

Children's social care market study final report

Scotland summary

10 March 2022

1. The CMA launched a market study into children's social care in England, Scotland and Wales on 12 March 2021, in response to two major concerns that had been raised with us about how the placements market was operating. First, that local authorities were too often unable to access appropriate placements to meet the needs of children in their care. Second, that the prices paid by local authorities were high and this, combined with growing numbers of looked-after children, was placing significant strain on local authority budgets, limiting their scope to fund other important activities in children's services and beyond.
2. We considered that the case for a market study in this area was particularly strong due to the profound impact that any problems would have on the lives of children in care. While we have approached this study as a competition authority, assessing how the interactions of providers and local authority purchasers shape outcomes, we have been acutely aware of the unique characteristics of this market, and in particular the deep impact that outcomes in this market can have on the lives of children.
3. Our market study is also timely. Each of the three nations in scope has significant policy processes underway which are aiming to fundamentally reform children's social care. For one vital element of this – the operation of the placements market – our study provides a factual and analytical background, as well as recommendations for reform. We intend that these will prove useful for governments as they develop their wider policy programmes for children's social care.
4. We found that, although the problems in this market are less pronounced in Scotland than in England or Wales, there were still some problems in how the placements market was functioning in Scotland. There were also some risks that will need to be monitored and mitigated as the Scottish Government proceeds with its reforms of the children's care system.
5. In Scotland we found that:

- in general local authorities are able to find appropriate placements, in the right location for their children, but they can face difficulties in finding appropriate placements for children with more complex or rare needs. In addition, some children are being placed in Scotland from English local authorities due to a lack of appropriate places in England;
 - the largest private providers of placements are making materially higher profits, and charging materially higher prices, than we would expect if this market were functioning effectively. Compared to England and Wales, we found lower prices in Scottish children's homes, but prices in fostering appear similarly high, despite all independent fostering agencies (IFAs) in Scotland operating on a not-for-profit basis; and
 - some of the largest private providers, some of whom operate in Scotland, are carrying very high levels of debt, creating a risk that disorderly failure of highly-leveraged firms could disrupt the placements of children in care.
6. It is clear to us that this market, as it operates across England, Scotland and Wales, is not working well and that it will not improve without focused policy reform. Governments in all three nations have recognised the need to review the sector and have launched large-scale policy programmes. A key part of these programmes should be to improve the functioning of the placements market, via a robust, well-evidenced reform programme which will deliver better outcomes in the future. This will require careful policymaking and a determination to see this process through over several years.
7. We are therefore making recommendations to all three national governments to address these problems. Our recommendations set out the broad types of reform that are necessary to make the market work effectively. The detail of how to implement these will be for individual governments to determine, taking into account their broader aspirations for the care system and building on positive approaches that are already in evidence.
8. Our recommendations fall into three categories:
- recommendations to improve commissioning, by having some functions performed via collaborative bodies, providing additional national support and supporting local authority initiatives to provide more in-house foster care;

- recommendations to reduce barriers to providers creating and maintaining provision, by reviewing regulatory and planning requirements, and supporting the recruitment and retention of care staff and foster carers; and
 - recommendations to reduce the risk of children experiencing negative effects from children’s home providers exiting the market in a disorderly way, by creating an effective regime of market oversight and contingency planning.
9. In recognition of the different contexts in each of England, Scotland and Wales, we differentiate between these in the text of the main report where appropriate. We have also drawn together the main conclusions and recommendations for each nation in its own dedicated summary. This summary sets out our main conclusions and recommendations for Scotland, and where appropriate compares our findings for Scotland with those for England and Wales. We do not set out our recommendations that apply only to England and Wales.

Background: the placements market

10. There are around 14,500 looked-after children in Scotland, out of a total of just over 100,000 looked-after children in England, Scotland and Wales. Of the children in care in Scotland a third are in foster care (compared with over two thirds in England and Wales); 10% are in residential settings (compared to 16% in England and 7% in Wales); and the remaining children are in ‘other settings’ including at home with parents, with kinship carers, with prospective adopters and in other community settings (this is notably higher than children in other settings in England and Wales).
11. The current annual cost for children’s social care services is around £680 million in Scotland.
12. Children’s social care is a devolved policy responsibility, with key policy decisions in Scotland being made by the Scottish Government. A significant policy reform process is underway in the children’s social care sector in Scotland, where the findings of The Promise Independent Care Review are being taken forward by The Promise Scotland. The Promise outlined five foundations on which change must be grounded, including that where children are safe in their families and feel loved they must stay, and where living with their family is not possible, children must stay with their brothers and sisters where safe to do so. Local authorities in Scotland now have a duty to ensure siblings are supported to stay together, where appropriate.

13. In parallel, the Scottish Government has been consulting on proposals for a National Care Service for Scotland (NCS), following on from the Feeley review of adult social care. Amongst other matters, the Scottish Government sought views on whether the NCS should include both adult and children's social work and care services. Subject to ministers' decisions, this could have significant implications for the future of the children's social care sector in Scotland.
14. The Scottish Government has also committed to move away from the model of for-profit provision in children's social care and we consider the implications of this below.
15. In Scotland, the Care Inspectorate has responsibility for children's social care, along with adult social care, in contrast to Ofsted in England which has a narrower focus on children's services. The Care Inspectorate is responsible for inspecting children's social care provision to ensure it is of the appropriate standard. Both fostering services and children's homes fall within the Care Inspectorate's remit.
16. Local authorities in Scotland have statutory duties in relation to the children taken into their care. They are obliged to safeguard and promote children's welfare, including through the provision of accommodation and care. 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.
17. In Scotland, local authorities use a significant amount of local authority provision for children's homes, with around 35% of places being provided by the private sector. In contrast local authorities in England and Wales rely more heavily on private provision of children's homes places. Since 2014/15 there has been a reduction in the share of local authority children's homes in Scotland, and a corresponding increase in the private sector's share of children's homes, whereas the voluntary sector's share has remained relatively stable.
18. As well as shifting from local authority to private provision in Scotland, the average size of children's homes has fallen, as has also been the case in England and Wales. Most children's homes in Scotland now provide five or fewer places.
19. In fostering, local authorities maintain their own in-house fostering agencies, but also use independent provision in the form of IFAs. However, the majority of fostering placements are provided by local authority foster carers in each of

Scotland, England and Wales. In Scotland, IFAs provide around 31% of foster placements; these are all not-for-profit providers, as for-profit provision is unlawful in Scotland. This picture has remained relatively stable since 2014/15. In England and Wales around 36% and 27% of foster placements, respectively, come from IFAs, with the majority operating on a for-profit basis.

20. In recent years, the number of looked-after children has fallen in Scotland, both in absolute terms and as a proportion of the population. Between 2016 and 2020 the number of looked-after children fell by 7% in Scotland. Over the same period, the number of looked after children, excluding those looked after at home, per 10,000 children declined in Scotland from 111 to 104. This is in contrast to England and Wales where numbers of looked after children rose over the same period.
21. Needs have also shifted, with more placements needed for older children, unaccompanied asylum-seeking children and those with more complex needs. These shifts have also increased demand for residential care and specialist fostering placements. We have seen an increasing gap between the number of children requiring placements and the number of local authority and third-sector placements available, although this has been less the case in Scotland than in England and Wales.

Move away from for-profit provision in Scotland

22. We are conscious that the Scottish Government has committed to move away from for-profit provision in children's social care. Our study has focussed on outcomes in the placements market and, overall, we have seen no real differences in terms of quality of provision by local authority and private providers, as assessed by regulators. In terms of price, our evidence suggests that the cost to local authorities of providing their own children's home placements is no less than the cost of procuring placements from private providers. In fostering, however, there is indicative evidence that local authorities could provide some placements more cheaply than by purchasing them from IFAs.
23. Implementation of any policy to move away from for-profit provision will take time and it is therefore inevitable there will be continued reliance on private provision to provide needed capacity for an extended period. During this period it is vital that the children are able to be placed in appropriate placements, at a reasonable cost to local authorities. In particular, a sudden loss of private capacity from the market could place local authorities in a difficult position, with negative impacts on children. Our recommendations

would contribute to ensuring that the placements market operates as well as possible in this transition period.

24. Even in a situation where for-profit provision has been removed entirely, it is likely that Scottish local authorities will continue to rely on commissioning places from not-for-profit providers, and that new placements capacity will be needed, either to reflect changing needs, or simply to replace lost capacity (eg through foster carers retiring). Our recommendations around commissioning, barriers to investment and resilience would remain relevant in this context.
25. The decision to move away from for-profit provision is rightly for the Scottish Government to take and involves considerations that go beyond our scope as a competition authority. In moving forward with this, however, we recommend that the Scottish Government carefully considers the points we have raised as part of the planning, funding and monitoring involved in the process of directly restricting for-profit provision, to ensure that this is achieved in a way that does not inadvertently result in negative outcomes for children.

Problems in the placements market

26. The placements market – the arrangements by which local authorities source and purchase placements for children – plays an important role in the provision of residential and fostering placements for children. As set out above, in Scotland, the placements market also plays an important role in allowing the local authority to purchase placements they do not provide in-house, including fostering placements provided by the voluntary sector.
27. Regulators assess most residential placements and fostering services as being of good quality, and there is no clear difference, on average, between their assessments of the quality of private provision, as compared with local authority provision. In Scotland, in December 2021, the Care Inspectorate reported that overall, the quality of fostering services was high and that it evaluates most care homes for children and young people in Scotland as being ‘good’ or ‘very good’.
28. Our study found problems in the way the placements market is operating in Scotland. Overall, we found that children are not always gaining access to placements that appropriately meet their needs and are in the appropriate locations and local authorities are sometimes paying too much for placements. While these problems are less pronounced than in England and Wales, they are still contributing to outcomes that are worse than they would be if the market were functioning better.

29. First, and most importantly, the placements market is failing to provide sufficient supply of the right type so that looked-after children can consistently access placements that properly meet their needs, when and where they require them. Concerns about the supply of placements in Scotland are less pronounced in England and Wales, as we would expect given falling numbers of looked-after children in Scotland. However, we were told Scottish local authorities experience difficulties finding appropriate placements for some children, including that 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 in Scotland, but shortages were reported for residential care for children with disabilities and for children with mental health issues.
30. As a result of these capacity constraints, we were told that some children are being placed in settings whereby they are unable to access care, therapies or facilities that they need: we were told consistently by local authorities in Scotland that it is especially difficult to find placements for children with more complex needs and for older children.
31. Particular concerns were expressed about children being placed cross-border from England into Scotland, because of a lack of suitable places in England. In such circumstances, children may be very far from home and in a different legal and educational system.
32. Second, the prices and profits of the largest providers in the sector in England, Scotland and Wales are materially higher than we would expect them to be if this market were working well. The evidence from our core data set, covering fifteen large providers, shows that these providers have been earning significant profits over a sustained period. For the children's homes providers in our cross-GB data set we have seen steady operating profit margins averaging 22.6% from 2016-20, with average prices increasing from £2,977 to £3,830 per week over the period, an average annual increase of 3.5%, after accounting for inflation. In fostering, prices have been steady at an average of £820 per week, and indeed have therefore declined in real terms, but profit margins of the largest IFAs appear consistently high at an average of 19.4%.
33. We found that the profitability of the children's homes in Scotland of the providers in our dataset (with a coverage of 53% of places) was markedly less than the average across all three nations; from FY 2016 to 2020, the average operating profit per child was £28,000 in Scotland compared to an average of £44,000 across all three nations (we caution, however that this was from a

relatively small sample of just the largest providers). These levels of prices and profits are therefore less of a concern in Scotland than in England and Wales. This finding is in line with stakeholders expressing more limited concerns about the supply of placements in Scotland.

34. However, for the fostering services in Scotland of the providers in our agency level dataset the surplus of revenues over costs (what we would call profit, in a profit-making organisation) was similar to the average across all three nations; from FY 2016 to 2020, the average operating surplus per child was £9,100 in Scotland, compared to an average of £8,600 across all three nations. This is perhaps surprising, given that providers in Scotland are required to operate on a not-for-profit basis, although we note that the providers in our dataset are for-profit businesses operating a not-for-profit arm in Scotland. Policymakers and commissioners in Scotland may wish to bear this finding in mind as they assess the prices they are paying to IFAs, as well as in the design of any measures to restrict for-profit provision in children's homes.
35. If this market were functioning well, we would expect to see existing providers investing and expanding in the market and new providers entering. This would drive down prices as local authorities would have more choice of placements, meaning that less efficient providers would have to become more efficient or exit the market, and the profits of the largest providers would be reduced. Eventually, profits and prices should remain at a lower level as providers would know that if they raised their prices, they would be unable to attract placements in the face of competition. The high profits of the largest providers therefore shows that competition is not working as well as it should be.
36. Third, we have concerns around the resilience of the market. Our concerns are not about businesses failing *per se*, but about the impact that failure can have on the children in their care. Were a private provider to exit this market in a disorderly manner – for instance by getting into financial trouble and closing its facilities – children in that provider's care could suffer harm from the disruption, especially if local authorities were unable to find alternative appropriate placements for them. Given the impact of these potential negative effects on children's lives, the current level of risk needs to be actively managed. This is less of a concern in the case of fostering, as foster carers should be able to transfer to a new agency with minimal impact on children. It is a greater concern in the case of children's homes, where placements may be lost altogether.
37. We have seen very high levels of debt being carried by some of the largest private providers, with private equity-owned providers of children's homes in

our dataset having particularly high levels. This level of indebtedness, all else being equal, is likely to increase the risk of disorderly exit of firms from the market.

38. In addition to the above concerns about the market, some respondents have argued that the presence of for-profit operators is inappropriate in itself. We note that in Scotland, it is illegal for commercial for-profit firms to provide foster care and that the Scottish Government has expressed an intention to remove profit-making from the provision of care to looked-after children more generally. We regard the issue of the legitimacy of having private provision in the social care system as one on which it is primarily for elected governments to take a view. Nonetheless we are well placed to consider the outcomes that private providers produce, as compared to local authority provision.
39. While there are instances of high and low quality provision from all types of providers, the evidence from regulatory inspections gives us no reason to believe that private provision is of lower quality, on average, than local authority provision.
40. Turning to price, our evidence suggests that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, despite their profit levels. By contrast, in fostering, there is indicative evidence that local authorities could provide some placements more cheaply than by purchasing them from IFAs. We have therefore made recommendations to the Scottish Government, along with the UK Government and Welsh Government, to run pilots in certain local authorities to test the potential to make savings by bringing more fostering placements in-house.
41. Finally, as noted above, we have seen that some private providers, particularly those owned by private equity investors, are carrying very high levels of debt. As local authorities need the capacity from private providers, but these providers can exit the market at any time, these debt levels raise concerns about the resilience of the market. We have therefore made recommendations to enable these risks to be actively monitored so that there is minimal disruption to children in care.
42. Given the importance of the functioning of the placements market for looked-after children, the problems we have found must be addressed. In the following three sections, we set out our findings on the main drivers of these problems, and the recommendations we are making to address them.

Commissioning

43. A key factor in determining how well any market functions is the ability of the behaviour of purchasers to drive the provision of sufficient supply at an acceptable price. The current shortfall in placements for children with particular needs in Scotland is therefore an indication that this mechanism is not working as well as it should. In particular, we have found that there are serious limitations on the ability of local authorities in Scotland, who purchase placements, to engage effectively with the market to achieve the right outcomes.
44. In order to engage effectively with the market, local authorities, directly or indirectly, need to be able to:
 - forecast their likely future needs effectively, gaining a fine-grained understanding of both the overall numbers of children that will be in their care, and the types of need those children will have;
 - shape the market by providing accurate and credible signals of the likely future needs of children to existing and potential providers, and incentivising providers to expand capacity to meet these needs; and
 - procure placements efficiently, purchasing those places that most closely match the needs of children, in the most appropriate locations, at prices that most closely reflect the cost of care.
45. However, we have found that local authorities face serious challenges when trying to do each of the above.
46. Individual local authorities face an inherently difficult task when trying to develop accurate forecasting. They each buy relatively few placements, and they experience significant variation in both the number of children requiring care and their specific needs. The absence of reliable forecasts means that there is greater uncertainty in the market than there needs to be. This acts as a barrier to investment in new capacity needed to meet future demand.
47. In Scotland, local authorities explained that they rarely forecast future demand as a result of the difficulties involved and because they do not consider there to be the same overall under-supply of placements in Scotland, as seen in England and Wales, notwithstanding their concerns around the difficulty of placing children with rare or complex needs. Large providers that operate in Scotland also highlighted issues around the accuracy of local authority forecasting, the inconsistency in approach and a lack of available information to support forecasting.

48. Scotland Excel operates on behalf of Scotland's 32 local authorities, undertaking strategic commissioning of services and providing 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 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. Support has been expressed for further involvement from Scotland Excel in terms of forecasting support.
49. Even where future needs can be anticipated, local authorities struggle to convert this understanding into signals that providers will act on. Local authorities must often take whatever placement is available, even when it is not fully appropriate for the needs of the child. This blunts the ability of local authority purchasing decisions to shape the market to provide for their true needs. In Scotland, most local authorities told us that they do not attempt to actively shape the market by encouraging providers to invest in new provision. Local authorities acting alone face particular challenges in attempting to shape the market. For example, often 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.
50. Scotland Excel has taken steps to assist local authorities with shaping the market, although these initiatives are relatively nascent. Scotland Excel explained that in terms of encouraging providers to supply the right type of placements (needs catered for and geographic location), its role has generally been to identify sufficiency gaps in the market to inform its framework agreements and to maximise participation on frameworks to enable maximum choice. Scotland Excel also told us that it does not currently have any plans to further expand its role in relation to market shaping. Support has also been expressed for further involvement from Scotland Excel around market shaping.
51. We have seen considerable evidence that working together can make local authorities more effective. Collaborative procurement strategies can strengthen the bargaining position of local authorities, and groups of local authorities can more effectively engage with private providers to support the case for investment in new capacity, which provides the right type of care in the right locations. We note the support that has been expressed for Scotland Excel, but also that it is up to individual authorities whether they secure placements through it, and that not all local authorities do so for every placement they require.

52. While we have seen varying degrees of cooperative activity between different groups of local authorities, there is scope for this to go further. Despite regional collaboration being widely seen as beneficial, local authorities can struggle to collaborate successfully due to risk aversion, budgetary constraints, differences in governance, and difficulties aligning priorities and sharing costs. It is not clear how local authorities can sufficiently overcome these barriers even if given further incentive to do so. As such, without action by national governments to ensure the appropriate level of collaboration, local authorities are unlikely to be able to collaborate sufficiently to deliver the outcomes that are needed.

Recommendation 1.1: Larger scale market engagement

53. We recommend that the Scottish Government requires a more collective approach to engagement with the placements market. This should include:
- setting out what minimum level of activity must be carried out collectively. This should include an appropriate degree of activity in each of the key areas of forecasting, market shaping and procurement;
 - ensuring there is a set of bodies to carry out these collective market shaping and procurement activities, with each local authority required to participate in one of them. In Scotland it is plausible that this may be at a national level (building on the work of Scotland Excel); and
 - providing an oversight structure to ensure that each body is carrying out its functions to the appropriate level. This should involve an assessment of the extent to which sufficiency of placements is being achieved within each area.
54. The Scottish Government should determine how best to implement this recommendation taking into account key issues that lie beyond the scope of our study. In examining the relative advantages and disadvantages of different options, the Scottish Government should consider:
- the number of bodies: for any body or set of bodies created there will be a trade-off between gaining buyer power and efficiencies through larger size, versus difficulties of coordination and management that come with that. The Scottish Government should consider these factors in determining the appropriate approach;
 - what precise collective market shaping and procurement activities are assigned to the body or bodies: there is a range of options, from mandating only a small amount of supportive activity to be carried out

collectively (eg forecasting, market shaping and procurement only for children with particular types of complex needs), through to mandating all of this activity to be carried out by the collective body or bodies;

- the relationship between the new body or bodies and local authorities: the national body or regional bodies will decide on how the mandated level of collective activity is carried out. This could be with local authorities collectively reaching agreement or the national body or regional bodies could be given the power to decide;
- the governance of the body or bodies: on the presumption that corporate parenting responsibilities (and therefore the ultimate decision of whether to place a particular child in a particular placement) will remain with local authorities, there may be a tension between the roles of the local authorities and the collective body or bodies that will need to be resolved via the governance structure; and
- how to best take advantage of what is already in place, in particular the role of Scotland Excel. There are benefits of building on existing initiatives in terms of avoiding transition costs and benefiting from organic learning about what works well in different contexts. For example, consideration should be given to using existing agreements, organisations and staff as the basis for future mandated collective action.

55. Wherever responsibility for ensuring there is sufficient provision for looked-after children sits, it is essential that this body or bodies are appropriately held to account. As such, we are also recommending that local authority duties should be enhanced to allow more transparent understanding of the extent to which sufficiency of placements is being achieved within each area. In order to do this, better information is required to understand how often children are being placed in placements that do not fit their needs, due to a lack of appropriate placements in the right locations. This will also help ensure that moving to a wider geographical focus helps support the aim of placing more children closer to home, unless there is a good reason not to do so.

Recommendation 1.2: National support for purchaser engagement with the market

56. We recommend that the Scottish Government provides additional support to local authorities and collective bodies for forecasting, market shaping and procurement.
57. With regards to forecasting, the Scottish Government should establish functions at a national level supporting the forecasting of demand for, and

supply of, children's social care placements. These functions should include carrying out and publishing national and regional analysis and providing local authorities and collective body or bodies with guidance and support for more local forecasting, including the creation of template sufficiency reports.

58. For market shaping and procurement, the Scottish Government should support the increase in wider-than-local activity by funding collective bodies to trial different market shaping and procurement techniques and improving understanding of what market shaping and procurement models work well.

Recommendation 1.3: Support for increasing local authority foster care provision

59. We recommend that the Scottish Government supports innovative projects by individual local authorities, or groups of local authorities, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs. While precise like-for-like comparisons are difficult to make, our analysis suggests that there are likely to be some cases where local authorities could provide foster placements more cost-effectively in-house rather than via IFAs, if they are able to recruit and retain the necessary carers. This finding holds in Scotland, despite the fact that for-profit provision of foster carers is not permitted. We have heard from local authorities who have successfully expanded their in-house foster care offering and have seen positive results.
60. The Scottish Government should offer targeted funding support for innovative projects by individual local authorities, or groups of local authorities, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs. Any such projects should then be evaluated carefully to provide an evidence base to help shape future policy.

Recommendations we are not taking forward: banning for profit care; capping prices or profits

61. Some respondents have argued that we should directly address the problem of high profits and prices in the placements market by recommending that local authorities stop using private provision altogether, or that caps should be imposed on their prices or profits.
62. Turning first to children's homes, as discussed above, we did not find evidence that providing local authority placements was any less costly to local authorities than purchasing placements from private providers. While the problem of a lack of appropriate capacity is less acute in general in Scotland than in England and Wales, it is clear that there will be a need for new investment in capacity, to meet new needs or to replace capacity otherwise

leaving the market. Banning private provision, or taking measures that directly limit prices or profits (which may deter entry or encourage exit of private providers), would entail a commitment to significant investment in capacity by the public sector. Our assessment is that such a ban or profit cap is not necessary to deliver a well-functioning placements market. However, we recognise that factors beyond our remit are relevant to this decision, and that it is the role of democratically-elected governments to weigh them up.

63. We recognise that the provision of for-profit foster services is already illegal in Scotland. Again, the CMA is making no recommendation in favour or against this position. However, we note our findings in relation to the prices in our dataset of IFA placements in Scotland, which were higher than in England and Wales. This indicates that banning for-profit provision does not, in itself, necessarily reduce the cost of placements to local authorities.

Overall recommended approach on commissioning

64. Our recommendations aim to address the problems we have found in Scotland by addressing their root causes, in particular to strengthen the position of local authority commissioners when purchasing placements and to remove unnecessary barriers to the creation of new provision, including from not-for-profit providers (as discussed in the next section). Improving the approach to purchasing, potentially building on the role of Scotland Excel, will provide local authorities with greater purchasing power and put them in a better position to forecast future demand and manage capacity requirements accordingly. Removing barriers to investment in new provision will help providers respond more effectively to the needs of children.
65. Over time, we believe that these measures would be successful in drawing more appropriate supply to the market and driving down prices for local authorities, without acting as a drag on required ongoing and new investment in provision. In doing so they would move the market to a position where providers are forced to be more responsive to the actual needs of children, by providing places which fully meet their needs, in locations which are in the best interests of those children. Such placements ought also to offer better value to commissioners who are purchasing them, by being priced more in line with the underlying cost of provision.
66. We are aware that there have been calls in the past for greater aggregation in commissioning. Currently, the Scottish Government is considering the potential for children's social care to be included within a National Care Service (NCS). Amongst other matters within the Scottish Government's consultation on an NCS, it is proposed that the NCS will be responsible for the

commissioning, procurement and running (including contract management) of national contracts and framework agreements for complex and specialist services including: care for people whose care needs are particularly complex and specialist and residential care homes. The consultation notes that the NCS will establish a national commissioning and procurement team to deliver this role. If a decision is made to include children's services within the NCS, we recommend that the Scottish Government should build our recommendations into its wider reform programme.

67. The Scottish Government will rightly wish to consider our recommendations, and the appropriate way to implement them in the round, taking into account broader issues that are beyond our remit. Nonetheless, we are clear that excessive fragmentation in the processes of forecasting, market shaping and procurement are preventing this market from functioning as well as it could, and must therefore be addressed if we are to see significant improvement in outcomes.

Creating capacity in the market

68. We have also identified barriers that are reducing the ability of suppliers to bring new supply to the market to meet emerging needs. These barriers are in the areas of:
- regulation, in England;
 - property and planning, in England and Wales; and,
 - recruitment and retention, in England, Scotland and Wales.

By creating additional costs and time delays for providers, these factors may act as a deterrent to new investment, leading to provision being added more slowly, or even deterred completely. Unless addressed, over time, these will contribute to the ongoing undersupply of appropriate placements in the market.

69. We have made recommendations to the UK Government in relation to regulation in England and recommendations to the UK Government and Welsh Government in relation to the planning system in England and Wales which we do not cover in this summary, but set out in detail in the main report.

Recommendation 2.3: Regular state of the sector review

70. We recommend that the Scottish Government commissions an annual state of the sector review, which would consider the extent and causes of any shortfalls in children's home staff or foster carers.
71. Recruiting and retaining staff for children's homes is a significant barrier to the creation of new capacity in Scotland, as in England and Wales. This is a fundamental problem across all the care sectors. Given the levels of profit and surplus among the large providers it is perhaps surprising that wages have not risen to ease recruitment pressure and that greater investment is not made in recruiting, training and supporting staff. We note, however, that there are many other factors aside from wages that impact on the attractiveness of roles within children's social care, some of which are outside the control of providers. While there is no easy route to addressing this, more attention needs to be paid to this question at a national level. This should be an ongoing process building on existing work.
72. In Scotland, there should be an annual assessment of the state of the sector, including workforce issues, to provide a clear overview of staffing pressures and concerns, and to recommend measures to address bottlenecks. This would be similar in scope to the Care Quality Commission's annual State of Care review in England. Governments should also give attention to whether national measures, such as recruitment campaigns, measures to support professionalisation (such as investment in training and qualifications) and clearer career pathways are required.
73. Recruitment and retention of foster carers is a barrier to creating more foster places. While many local authorities and IFAs are adopting positive approaches to addressing this, again more can be done at the national level. There should be an assessment of the likely future need for foster carers and national governments should take the lead in implementing an effective strategy to improve recruitment and retention of foster carers.

Resilience of the market

74. We have found that some providers in the market, particularly those owned by private equity firms, are carrying very high levels of debt. These high debt levels increase the risk of disorderly firm failure, with children's homes shutting their doors abruptly. Were this to occur, this would harm children who may have to leave their current homes. Local authorities may then have problems finding appropriate alternative provision to transfer them into.

75. In principle, a successful children's home should be expected to be attractive to a new proprietor. There is, however, no guarantee that it will be sold as a going concern in every case. In particular, the expected move away from the ultra-low interest rate environment of recent times would place new pressure on highly-leveraged companies to meet their debt servicing obligations, increasing the risk of disorderly failure. Our assessment is that the current level of risk of disruption to children's accommodation and care as a result of a provider's financial failure is unacceptable and measures must be taken to mitigate this.
76. We recognise the move away from for-profit provision in Scotland could, in time, remove some of the riskier business models from the placements market. However the risks of a firm failing for financial or other reasons and the need to put in place strategies to reduce this risk also applies to not-for-profit providers. Some of these may also be part of groups which include for-profit providers in other nations.
77. In considering our recommendations in this area, we have taken into account the ongoing need for investment in the creation of appropriate placements, and the current level of reliance on private providers to make this investment. We have sought to balance the need to take urgent steps to reduce the level of risk to children against the need to avoid a sudden worsening of the investment environment faced by providers, which may exacerbate the problem of lack of appropriate supply in this market.
78. We are therefore recommending that the Scottish Government takes steps to actively increase the level of resilience in this market, in order to reduce the risk of negative outcomes for children. In particular, we recommend that it:
- introduces a market oversight function so that the risk of failure among the most difficult to replace providers is actively monitored; and
 - requires all providers to have measures in place that will ensure that children in their care will not have their care disrupted in the event of business failure.
79. We note that, in its consultation on a National Care Service the Scottish Government has sought views on the necessity of a market oversight function for the regulator (Care Inspectorate), its scope and the potential form of any additional powers the regulator should have to ensure this function is effective. If a decision is taken to include children's services within the scope of a National Care Service, we recommend that the Scottish Government builds our recommendations into its wider reform programme.

Recommendation 3.1: Monitor and warn of risks of provider failure

80. We recommend that the Scottish Government creates an appropriate oversight regime that is capable of assessing the financial health of the most difficult to replace providers of children's homes and of warning placing authorities if a failure is likely.
81. This regime could operate along similar lines to the Care Quality Commission's current market oversight role in relation to adult social care providers in England – a system that already exists for a similar purpose. Adopting this recommendation would provide policymakers and placing authorities with early warning of a potential provider failure.
82. Due consideration should be given to adopting a statutory approach to market oversight in Scotland. Given the cross-border nature of many of the most significant providers, oversight bodies in the three nations need to be able to share relevant information in a timely and effective way.

Recommendation 3.2: Contingency planning

83. We recommend that the Scottish Government takes steps to ensure that children's interests are adequately protected if a provider gets into financial distress.
84. The Scottish Government, via its appointed oversight body, should require the most difficult to replace providers to maintain a "contingency plan" setting out how they are organising their affairs to mitigate the risk of their provision having to close in a sudden and disorderly way in the event that they get into financial difficulties or insolvency. One important element will be to ensure that appropriate arrangements are in place to ensure that providers have the necessary time and financial resources to enable an orderly transition where the provision can be operated on a sustainable basis, either by its existing owners or any alternative owners. Contingency plans should seek to address these risks, for instance through ensuring that:
 - appropriate standstill provisions are in place with lenders;
 - companies are structured appropriately to remove unnecessary barriers to selling the provision to another operator as a going concern; and
 - providers maintain sufficient levels of reserves to continue to operate for an appropriate length of time in a stressed situation.

85. These contingency plans should be subjected to stress testing by the Scottish Government's oversight body, to ensure that they are sufficiently robust to reduce the risk of negative impacts on children in potential stress scenarios. Where the oversight body considers that plans are not sufficiently robust, it should have the power to require providers to amend and improve them.
86. Taken together, we believe that these measures strike the right balance between minimising the risks of negative impacts on children and maintaining an environment that supports needed investment in the future, based on the current state of the market. As the measures that we are recommending, as well as wider measures to reform the sector, take effect and capacity grows in the market, the government will however want to reflect on the appropriate balance between public and private provision. In particular, as well as the resilience risks associated with the high levels of debt inherent in the business models of some providers, there is a risk that excessive reliance on highly leveraged providers will leave local authorities more susceptible to having to pay higher prices for services if the costs of financing debt increase.
87. In addition, as reforms to the care system are made in Scotland (possibly resulting in fewer children being placed in children's homes given the Promise's aims for a fundamental shift of thinking about when a child should be removed from their family with more support for families to stay together) the basis of this calculation may shift, meaning that imposing tougher measures, such as a special administration regime or steps to directly limit or reduce the levels of debt held by individual operators, may at that point be appropriate.
88. The functioning of the placements market in Scotland is also influenced by the functioning of the market elsewhere in the UK, particularly – given its proximity and size – in England. More pronounced problems around inadequate supply of appropriate placements in England are a key driver of cross-border placements into Scotland. Our intention is that the recommendations to the UK government in relation to the English market will improve supply of placements in England, thus tackling the root-cause of problematic cross-border placements.

Next steps

89. If implemented, we expect that our recommendations should improve or mitigate the poor outcomes that we see in the placement market.
 - Our recommendations in relation to commissioning placements in the market will put purchasers in a stronger position to understand their future

needs, to ensure that provision is available to meet them and to purchase that provision in an effective way.

- Our recommendations to address barriers to creating capacity in the market will reduce the time and cost of creating new provision to meet identified needs.
- Our recommendations around resilience will reduce the risk of children experiencing negative effects from children's home providers exiting the market in a disorderly way.

90. Taken together, we expect these measures to lead to a children's social care placements market where:

- the availability of placements better matches the needs of children and is in appropriate locations;
- the cost to local authorities of these placements is reduced; and
- the risk of disruption to children from disorderly exit of children's homes provision is reduced.

91. Major policy processes in relation to children's social care are currently ongoing in Scotland through the implementation of The Promise and potentially, through the establishment of a National Care Service which may cover children's services, and we hope that our recommendations will be considered as part of this. We will engage with the Scottish Government, the Care Inspectorate and others to explain our recommendations, strongly encourage them to implement them and, support them in doing so.