also a particular challenge. For example, CIS report that 58% of fostering agencies in Scotland have difficulties recruiting households that will take sibling groups with the main reason being accommodation constraints.⁷¹ The challenge is also potentially greater in areas of greater need, such as London and the South East of England, where there is limited housing stock and so limited numbers of applicants with spare bedrooms.
- 4.83 Those interested in becoming foster carers go through a detailed recruitment process. Most agencies start by completing an initial screening, including a home visit, to assess an applicant's suitability. If both agency and applicant wish to proceed, the formal process then begins with the applicant completing a detailed application form. The assessment will include multiple visits from a social worker, background checks and references. During the process, prospective foster carers complete a three-day introductory course covering

⁷⁰ Sources: [Ofsted Official Statistics Release](#); [Care Inspectorate, Fostering and Adoption 2019-20 A statistical bulletin](#); [Foster Parents Approved by local authority and measure, Stats Wales](#).

⁷¹ [Care Inspectorate, Fostering and Adoption 2019-20 A statistical bulletin](#).

the essential skills required for fostering. A panel made up of childcare professionals assesses the evidence gathered by the social worker and interviews the prospective carer. This panel then makes a recommendation to the agency decision maker, who must be an experienced social worker.

- 4.84 Very few initial enquiries lead to people becoming approved foster carers. In England, Ofsted estimates that there were 137,200 enquiries from new prospective fostering households in 2019/20 compared to under 8,000 households approved for fostering in the year.⁷² In Scotland, CIS report that in the first half of 2019 fostering agencies received around 5,200 enquires compared to 113 leading to approved households. Overall, the process of recruiting a foster carer typically takes between 6 and 9 months and costs around £10,000 to £20,000 per carer, including the cost of marketing and assessment.
- 4.85 Despite the attrition rate, cost and time involved, local authorities and providers generally did not raise this process as a major barrier. The process was seen by them as necessary to ensure that only the right applicants became foster carers.
- 4.86 We have heard concerns from some IFAs that the ability of foster carers to transfer between agencies was detrimental as it could reduce the incentive to recruit new carers. However, this does not seem to have led to a significant impact on recruitment. It is relatively easy to transfer from one agency to another and the main cost which this involves relates to the requirement for the foster carer to go through the assessment process again at their new agency. Nevertheless, foster carers appear to move between agencies relatively rarely⁷³ and if it was more difficult to transfer, this could potentially impact negatively on overall carer retention where carers may wish to leave a particular agency but remain working in the sector.⁷⁴

The funding arrangements of local authorities

- 4.87 As discussed previously, opening a new children's home is a major financial commitment and especially so for local authorities with reduced budgets and multiple competing demands for resources. Many local authorities told us this was one of the major challenges when considering whether to open new children's homes. Local authorities gave examples where they could not open

⁷² [Ofsted, Fostering in England 2019 to 2020: main findings.](#)

⁷³ Most agencies told us they had only a small number of carers who transferred each year, eg less than 5%. Ofsted statistics also suggest it is relatively rare: 645 out of 4390 carers with information on their fostering experience were "transferring from another fostering agency" and 570 out of 8,465 deregistrations were to facilitate a transfer. [Ofsted: Official Statistics Release, 12 November 2020.](#)

⁷⁴ [Assessment of Market Power \(OFT415\)](#)

a home as a result of lack of funding despite there being a good business case, such as investing in the short term to save longer term. Some local authorities suggested the nature of local authority funding arrangements causes issues. For example, one local authority told us that “funding is short-term and therefore it is difficult for authorities to plan longer-term.” However, we also heard from many local authorities that have successfully invested in opening new homes within the current financing arrangements. While this appears to be more relevant to children’s homes, we note that marketing campaigns to recruit foster carers are also significant expenses.

Provisional view on causes of the outcomes we observe

- 4.88 At this stage in our market study we have concerns that the market for children’s social care placements is not performing as effectively as it could be.
- 4.89 First, we see evidence that local authorities face difficulties in making effective and consistent use of measures which would improve their ability to secure the best available placements at a reasonable price from the available supply. Due to the small number of placements they make each year, local authorities face limits to their ability to make use of these approaches.
- 4.90 Second, incentives for providers to invest in order to provide sufficient placements could be strengthened if local authorities (or someone acting on their behalf) were able to forecast effectively future demand and shape the market to meet that demand. We have found a lack of accurate long-term forecasting driven by lack of resources within local authorities and uncertainty of demand; and a lack of effective market shaping driven by local authorities’ inability to credibly signal that they will take up particular placements or commit to paying for capacity in their area if provided in the future.
- 4.91 In both these areas, we have concerns that the scale of activity may mean that, for some activities, there are limits to how effectively they can ever be carried out at local authority level.
- 4.92 Third, we consider that there may be barriers to providers, both local authority and independent, responding flexibly to needs, even when they are incentivised to do so. One key potential source of these barriers is regulation, which we have heard makes opening new regulated provision slow and costly and discourages the provision of complex care. Other potential barriers to providers opening new provision include finding suitable properties for children’s homes and getting the necessary planning permission; recruiting and retaining staff for children’s homes; recruiting and retaining foster carers; and local authority funding arrangements.

5. Possible remedies

5.1 This section of the report sets out our provisional thinking, at a high level, on measures that we consider may be necessary to tackle our concerns about how well the placements market is functioning to support positive outcomes in children's social care.

5.2 We have not yet completed our work and have therefore not yet reached firm conclusions about the extent to which the market may be failing to deliver the key outcomes needed to support a successful children's social care system, and any measures that may be necessary to achieve this. Nonetheless, at this stage we wish to set out our initial thinking on potential measures, and to seek stakeholders' views on their likely effectiveness.

5.3 In Section 3 we set out our concerns that the children's social care sector is failing to deliver consistently the right outcomes for children and society. We reiterate these below:

(a) We have concerns that there are insufficient placements of the right type, in the right places, to ensure that children consistently have access to placements that are appropriate to their needs.

(b) We have concerns that prices for placements are above what we would expect to see in a well-functioning market.

(c) We are concerned that high and increasing debt levels among independent providers may be leading to an increased risk of unexpected disorderly exit from the market, with negative impacts on children and local authorities.

5.4 In Section 4 we set out the possible causes of these concerns, which we summarise below:

(a) Local authorities face a wide range of challenges when looking to find a place for a child in their care. Different approaches to procurement may increase the ability of local authorities to secure appropriate placements at reasonable prices, but the relatively low numbers of placements bought by a single local authority limits their ability to make use of these positive approaches.

(b) Local authorities face difficulties in encouraging the creation of appropriate supply to meet their future needs. A lack of accurate long-term forecasting driven by lack of resources within local authorities and uncertainty of demand; and a lack of effective market shaping driven by local authorities' inability to credibly signal that they will take up particular

placements or commit to paying for capacity in their area if provided in the future. Again, the low numbers of placements needed by a single local authority limits their ability to achieve this.

- (c) Barriers to providers, including local authorities, opening new services in response to indications that such services are needed, namely:
- (i) Aspects of the regulatory system that make opening new regulated provision slow and costly and discourage the provision of complex care.
 - (ii) Other barriers to providers to respond flexibly to need, namely:
 - Difficulties finding suitable properties for children's homes and getting the necessary planning permission;
 - Difficulties in recruiting and retaining staff for children's homes;
 - Barriers to recruiting and retaining foster carers; and
 - Local authority funding arrangements.

5.5 In the rest of this Section we set out the high-level measures that we intend to explore in the next stage of our study, focussing on:

- (a) Ensuring that purchasers of children's social care are able to engage with the market more effectively; and
- (b) Making it easier for providers to create appropriate capacity.

We then consider concerns that have been raised about the resilience of the sector. Finally, we consider a range of options that would involve intervening directly to shape market outcomes.

Supporting authorities to engage with the placements market more effectively

5.6 In [Section 4](#) we set out our concerns that some of the difficulties local authorities appear to face in engaging with the placements market may be made worse by their relatively small scale of activity, in particular for certain categories of children who are more difficult and expensive to place. We therefore want to consider whether options for carrying out market operations on a larger scale could help address some of these issues.

Purchasing placements to secure the best outcomes for children

- 5.7 We have concerns that local authorities are not consistently able to find and purchase placements of the right type, in the right places, to ensure children have access to placements appropriate to their needs. Local authorities face a number of challenges in finding and purchasing placements: getting the right match for a child is incredibly difficult given the individual needs of each child; placement options may be very limited in number, particularly for children with the most complex needs; and local authorities must find a placement for each child, and do not have the ability to delay. Local authorities can therefore find themselves in a weak position in the purchasing process.
- 5.8 As we set out in Section 4, we believe that local authorities may not be able to take full advantage of measures they could use to improve their engagement with the market when they are procuring placements, such as regional or national framework agreements, block contracts and bulk-purchase discounts. At the same time, having multiple local authorities chasing a small number of available places may lead them to bid up the price.
- 5.9 On each of these issues, we believe that a more appropriate scale of interaction with the market from the purchasing side could help local authorities achieve better outcomes:
- (a) Framework contracts are likely to be more attractive to providers when they encompass a larger number of potential placements, and where the opportunities for selling off-framework are reduced. Both of these could be achieved with frameworks operating across multiple local authorities.
 - (b) Block purchasing may also be more feasible and effective at a larger scale than can be achieved by a single local authority, as the larger numbers of looked-after children would give greater confidence to purchasers that there will be a sufficient number of children for whom the block-purchased placements are a good fit to ensure the places are taken up.
 - (c) Making higher numbers of placements overall may mean that it is more likely that a larger number of placements will be made at a similar point in time, potentially increasing the ability of purchasers to request bulk discounts.
 - (d) Finally, by widening the scope of the procurement exercise, prioritisation between children in need of the same scarce placement is more likely to be able to be managed in a coordinated way, rather than through competition between different authorities in the market.

Understanding needs and incentivising placements

- 5.10 As we have also set out in Section 4, we have concerns that local authorities often do not effectively forecast their future needs, and that this in turn increases uncertainty for potential suppliers of new capacity.
- 5.11 Again, we consider that increasing the scale at which these activities are carried out, by doing so by or on behalf of multiple local authorities or providing more centralised or regional support, could address some of the challenges to more accurate and comprehensive forecasting. The benefits of doing so may particularly arise for those placements that are more challenging for local authorities to forecast and provide, such as placements for children with the most complex needs. We have also heard concerns that a lack of access to suitably fine-grained data is limiting the ability of market participants to understand the profile of needs in the market, and how well it is being met by current provision. We are, however, mindful of the impact on local authorities and others of increasing levels of data collection. We will consider what recommendations it would be proportionate to make in this area.
- 5.12 We also set out our concerns about the limited extent to which local authorities appear to be actively engaging with the market to help ensure that sufficient appropriate placements are provided to meet their future needs. Again, increasing the scale at which this market-shaping is carried out or supported, above the local authority level, has the potential to address some of the blockers local authorities may be facing in doing this themselves.
- 5.13 Additionally, we will consider whether changes to local authority funding arrangements may be helpful in providing them with greater long-term certainty, to allow them to more effectively plan and shape the market over time.

Achieving the most appropriate scale of operations

- 5.14 In order to achieve this more appropriate scale, we are exploring recommendations that would involve the creation of regional or national level bodies with a clear mandate to help local authorities secure the most appropriate placements for their looked-after children. These functions could encompass procurement, forecasting and market shaping.
- 5.15 While we are interested in exploring the benefits of carrying out some of the market engagement activities of local authorities at a higher scale of operation, we are also conscious that there could be trade-offs from reducing local autonomy, and the costs and benefits may vary for different functions. We will therefore consider whether, and if so how, any such remedies should

apply to all types of children's social care or just those that are more challenging for local authorities to provide (such as placements for children with the most complex needs) and to whether they should vary between procurement, forecasting and market shaping activities.

- 5.16 Within each of these options, there is a spectrum of possible interventions that could be made to move away from the current approach. At the lighter end of possible intervention, these bodies could act as a support function for local authorities to carry out their own market-facing activities and collaborate with each other. In a more interventionist model, these bodies could take on the responsibility for delivering placement sufficiency across their geographical remit, or even placing the children themselves, with associated budget. Similarly, local authority engagement with collaborative approaches run by these regional bodies could be voluntary or mandatory. Again, however, there are likely to be trade-offs to be made in considering these options.
- 5.17 Some of these trade-offs may impinge on wider issues related to the effectiveness of the overall children's social care system, but not related to the operation of the placements markets; policymakers will be better placed than the CMA to consider these. We recognise that the CMA may not be best placed to decide how these functions are best carried out, and we will explore what might be the most appropriate body to make such judgments.

Making it easier for providers to create appropriate capacity

- 5.18 Existing and potential suppliers must be able to act effectively in response to the market signals discussed above. We have concerns, as discussed in Section 3, that they face constraints in doing so.

Ensuring that policy and regulatory responses do not unwittingly create barriers to the market responding effectively to future needs

- 5.19 In the children's social care sector, it is particularly important that quality is regulated and that all providers are vetted to safeguard the interests of children. However, we have heard concerns that regulation has not kept pace with the changing nature of provision over the years, and that aspects of the regulatory framework, particularly in England, may restrict the flexibility of providers, create barriers to the supply of care and accommodation and disincentivise provision. There have been calls for a comprehensive review of the regulatory system in England.⁷⁵

⁷⁵ See eg [ADCS response to the ITC](#).

- 5.20 Our thinking is in its early stages. However, in view of these concerns, a review of regulatory frameworks may deliver significant benefits. Given the essential role of regulation in the sector, it should be first and foremost centred on quality and safeguarding of children’s interests. We therefore have no intention of pursuing recommendations that would reduce the overall level of regulatory protection for children.
- 5.21 With that important proviso, however, an effective review should also take into account any potential barriers to supply in the existing frameworks, and the potential for unwittingly creating barriers in any future regulatory frameworks, to ensure the effective functioning of the placements market, whilst at the same time not compromising the quality of care. The CMA is not best-positioned to decide on the appropriate level or final design of regulation, but it is able to advise on the impact of different approaches to regulation on the way the market is likely to function.
- 5.22 We intend to explore these concerns further in the second stage of our market study.

Other potential barriers

- 5.23 Concerns have been raised about other potential barriers that make it difficult for providers to create capacity where it is needed.
- 5.24 These relate to the availability of property suitable for children’s homes and concerns around potential barriers in the planning system. While expanding the availability of property more widely is outside the scope of our study, we intend to examine further whether there are any barriers related to property and planning that make it more difficult for providers to create appropriate capacity in response to expected needs.
- 5.25 The scope of potential workforce issues is far broader than the CMA can examine in this study, but in light of concerns that have been raised we intend to examine whether there are barriers to the recruitment and retention of staff in children’s homes; and, whether there are barriers to the recruitment and retention of foster carers that make it more difficult to create appropriate capacity in response to expected needs.

Supporting a resilient placement market

- 5.26 In [Section 3](#) we noted concerns that certain external shocks – such as a change in regulatory or policy approach or sudden tightening of credit conditions - may lead to unforeseen and substantial market exit, significantly increasing the difficulties local authorities face in finding places for children in their care, particularly in children’s homes. We have seen the problems which

arise from such market exit in other sectors, for example care for older people, if there is not a plan in place to ensure continuity of care.

- 5.27 Concerns have been raised by some stakeholders that the levels of debt in the sector leave some independent providers particularly exposed to external shocks. Given the potential damage to individuals and local authorities from sudden, unexpected exit, we are more likely to have concerns which lead us to consider intervention than in other sectors.
- 5.28 We are considering a range of potential recommendations in this area, focused on measures that would reduce and mitigate the risk of unexpected disorderly exit.
- 5.29 One such approach would be a financial oversight regime for providers. A statutory oversight regime is already in place for adult social care in England, administered by the Care Quality Commission. This regime is designed to assess the financial sustainability of providers that local authorities could find difficult to replace should they fail and become unable to carry on delivering a service because of their size, geographical coverage, or specialism. As well as providing an early-warning system, such a regime could involve setting clear limits on leverage and other forms of financial risk-taking.
- 5.30 In addition to this, we will also consider whether there need to be additional step-in provisions. These would allow an alternative provider, whether a local authority, another independent provider, or someone else, to come in smoothly to run a service if the original provider is unexpectedly unable to continue. Such provisions would be aimed at ensuring continuity of service with minimal disruption for the children in the relevant placements.

Other potential remedies proposed by stakeholders

- 5.31 We have also heard a number of other remedies proposed by stakeholders that would involve intervening to shape outcomes, rather than trying to improve the way the market itself operates. Some stakeholders see these measures as a direct way of addressing concerns about the operation of the market. Given the apparent support for these approaches, it is important that we set out our views on them.

Limiting for-profit provision

- 5.32 One possible solution in a market where there is public and voluntary provision alongside apparently high profits from for-profit providers is to remove for-profit provision and the distortions it implies from the market, necessarily eliminating the issue of high profits being earned.

- 5.33 This view has gained significant support from some important policy-makers and stakeholders. In Scotland, profit-making is not permitted in the fostering segment and the Scottish Government has plans to eliminate profit-making from the wider children's social care sector by 2030. The Welsh Government has also committed to moving in this direction in the course of this Senedd term. Within England, stakeholders such as the North East Region of the Association of Directors of Children's Services have suggested eliminating profit-making from the system as one possible approach.⁷⁶
- 5.34 Our view of the role of private and local authority provision in the market is based on an assessment of what is needed to deliver the best outcomes in the market as it currently stands, not on any in principle view as to whether it is appropriate to have services operated by the private sector.
- 5.35 On this basis, it is unclear to us at this stage that the net result would be better outcomes for children and local authorities in the long term.
- 5.36 First, it is not clear that more local authority provision of children's homes would necessarily result in significant cost savings for them, because we have seen that on average local authority costs (to deliver a comparable quality of care) appear to be higher than private providers' costs for children's homes. In the case of fostering, the like-for-like comparison is less clear, but we have not at this stage seen compelling evidence that independent provision is more expensive on a like-for-like basis.
- 5.37 Second, eliminating for-profit provision would risk reducing supply as local authorities and voluntary providers, who may not have access to capital to create new provision, may not be able to fill the gap left by reducing reliance on for-profit provision within an acceptable timetable.
- 5.38 We note, however, that the level of these risks will be different depending on the situation facing policymakers within their different jurisdictions. Where local authorities are less reliant on for-profit provision, or where they expect to be so in the future, there will be correspondingly less risk in restricting the role of for-profit provision. Conversely, where there is currently a high-level of reliance on for-profit provision, and this would be expected to continue into the future, this creates a higher level of risk that sufficient appropriate placements will not be available.

⁷⁶ [North East Submission to the Independent Review of Children's Social Care 2021.](#)

5.39 Ultimately, we recognise that decisions around the appropriateness or otherwise of having services operated by the private sector are rightly for elected representatives across the UK to decide.

Direct intervention to limit prices or profits

5.40 A related view that we have heard put forward by some stakeholders is that if prices and profits are higher than they should be, we should therefore intervene directly to limit prices or profits in the sector. Again, however, although this would directly address potential concerns around high prices and profits, it may not result in a better overall outcome for children and local authorities.

5.41 First, this approach may drive supply from the sector. Our preliminary conclusions about outcomes in this market suggest that despite apparently high profits being earned, there is under-supply of appropriate placements in the market. Therefore, without addressing the drivers of this under-supply, price and profit caps risk reducing incentives to bring new capacity to an already underserved market. This would be a poor outcome for children.

5.42 Second, price caps in particular would be very difficult to design and administer effectively. The level of needs, and the type and cost of supply that is required to meet those needs, varies widely between children. Even for specific children, their true level of needs may not be apparent when they are first placed or may change over time. A price or profit cap that is not well-targeted could, therefore, produce inappropriate incentives for providers to pick and choose the placements that they were willing to provide. For example, it could result in “cherry-picking” whereby providers avoid offering placements to children with higher needs, because they get the same level of income or profit by caring for children with needs levels that involve less cost and risk.

Funding

5.43 We have also heard concerns from stakeholders that local authority funding in England is under increasing pressure as central government grants have fallen and demand for services has increased, and that such financial challenges have led to the reduced ability of local authorities to invest in new provision.⁷⁷

⁷⁷ [LGA response to the ITC](#).

- 5.44 It has also been suggested that a lack of spending on early intervention and edge of care services leads to more looked-after children, and therefore higher costs for local authorities. While these non-statutory services are outside the scope of our market study, it seems clear that their effectiveness will have an impact on the functioning of the children's social care placements market.
- 5.45 These concerns may have led some stakeholders to conclude that greater funding for local authorities as they access the placements market would help them achieve better outcomes for children.
- 5.46 It seems clear that providing targeted funding to local authorities to create new provision could ease particular constraints caused by under-supply in the market. In some cases, initial investment may allow local authorities to deliver services on an ongoing basis at a lower cost than they can purchase them from independent providers.
- 5.47 However, funding cannot be considered in isolation and putting more funding into the system without wider reforms – of the type we have been discussing - may only result in prices and profits being bid up without delivering new supply. It is therefore important that funding pressures are considered in the round of wider issues affecting the market.

Next steps on remedy development

- 5.48 As our thinking on potential remedies develops, we would like to test these with stakeholders to understand their likely impact on any issues we are investigating, and any unforeseen effects they may have on the children's social care system more widely. In the first instance, we welcome feedback on the thinking set out in this section. Between now and the final report, we intend to seek more detailed input on any proposed remedies, including through workshops with stakeholders so that we can understand the institutional context and operational implications of the measures we are contemplating.

6. Invitation to comment

- 6.1 We welcome feedback on our analysis of market outcomes, emerging conclusions on potential drivers of poor outcomes and early stage thinking on possible recommendations. Informed feedback will be extremely valuable to us as we move into the second phase of our study, where we will look to deepen our analysis and sharpen our understanding of any drivers of poor outcomes and what can best be done to address them. We particularly welcome responses on the questions below.

Consultation questions

In responding to each of the questions below please make it clear:

- *whether your response relates to children's homes, fostering services, or both; and*
- *which nation or nations your response relates to.*

Please provide explanations, evidence and examples to support your responses wherever possible.

Our analysis of market outcomes

- 1) Do you agree with our analysis of market outcomes, as set out in **Section 3** of this interim report?

Our emerging conclusions on the potential drivers of market outcomes

- 2) Do you agree with our emerging conclusions on the potential drivers of the market outcomes, as set out in **Section 4** of the interim report?

Our thinking on possible remedies

- 3) Do you agree with our thinking about possible remedies as set out in **Section 5** of the interim report?
- 4) Can you provide any best practice examples of initiatives to improve outcomes, including collaborative initiatives, that we should consider?
- 5) Do you have any examples of collaborative (or other) initiatives to improve outcomes that have been less successful – please explain why you think this was the case.

- 6) Do you see potential for unintended consequences with any of the potential measures set out in Section 5?
- 7) Are there any other measures we should be thinking about? If so, please explain how they would work and what would their impact be.

Financial analysis

- 8) We welcome comments from stakeholders on:
 - a. the approach we are taking to the financial analysis of the sector; and
 - b. the initial findings from our financial analysis and our interpretation of those findings.
 - c. the specific questions to further our analysis as set out at the end of the **financial analysis appendix** (Appendix A).

Responding to this interim report

- 6.2 Please email written submissions to children@cma.gov.uk by **12 November 2021**.
- 6.3 Please ensure that all personal information, other than your contact details, is redacted or excised from your response and any documents you submit to us.⁷⁸
- 6.4 We intend to publish responses to this interim report, therefore:
 - Please supply a brief summary of the interests or organisations you represent, where appropriate.
 - Please consider whether you are providing any material that you believe to be confidential, and explain why this is the case. Please provide both a confidential and non-confidential version of your response where applicable.

⁷⁸ Personal information is defined in the General Data Protection Regulation PR (Article 4(1)) as 'any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'.

- 6.5 If you are responding as an individual (ie you are not representing a business or other organisation), please indicate whether you wish your response to be attributed to you by name or published anonymously.
- 6.6 An explanation of how we will use the information provided to us can be found in the Annex below.

Annex

How the CMA will use the information you provide us with

1. This annex sets out how we may use information you provide to us during the course of this market study, in line with our legal responsibilities. In particular, please note that we may choose to refer to comments or evidence that you provide in a published report or publish non-confidential information on our website. This may include identifying the contributor.

Why is the CMA asking for information?

2. The CMA is asking for information to help us to understand how to improve outcomes in the provision of accommodation and associated care and support for looked-after children, and fostering services for looked-after children.

What will the CMA do with the information I provide?

3. Your information will inform our interim and final market study reports. We may publish information you provide and identify you as the contributor of it in those reports, or alongside them on our website. Our final market study report will set out our findings and any proposed remedies to any existing or potential issues we find.
4. We may disclose any information provided by you for the purposes set out in sections 7, 170 and 241 to 243 of the Enterprise Act 2002, where we consider such disclosure to be appropriate. In particular, we may choose to put information provided by you to third parties, such as other government departments and other parties providing information to the CMA, for the purpose of facilitating any further related work.
5. Where appropriate, we may use information you provide to take enforcement action, using our competition or consumer powers, against businesses operating in the markets within the scope of this study. We may also share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary.
6. Unless an exemption applies, we may disclose the fact that you have provided information to us, and the information you have provided, in accordance with our obligations under the Freedom of Information Act 2000.

Will the CMA take steps to protect my information?

7. We may only publish or share with others information that you provide to us in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, we must have regard to (among other considerations) the need for excluding, so far as is practicable: (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or (b) any commercial information which, if published or shared, we think might significantly harm the legitimate business interests of the undertaking to which it relates.
8. We will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.

How will the CMA handle any personal data I provide?

9. Any personal data you provide to us will be handled in accordance with our obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. Our [personal information charter](#) set out the standards you can expect from us when we collect, use or share personal data and provides details of your rights in relation to that personal data and how to contact us.

What should I do if you have concerns about how the CMA will use any information I provide?

10. You should make clear to us any information that you consider to be confidential when you provide it to us and set out why you consider it to be confidential.
11. If we want to include any sensitive commercial or personal information in a document that will be published we will, save in exceptional circumstances, contact you prior to publication to give you an opportunity to tell us about any concerns you may have regarding that publication.

Where can I find further information?

12. Further details of the CMA's approach can be found in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).