

Children's social care market study

Invitation to comment

12 March 2021

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Overview

1. The Competition and Markets Authority (CMA) has launched a market study which will consider the provision of accommodation and associated care and support for looked-after children in England, Scotland and Wales. This work will cover foster services, children's homes and unregulated accommodation. Persistent concerns have been expressed around high prices and an inadequate supply of appropriate placements for children, putting pressure on the ability of local authorities to consistently provide children in their care with the accommodation and care that they should be receiving. We will examine how the way placements are supplied and commissioned may be leading to inappropriate outcomes, and where this proves to be the case, how it can be improved to prevent this from happening. We are seeking views from interested parties and have set out some questions at the end of this document. Our statutory deadline for issuing our final report is one year from launch: 11 March 2022.
2. In England, Scotland and Wales, around 99,000 children live under the care of their local authority. Reasons for children going into care vary – for example, their parents may be unable to look after them; they may be unaccompanied asylum seekers; or children's services may have intervened if they felt the child was at risk. Local authorities are under a duty to provide these children with accommodation, and safeguard and promote their welfare and wellbeing. They do this either directly via in-house provision or by purchasing places from other local authorities, or private or third sector providers.
3. The majority of children in care, approximately 65,000, live in foster care. A further group of around 16,000 children live in residential care, which is mostly made up of children's homes and unregulated independent/semi-independent living accommodation. Residential care is, on average, much more expensive for local authorities than foster care, meaning that despite the disparity in numbers, the overall amount spent on the two categories of care is comparable.
4. In recent years, however, some local authorities (primarily in England and Wales) have expressed concerns about their ability to discharge these duties in an effective manner.¹ These concerns have often centred on the mix of service providers, including the role and nature of private sector providers. In

¹ For instance, see Housing Communities and Local Government Committee (2020), [Funding of local authorities' children's services](#).

particular, they point to two primary negative outcomes concerning children's homes:

- High and increasing prices with significant variation between prices paid for similar types of placement and among local authorities. This is placing pressure on local authority children's services budgets. The average price for a children's home place in England has been estimated at £4,000 per week,² equating to around £210,000 on an annualised basis.
 - Difficulty in securing appropriate places to meet the needs of children who need to be accommodated. This results in some children being sent long distances to accommodation or being placed in accommodation that is otherwise inappropriate to their needs.
5. Added to localised pressures on fostering services, these issues appear to have led to pressure on the children's social care system, across all types of placement.
 6. Generally, we would expect higher prices to encourage more accommodation to be made available – either by new entrants or by existing providers expanding their supply. This would then lead to a reduction in price. As a result, a lack of appropriate places and artificially high prices would not be sustained.
 7. Our preliminary observation is that, on the contrary, the prevailing high prices over several years have not led to the creation of an adequate supply of children's residential homes. It suggests that there may be aspects of the market that are causing adverse effects, which the CMA may be well placed to explore and propose remedies. We are also concerned that these effects could be having knock-on effects on other parts of the system, including fostering and independent/semi-independent living accommodation, exacerbating possible concerns there. Potential areas to examine include:
 - The nature of supply in the market, looking at the ability and incentives of different types of suppliers in the market to ensure sufficient supply of appropriate places for children who need them.
 - Local authority commissioning practices, exploring the ways in which local authorities purchase places for children are able to secure the best placements for children at an appropriate price, and how they incentivise supply to be brought to the market.

² National Centre of Excellence for Residential Child Care (2020), [Price trends and costs of children's homes](#), page 3.

- The regulatory system, considering how regulation – which plays a vital role in ensuring placements are safe and appropriate for children – shapes incentives on local authorities and suppliers.
 - Pressures on investment, considering whether there are wider forces at work in the market that shape how suppliers are incentivised to invest in building appropriate capacity to meet future needs.
8. The fact that negative features may be present in the children’s social care system is particularly concerning because they would impact on the delivery of a vital social service. In contrast to many sectors the CMA may consider, local authorities must provide this service, and the quality of service received impacts directly on the lives of children, with profound effects both during and beyond their time in care. By investigating these issues, the CMA will be in a position to give a rounded assessment of how the market is working, whether the current mix of local authority, private and third sector provision is the right one for delivering the best outcomes, and whether changes need to be made to make the market work more effectively. If we do find that such changes are required, we will be well-placed to make recommendations to policymakers, local authorities and others on how best to develop these.
9. We are therefore launching a market study to consider these issues and what might need to be done to address any concerns that we uncover. The CMA has chosen to prioritise this work because this is a very important sector where outcomes have a profound impact on the lives of the children involved, and where services are, in many instances, procured via market mechanisms. In particular, our decision to launch work on this sector now was influenced by the following considerations:
- Protecting vulnerable consumers is a strategic priority for the CMA and looked-after children are among the most vulnerable members of our society.
 - While there are other bodies with direct responsibilities in this area (notably the UK and devolved governments and their respective regulators), there are apparent issues in this sector which are ongoing and significant, and which the CMA’s powers, tools and expertise leave us well-placed to address.
 - The funding pressures that are being exerted on local authorities by spending in this area are significant, at a time when real-terms local authority budgets have been significantly reduced. This is leading to pressures on budgets for statutory children’s services, as well as for non-

statutory and other services, which may itself serve to increase demand for statutory children's services in the longer term.

10. We propose that the geographic scope of our work will be England, Scotland and Wales, and we will carry out our work with due regard to the different legal and regulatory frameworks, stakeholder groups, and market conditions in each nation. Based on the information we currently have available, the problems in the market we have mentioned appear to be most acute in England and Wales, which also have a higher proportion of private sector provision than in Scotland. However, the existence of substantial, though smaller, private sector provision in Scotland suggests that many of the issues we intend to cover are likely to be relevant, and the issue of children being sent across the borders within the UK for placements is also important. We are proposing to exclude Northern Ireland from the scope of this study due to the significant differences in the sector there. Our reasoning for this is set out at paragraph 67 below, but we will consider any evidence offered that suggests we should reconsider this.
11. Questions relating to the type and levels of care it is appropriate for children to receive and the overall policy framework for looked-after children are for the UK government and devolved administrations to determine. In each of England, Scotland and Wales, there are significant policy developments ongoing, including the work of the Independent Care Review in England, the implementation of The Promise review recommendations in Scotland and the work of the Ministerial Advisory Group for Improving Outcomes for Children in Wales. We will seek to ensure that our work takes account of and complements these wider policy processes.
12. In carrying out our market study we will work closely with stakeholders including accommodation and care providers across the public, private and third-sectors, industry bodies, regulators, local authorities and advocacy groups, and engage closely with governments and others. In particular, we will be keen to understand the views and experiences of care-experienced people and those who work closely with them. We will take into account the challenges facing many organisations as a result of Coronavirus (COVID-19). We will publish a report setting out our findings and any recommendations we develop to address problems we uncover.
13. We welcome comments on the broad issues we raise in this document, as well as our specific consultation questions.

Introduction

14. This document sets out the purpose, proposed scope, and expected central themes of the CMA's Children's Social Care market study. Its aim is to gather input from a range of stakeholders with an interest in this area to help inform our thinking and shape the work we will carry out as part of the study.
15. Market studies are one of a number of tools the CMA can use to examine possible competition or consumer protection issues and address them as appropriate. A market study formally begins with the publication of a Market Study Notice by the CMA. Launching a market study provides the CMA with information-gathering powers, which we can use to obtain important data with which to analyse the market.
16. Market studies may find that a market, or parts within it, can be given a clean bill of health or that some aspects of the market are not working well. If the latter, we can consider different ways to address these issues. For example, we can issue guidance to businesses, provide information or guidance to consumers, take enforcement action ourselves and/or make recommendations to governments. The CMA has an open mind as to which outcomes, or combination of outcomes, may be appropriate in this market study.
17. In the case of children's social care, our market study tool will allow us to take a close, holistic look at the sector, considering the evidence for persistent concerns about the make-up and operation of the market. Having done this, we will be well-placed to identify where these concerns should be addressed and make evidenced recommendations to policymakers, local authorities and others on how to go about this.

Children's social care sector

Looked-after children

18. Local authorities in the UK have statutory duties in relation to the children they look after, including a general duty on the local authority to safeguard and promote the welfare of the looked-after child. A child is looked after by a local authority if a care order has been made by the family court, or they have been in the local authority's care for more than 24 hours voluntarily with the agreement of the parents, or the child if they are aged 16 or over. In addition, looked after children include:
 - Children placed away from home under an emergency protection order, where they are accommodated by or on behalf of the local authority;

- Children on remand to local authority accommodation or under supervision with a residence requirement to live in local authority accommodation;
 - Children in police protection or arrested, who are accommodated by the local authority at the police's request; and
 - Unaccompanied asylum seekers.
19. Local authorities in the UK have statutory duties to provide accommodation for children who are in their care and to maintain all looked-after children in other respects. Separately they have statutory duties to accommodate those children who are voluntarily accommodated or accommodated for their own protection or via an order made in criminal proceedings. Local authorities have responsibilities relating to care leavers, up to the age of 25.
20. There is a variety of reasons why children become looked-after, reflecting the unique set of circumstances of each child. The child's parents may have agreed to their child going into care, for example if they are too unwell to look after their child; the child could be an unaccompanied asylum seeker, with no responsible adult to care for them; or, children's services may have intervened if they felt the child was at significant risk of harm. Many looked-after children have previous experiences of violence, abuse or neglect. Research suggests that when looked after children are compared with children who have not been in care, they tend to have poorer outcomes in a number of areas such as educational attainment and mental and physical health.³

Local authority purchasers

21. Local authorities are responsible for securing the provision of services to address the needs of children and young people and each local authority is responsible for providing, either by providing themselves or purchasing, the placements they require. There are 152 such local authorities in England, 32 in Scotland and 22 in Wales.
22. In some cases, local authorities purchase the places they require using framework agreements, which set out the terms (such as the services offered and the price) under which the provider will supply the relevant service in the specified period. However, according to respondents to a recent Independent Children's Homes Association's survey of its members, over 4 out of 5 (82%)

³ NSPCC (2020), [Looked after children](#).

of their places were spot purchased.⁴ This represented a significant increase on the previous survey, when respondent reported that 51% of their places were spot purchased.⁵

23. There are some examples of cooperation and joint procurement between local authorities in purchasing. In England, most local authorities cooperate, to varying degrees, with neighbouring authorities in around fourteen regional residential consortia. In Wales, the Children’s Commissioning Consortium Cymru (4Cs) is a partnership of 15 local authorities to support collaboration in the purchasing of placements. Scotland Excel is a non-profit shared service funded by Scotland’s 32 local authorities and operates a contract register for placements for children’s residential care, although we understand that not all local authorities in Scotland use the Scotland Excel framework.

Residential Care: Children’s homes

24. Operators of children’s homes may be split into three main groups: local authorities, private sector and third sector. The tables below show the number of placements provided by each provider-type by nation (with the proportion indicated in parentheses) and the number of children’s homes by nation.

Table 1: Number of children’s places by provider type and nation

Provider group	England	Scotland	Wales	Northern Ireland
Private – no. places	6,988 (70%)	587 (32%)	518 (78%)	26 (9% - termed ‘independent’)
LA/public – no. places	2,128 (21%)	731 (40%)	113 (17%)	270 (91% ‘statutory provision’)
Third sector – no. places	873 (9%)	501 (28%)	33 (5%)	0%

Source: CMA analysis of data from various sources

⁴ Independent Children’s Homes Association (November 2020), [State of the Sector survey 7](#), p.15.

⁵ Independent Children’s Homes Association (January 2020), [State of the Market survey 6](#), p.15.

Table 2: Number of children’s homes by provider type and nation

Provider group	England	Scotland	Wales	Northern Ireland
Private – no. homes	1,821 (77%)	142 (44%)	122 (81%)	6 (13% - termed ‘independent’)
LA/public – no. homes	408 (17%)	115 (36%)	21 (14%)	42 (88% ‘statutory provision’)
Third sector – no. homes	142 (6%)	66 (19%)	8 (5%)	0%

Source: CMA analysis of data from various sources

25. Table 1 above indicates that in England and Wales, the largest proportion of children’s homes places are provided by the private sector – around 70% and 78% respectively. In contrast, in Scotland, only around 32% of places are provided by the private sector. The remainder of places are provided by local authorities and the third sector.
26. The sector is categorised by a large number of smaller firms, with a few larger ones. While several mergers of larger firms in the sector have taken place in the last few years, this basic industry structure has remained.
27. The two largest private providers of children’s homes are:
- Caretech: the UK’s largest independent provider of children’s homes in the UK and also a major provider of special education and foster care. Caretech currently looks after over 2000 children across 222 residential facilities, specialist schools and fostering offices based in England, Wales and Scotland. Caretech acquired Cambian Group, another private provider, in August 2018 for £372 million.⁶ Caretech is a publicly traded healthcare company, operating across the children’s and adults’ social care sectors.

⁶ The CMA cleared this merger on 8 February 2019: [CareTech Holdings plc / Cambian Group plc merger inquiry](#).

- Keys Group: the second largest provider of independent children's homes in the UK, operating 118 sites with a capacity of just over 400 across England and Wales. Keys Group is owned by G Square, a private equity firm focusing on pan-European healthcare.
28. Between them, these two firms account for around 14% of children's homes.
29. In Scotland, Care Visions Group Limited operates 31 private children's homes, with over 80 registered places. It describes itself as Scotland's largest independent provider of residential services for children aged six to eighteen, specialising in working with children with more complex needs. It is a private company, limited by shares and registered in Scotland.
30. Apart from Caretech all other private children's homes operators are privately held. Private equity ownership is in evidence in the sector, with examples including Keys Group, Priory Group (owned by Waterland PE), Horizon Care & Education (owned by Graphite Capital Partners) and Pebbles Care (owned by Ardenton Capital).

Residential care: unregulated accommodation

31. In England, unregulated accommodation is accommodation for looked-after children, which is exempt from the obligation to be registered with and inspected by the regulator, Ofsted, because 'care' is not provided. The following types of permanent placement⁷ fall into this category:
- 'Independent living' such as in a flat, lodgings, bedsit, B&B or with friends, with or without support;
 - 'Semi-independent living accommodation' such as in hostels, YMCAs, lodgings, flats and bedsits, where staff or advice workers are specifically employed and available to provide advice and support to the residents.
32. In each case, any support provided must fall short of the definition of 'care' set out in the Care Standards Act 2000.⁸ Any setting that provides 'care' as well as accommodation and meets other requirements of the Care Standards Act 2000, must be registered with Ofsted as a children's home.

⁷ A third type of unregulated accommodation is temporary care and accommodation for children in mobile settings or lettings arrangements e.g. boats, holiday cottages and static caravans, where the placement is for leisure, cultural or educational activities. We do not intend to consider this type of provision as part of the market study.

⁸ Ofsted has produced a checklist to distinguish between 'care' and 'support' and assist providers in distinguishing between semi-independent accommodation and a registered children's home. This can be found at Annex A in Ofsted (2020), [Introduction to Children's Homes](#).

33. Local authorities in England are responsible for securing ‘the most appropriate placement available’⁹ for a looked-after child, that is, the one that they consider will best promote and safeguard the child’s welfare. A local authority may decide that unregulated accommodation is appropriate with or without support.
34. Where children’s accommodation is not registered but does not fall within the categories mentioned above (usually because they are providing ‘care’) these are referred to as ‘unregistered’ homes. It is a criminal offence to carry on or manage an unregistered children’s home.
35. As of March 2019, 8% (6,180) of looked after children were placed in unregulated accommodation in England, with 3,400 living independently and 2,790 in semi-independent accommodation.¹⁰ These numbers have increased by 33% and 100% respectively since 2015; the number of children in care also increased over this period, but at a lower rate. A high proportion of Unaccompanied Asylum-Seeking Children are placed in these types of accommodation. While overall figures for the use of unregulated accommodation in Wales are not available, we understand that it is increasing. This type of accommodation is not used in Scotland.
36. In 2019, the majority of children living independently or in semi-independent accommodation in England were in private provision (76% and 77% respectively), with 18% and 14% respectively in local authority own-provision/other local authority provision/other public provision; and, 5% and 9% respectively in voluntary/third sector provision.¹¹
37. According to a report by the Children’s Commissioner for England,¹² some providers have hundreds of placements across dozens of local authorities. Other providers operate in a particular area or region. Some providers operate a single setting, and these are frequently owner-managed businesses.

Fostering

38. Fostering is a form of care where children are looked after by foster carers in the foster carer’s home. Foster carers are approved and registered by a fostering agency; this can either be a local authority or an Independent Fostering Agency (IFA). In England and Wales, IFAs can be from the private

⁹ Children Act 1989 s.22C(5).

¹⁰ Department for Education, (2020) *Use of unregulated and unregistered provision for children in care*, p.14.

¹¹ Department for Education, *Looked after children in independent or semi-independent placements*, February 2020.

¹² Children’s Commissioner, *Unregulated*, September 2020.

or third sectors, but in Scotland it is prohibited to run a fostering agency on a for-profit basis. The table below shows the number of foster placements provided by each type of provider by nation (some breakdowns unavailable in published data).

Table 3: Number of children placed in foster care, by provider type and nation¹³

Provider group	England	Wales	Scotland	NI
Local authority	27,030	3,545	3,335	2,664
Independent – private	6,380	1,325	0	
Independent – third sector	1,570		1,463	
Total	34,980	4,870	4,798	

39. Table 3 shows that the majority of fostered children in each nation are in the care of local authority foster carers (77% in England, 73% in Wales and 70% in Scotland). However, a significant minority are not in the care of local authority carers and are instead in the care of carers provided by IFAs owned by private providers and the third sector (25% in England, 27% in Wales and 30% in Scotland). Within England, private providers make up over 80% of the IFA sector.
40. In terms of pay, within England the government sets minimum allowance levels for foster carers, which is usually £132-£231 per week depending on geography and age of child. In addition, nearly all fostering services pay a fee on top of this, with the amount determined depending on the needs of the child, the skills and experience of the foster carer, and other factors. In Scotland and Wales, no national minimum allowance levels are set.
41. A key trend in the fostering market in England has been growth in the number of IFAs: in the year to March 2020 the number of local authority foster carers fell by 1,500 while the number of IFA carers grew by 430. There has been consolidation in the IFA market in recent years, so now 51% of IFA carers (18% of all foster carers) are registered with IFAs owned by the 6 largest providers. A number of firms that own IFAs, such as Caretech and Care Visions, also operate children’s homes and other residential facilities.

¹³ CMA analysis of various sources

Other key stakeholders

42. Beyond the market participants described above, there is a wider group of advocacy organisations and pressure groups in the sector. The Children's Commissioners for England, Scotland and Wales are each established on a statutory basis to promote awareness of the views and interests of children, with special responsibility for children who are in or leaving care. Additionally, a large number of voluntary organisations such as Barnardo's, the NSPCC and many others carry out research and advocacy around issues affecting children in care. In addition there are groups representing independent providers, including the Independent Children's Homes Association and the Nationwide Association of Fostering Providers.

Potential problems in the market

43. This market study aims to investigate a number of problems that have been identified in the children's social care sector. While these take different forms across children's homes, unregulated accommodation and foster care, we intend to investigate these comprehensively and holistically to gain an overview of the issues affecting local authorities in seeking to place children and the impact of this on the experience of children. It is important to consider these issues in the round, as local authorities' options for placing a child will include using a children's home, unregulated accommodation or foster care, and problems in relation to any one placement type will have knock-on effects in relation to the others.
44. Significant information is available in the public domain that points towards the existence of these problems within England; this is summarised in the following sections. In the course of this market study we will seek to build a wider picture covering Scotland and Wales as well.
- a) Children's homes
45. Concerns in relation to children's homes relate to two main areas: high prices and a lack of supply of appropriate places.
46. On price, a report by the National Centre for Excellence in Residential Child Care found that the average price per child for a place in an independent children's home in England in 2019 was around £4,000, per week (c.£210,000 annualised), representing an increase of 40% on prices in 2013.¹⁴ This

¹⁴ National Centre of Excellence for Residential Child Care (2020), [Price trends and costs of children's homes](#), page 3.

average covers a wide spread of prices, however, and according to research by the Association of Directors of Children's Services £5,000 - £7,000 a week for a placement is becoming more common.¹⁵

47. On supply, the overall number of looked-after children grew by over 20% between 2011 and 2020, but the number of children's home places grew by just 8% in the years 2012-20.
48. Furthermore, within this broader picture, not all potential children's home places are suitable for all children.
 - First, unless there is a specific reason, local authorities will seek to place children close to their own area; however, there is significant under-availability of places in some regions (e.g. London and SE England) and significant excess capacity in others (e.g. NW England). This appears to have led to considerable numbers of children being placed outside their home area. We are also aware of children from England and Wales being placed across borders within the UK, where different regulatory systems apply.
 - Second, the specific needs and background of a child must fit with the facilities, care and resident group offered by a particular home. Where this fit is poor, placement breakdown can occur.
49. For these reasons, it is important that we consider not just whether the market is able to provide enough places overall, but whether the market is able to provide sufficient places that are appropriate to the needs of the children who require them.
 - b) Unregulated accommodation
50. The main concern around unregulated accommodation is that it has increasingly being used to house children because the preferred placement type (children's home or foster care) is not available. This is concerning because (a) there are general concerns around the quality of unregulated accommodation and (b) unregulated accommodation may not be appropriate to the needs of some children who are being placed in it.
51. Turning first to quality concerns, issues have been raised in relation to the quality of the accommodation, the level of support offered to children and the protection and safeguarding of the children themselves.¹⁶ Unregulated provision is locally monitored and quality-assured by local authorities. Without

¹⁵ Association of Directors of Children's Services (2021), [Safeguarding pressures phase 7](#), page 52.

¹⁶ For instance, see Children's Commissioner (2020), [Unregulated](#).

any national standards or inspection regime, concerns have been raised that poor standards are not always picked up and rectified. There are also concerns that some ostensibly unregulated accommodation is in fact providing care, and so constitutes illegal, unregistered accommodation.

52. Second, on the appropriateness of placements, there is concern that unregulated accommodation, offering only support, rather than care, is inappropriate to the needs of some young people who are being placed there. Some stakeholders, including the Children’s Commissioner for England¹⁷, argue that unregulated accommodation is not appropriate for any looked-after children, while others say that the use of unregulated accommodation can be a positive choice, to help prepare young people transition to adult living. Nonetheless, there are concerns that local authorities are being pushed into using this type of accommodation where it is inappropriate to the needs of the child, due to a lack of availability in a more suitable setting. This is particularly concerning where the child is under 16 years of age and/or the child has been turned down for placements because their needs are too serious for the provider to cope with.
53. Pricing information for unregulated accommodation is not readily available, but according to a study on behalf of the DfE in 2020¹⁸ into the use of unregulated and unregistered care settings the range of prices is potentially very large indeed. The cheapest mentioned was £250 per week for a semi-independent living placement. The most expensive was £19,500 per week for a young person with complex needs and very challenging behaviour; this was an emergency placement providing 24-hour care in a holiday cottage.
54. The UK government has recognised the concerns around unregulated provision and consulted on this earlier this year. In February 2021, the government responded to this consultation¹⁹, setting out its proposed policy approach, which includes:
- Banning the use of unregulated accommodation for children under the age of 16, with effect from September 2021.
 - Introducing new national standards for independent and semi-independent provision, overseen by an Ofsted-led registration and inspection regime, committing to consult on this in 2021.

¹⁷ Children’s Commissioner (2020), *Unregulated*.

¹⁸ Department for Education (2020), *Use of unregulated and unregistered provision for children in care*.

¹⁹ Department for Education (2021), *Reforms to unregulated provision for children in care and care leavers*.

- Giving Ofsted new powers to take enforcement action against illegal, unregistered accommodation providers, legislating for this at the earliest opportunity.
55. As noted in some of the responses to the UK government’s consultation,²⁰ the measures proposed by the government may exacerbate existing problems with the cost and availability of appropriate placements, especially if the introduction of new standards results in some providers exiting the market.
- c) Foster care
56. In foster care the evidence we have seen so far does not appear to point to concerns around overall pricing levels and availability of places that are as acute as those in residential care. A 2018 independent review of foster care in England, carried out on behalf of the DfE,²¹ found that:
- Taking into account all the differences between the sectors, their sample showed that IFA provision was more expensive than local authority provision, albeit by a relatively small amount, and that this cost difference is smaller than the variance in costs between and across local authorities and between and across IFAs.
 - There is no discernible difference in the quality of care offered by local authority and IFA carers, and no significant difference between the inspection outcomes of profit and non-profit making agencies.
 - There is no absolute shortage of foster carers across England, with around 16,000 fostering households having no child living with them at any one time.
57. However, beyond this overall picture, the report did raise concerns that are relevant to any assessment of how well the current sector is able to deliver the right outcomes for children and local authorities.
58. On price, the Review notes that the marginal cost of using an in-house carer, rather than paying the full fee to an IFA, is substantial; the report estimates £500 per week.
59. The Review also notes that despite the overall adequate supply of carers, there are significant constraints on supply in particular geographical areas and when placing children with more complex needs, perhaps related to the age profile of foster carers. The Review quotes previous research that observed

²⁰ Department for Education (2021), [Reforms to unregulated provision for children in care and care leavers](#).

²¹ Sir Martin Narey and Mark Owers (2018), [Foster Care in England](#).

that in 50% of cases, social workers have no choice over placements. In cases where there is less choice, the quality of the match is likely to be poorer, leading to an increased likelihood of the placement breaking down.

60. Recent trends in England, including the decrease in the overall number of foster carers, the relative shift from local authority to IFA carers and increasing consolidation and private equity ownership in the sector may be having an impact on these concerns.

Wales and Scotland

61. As mentioned above, the majority of the data in the public domain that we can draw on to assess the prevalence of problems in the children's social care market relates to England. However, we are able to make some initial observations on the situation in Wales and Scotland.
62. There are clear similarities between the English and Welsh markets in terms of the role and extent of private sector provision and similar concerns have been raised by Welsh stakeholders.
63. By contrast, the sector in Scotland displays notable differences from England and Wales. In particular, the role of private sector provision appears to be significantly smaller within children's residential care, and unregulated accommodation is not used. Independent fostering agencies cannot be run on a for-profit basis. While we have not seen directly comparable overall figures, we have not heard concerns about price or supply constraints in relation to children's homes to the extent that we have in relation to England and Wales.
64. In both Wales and Scotland, the evidence base in relation to these issues is limited, and one of the aims of the study will be to build this out and gain an understanding of the issues. While our initial research indicates fewer concerns in relation to Scotland, we expect the different approach there to provide an instructive contrasting case with England and Wales.
65. Additionally, the English, Scottish and Welsh systems are not completely separate, with children sometimes being sent to placements on a cross-border basis; this has led to concerns in Scotland and Wales that lack of capacity and high prices in parts of England are leading to English children being placed across borders, in placements that are not well-suited to their needs. As part of this market study, we will consider this element of interaction between the three care systems.

Northern Ireland

66. In Northern Ireland, the children's social care sector has significantly less private sector involvement than the other UK nations. Children's homes make up a much smaller proportion of placements in total, and a very small number are provided by the private sector. In fostering, we do not believe that there are any independent fostering agencies operating on a for-profit basis. Again, while overall data is less available, we have not seen evidence of concerns around the availability or price of placements.
67. Given this background, we are not proposing to include Northern Ireland in the scope of this market study. We welcome any responses on these issues in relation to Northern Ireland, however, and remain open to revisiting our decision to exclude it from scope if we see evidence that leads us to reassess our initial view.

Policy Environment

68. Children's social care is a devolved policy area. Within England, the Department for Education (DfE) is responsible for the legal and policy frameworks within which children's social care operates, while the Ministry of Housing, Communities and Local Government (MHCLG) provides funding to local authorities for children's services. In Scotland, responsibility sits with the Scottish Government's Children and Families Directorate. In Wales, these roles are played by the Education and Public Services Group. In addition to this statutory framework, regulations and guidance apply to local authorities and is specific to each nation.
69. Each of England, Scotland and Wales has its own regulator of children's social care services. In England, the regulator is Ofsted, in Scotland it is the Care Inspectorate and in Wales it is Care Inspectorate Wales. Each regulator maintains a register of children's homes providers and carries out inspections. They have a range of enforcement powers that can be used when a regulated service falls short of the standards set out in legislation.
70. Funding for these services in England comes from the local government core funding settlement, and the current annual cost is around £4.5 billion. In Scotland, the current annual cost is around £650 million. Within Wales, the current annual cost is around £320 million.
71. Within each of England, Scotland and Wales there are significant policy processes underway which will shape the children's social care sector well into the future.

72. In England, on 15 January 2021 the Education Secretary launched a wide-ranging independent review of children’s social care, which sets out to radically reform the system.²² Amongst other issues, the review will consider the increase in numbers of looked after children, inconsistencies in children’s social care practice, outcomes across the country and the failure of the system to provide enough stable homes for children. The review has confirmed it will look at the issue of placements as part of its overarching objective to provide loving, safe and stable homes for children, whether it is with their families or in care. As the CMA market study will work to similar timescales to the independent review and look at similar areas, it is our intention that the two reviews will work closely together, within the bounds of our legal powers and obligations, sharing findings and ensuring that requests for information are not duplicated. This will maximise the opportunities for effective outputs that recognise the wider context and have the greatest impact on improving the quality of placements children receive, whilst ensuring the independence of both pieces of work.
73. Scotland completed a major, child-centred review of its children’s social care system last year (‘The Promise’). This was a major political priority of the First Minister, and the Scottish Government is now implementing its findings. Amongst other findings (largely focussed on supporting children in care) the review²³ found that: commissioning of services must change; competing for contracts can lead to duplication of services and can stifle sharing of good practice, it can ‘encourage competition, not collaboration that in turn drives down investment and standards;’ there must be strategic, needs based planning for children; there are challenges in the management of places and the sustainability of settings of care; and, Scotland must improve how it uses data in decision-making but to do so it must take a different approach to how it collects data and information. Despite numerous reviews over the years looking at children in care, market aspects have never featured strongly. However, we note the Promise strongly recommended that: ‘Scotland must avoid the monetisation of the care of children and prevent the marketisation of care’.
74. In Wales, the Improving Outcomes for Children Programme, overseen by a Ministerial Advisory Group, is a Welsh Government programme of change that aims to improve services for children and families in need of help and support. It is focussed on three core areas: safely reducing the number of children in need of care; making sure there are sufficient placement options of

²² Department for Education (2021), [Independent review of children’s social care](#).

²³ Independent Care Review (2020), [The Promise](#).

a high quality for children who are looked after or leaving care; and, supporting children who are looked after to have the best possible journeys through care and into adulthood. In the last annual report of the programme²⁴ the Welsh Government made a commitment to develop a national strategic approach to commissioning of placements for looked after children.

75. A number of organisations have carried out work related to residential accommodation and fostering²⁵. This work has highlighted a number of the issues we have raised in this Invitation to Comment. We will draw on such relevant information, research and reports as part of our market study.
76. We will also engage closely with relevant government and regulatory organisations. In England, this will include the DfE, MCHLG and Ofsted as well as HM Treasury; we will particularly look to links between our study and the DfE response to its consultation on unregulated settings and the independent review of children's social care. In Scotland we will engage with the Scottish Government and the Care Inspectorate, Scotland Excel and will include a focus on the Promise independent care review, the recommendations of which are now being implemented. In Wales, this will include the Welsh Government and Care Inspectorate Wales; we will seek links between our study and the work of the Ministerial Advisory Group for Improving Outcomes for Children.

Scope and themes we propose to consider

77. We propose that the scope of this market study is the supply of accommodation and associated care and support for looked-after children in children's homes, foster care, and independent and semi-independent living facilities. It will look at the ability of local authorities to secure appropriate placements for the children in their care, at a reasonable price. We will cover England, Scotland and Wales, taking into account relevant policy, market and socioeconomic differences between and within the three countries.
78. In carrying out our market study, we are aiming to fulfil two key purposes:
79. First, to consider the efficacy of the market in providing such important social services, including the role of private provision. Over the past few decades, the private sector has come to dominate the provision of children's homes and unregulated accommodation in England and Wales, and independent

²⁴ Improving Outcomes for Children Ministerial Advisory Group (2019), [Annual Report 2019](#)

²⁵ These include: Sir Martin Narey, [Residential care in England](#); National Audit Office, [Pressures on children's social care](#); HCLG Select Committee, [Funding of local authorities' children's services](#); the Children's Commissioner for England, [Private provision in children's social care](#) and [Unregulated](#); and successive [Annual Reports](#) of the Children's Commissioner for Wales, among others.

agencies have become increasingly prominent in the fostering market. Concerns around private provision in the sector have grown, particularly in light of increasing private equity investment and consolidation. We will explore levels of profit-making by private providers in the current system and consider whether the current mixed market is delivering good outcomes and value for money when compared to possible alternative models.

80. Second, to consider how well the current market is working and explore how it could be made to work better. There are areas that seem to be functioning sub-optimally on both the demand and supply sides of the market and addressing these could deliver improved outcomes for children and local authorities irrespective of the overall shape of the market that emerges from any overall policy approach.
81. To explore these issues, we propose to focus on how each of the following four themes contributes to the problems of securing appropriate supply and avoiding unduly high prices.

Theme one: Nature of supply

82. Under this theme we will explore how the way the market is structured and the place of different operators within it leads to particular results, both in terms of the supply of places and the cost of provision. We will also consider whether certain ownership models create risks to stability of supply, and whether the variations in costs and quality of placements have been driven in part by a lack of competition and excess profit-making, as opposed to other possible drivers. As part of this theme, we will consider the nature of the provision of unregulated accommodation, and the impact that the availability of an unregulated option has on incentives to supply across the system.

Theme two: Commissioning

83. Local authorities are the sole purchasers of children's care placements (as well as being significant suppliers), but high levels of spot purchasing of placements and an apparent lack of strategic commissioning indicate that they do not take full advantage of this position to secure long-term value for money and sufficient levels of appropriate capacity. Within fostering, the growth of independent fostering agencies in England and Wales has placed greater emphasis on decisions by local authorities on how much to focus on in-house provision versus agencies, and how they interact with agencies over time. We will look to compare local authorities' commissioning practices, and the environment in which they are operating, and see whether lessons can be learned to improve overall outcomes. For example, improved access to information, regional collaboration and the use of frameworks or volume-

based contracts could drive down costs, while more active market shaping through better forecasting of demand and collaboration with independent providers could help to encourage investment in supply.

Theme three: Regulatory System

84. Regulation is a vital means by which we ensure that the provision children are receiving is to an appropriate standard; this must not be compromised. However, it is important to ensure that the way regulation is carried out is not having unintended consequences that impact negatively on the system's outcomes. We will investigate whether, for example, regulation makes it unduly difficult for suppliers to set up or repurpose residential homes to meet different needs, or to become registered as a foster carer. We will also consider whether it has an impact on the willingness of homes and foster agencies or individual foster carers to accept certain placements. Additionally, we will consider whether there are areas where a greater role for regulators could help deliver better outcomes.

Theme four: Pressures on investment

85. Under this theme we will explore forces at work in the market which may create barriers to investment in capacity. In particular, we will consider whether uncertainty about future demand and funding, along with the allocation of risk in the sector, has discouraged private and public sector investment in creating placements and recruiting foster carers. We will compare this with the impact of other possible factors, such as the cost of property, planning restrictions and difficulties in recruiting and retaining appropriate staff.

Areas where we do not intend to focus

86. Within the category of residential care, we do not intend to focus on either secure children's homes or residential schools. While both are very important aspects of provision for looked-after children, each of them is heavily rooted in wider systems: the justice and mental health systems, and the education system, respectively. As a result, work on these would include a much wider set of issues and stakeholders than it would be feasible for us to attempt to cover in depth within the scope of this study, given the relatively small numbers of children involved.

Consultation questions and next steps

87. The CMA welcomes comments on any of the issues raised in this Invitation to Comment and the accompanying Market Study Notice from care and accommodation suppliers, local authorities, looked-after and care-experienced children and their advocates, and other interested parties. We particularly welcome responses on the following key questions.

Box 1: Our themes and key questions

Theme one: Nature of supply

1. How has the provision of children's homes, unregulated accommodation and foster care for looked after children developed over time, what has driven this development and how will the wider environment shape it in the future?
2. Are there significant differences in how providers operate, depending for example on the type of provider they are, their size or the geographic region in which they are operating?
3. To what extent is a lack of availability of suitable residential and fostering placements driving undesirable outcomes for local authorities and children?
4. How have the following four types of children's care home and fostering agency provision developed over the last decade:
 - a. Local authority
 - b. Private – private-equity owned
 - c. Private – non-private-equity owned
 - d. Third sector private.
5. Does the *status* of the provider (ie Local authority, private equity, non-private equity or third sector) significantly impact on the nature of the homes and fostering arrangements they put in place, in terms of: the number of placements (eg do they have incentives to invest in new capacity), price, value for money, location and quality of placements?
6. With regards to private equity ownership of children's care homes and fostering agencies:
 - a. What features of children's care homes and fostering agencies attract PE investors? Are these the same compared to non-PE investors?

- b. To what extent are property prices a driver of PE incentives to invest?
- c. Do PE investors in the sector have a shorter-term investment horizon than other types of providers, and if so, what effect does this have on the service they provide and investment in future capacity?
- d. Do PE-owned children's homes or fostering agencies carry a higher financial risk profile or leverage than the other types of providers, and if so what effect does this have on the service they provide and investment in future capacity?
- e. What are the implications for the number of placements, price, value for money, location and quality of placements if group companies providing essential services such as children's social care are registered offshore?

Theme two: Commissioning

1. How has the way in which local authorities commission places in children's homes, unregulated accommodation and foster care developed over time, what factors have driven this, and how is it likely to develop in the future?
2. How able are local authorities to secure appropriate placements to meet the varying needs of children in their care, for a reasonable cost?
3. To what extent do features of the market limit the ability of local authorities to secure appropriate placements at reasonable cost, including:
 - a. levels and uncertainty of future demand;
 - b. nature of demand, e.g. age profile of looked-after children or prevalence of complex needs;
 - c. levels of uncertainty of future funding;
 - d. level of access to information on providers and individual placement options;
 - e. any other factors?
4. To what extent does the capacity, capability and practice of local authorities limit their ability to secure appropriate placements at reasonable cost, including:
 - a. the relative use of frameworks, block contracts or cost and volume contracts, as against spot purchasing;

- b. the extent to which local authorities proactively forecast demand and seek to attract providers into their area;
 - c. levels of collaboration between local authorities in planning and purchasing;
 - d. ability to recruit and retain appropriate staff to carry out their planning and procurement functions;
 - e. any other factors?
5. Are there examples of good practice within or among local authorities that have been effective in overcoming any of these potential difficulties?

Theme three: Regulatory system

1. Please briefly describe the regulatory system and your assessment of its effectiveness in supporting good outcomes in children's social care. In particular, we welcome comments on:
- a. The interplay between regulators and government, local authorities and providers.
 - b. The range of the regulators' functions and whether they ought to be reduced or expanded in any way?
 - c. The operational effectiveness of regulators and whether this could be strengthened by reform of their remit and objectives, resources and skills-sets and/or powers.
2. Are there particular problems in the way placements are supplied and commissioned that the current regulatory system is not well-equipped to address?
3. Does any aspect of regulation create any perverse incentives on local authorities, providers or other actors, which are driving sub-optimal outcomes?
4. Where local authorities use unregulated placements, how do they ensure that these are appropriate in the absence of regulatory oversight? In England, how might this change as a result of the government's recent announcements?

Theme four: Pressures on investment

1. What are the main drivers of, and barriers to, decisions to invest in new children's homes capacity by local authorities, private sector and third sector providers? Please consider:
 - a. Levels, nature and certainty of future funding;
 - b. Levels, nature and certainty of future demand;
 - c. Expectations of the level of prices in the future;
 - d. Regulatory and policy frameworks;
 - e. Barriers to the acquisition of appropriate property;
 - f. Barriers to the recruitment and retention of appropriate staff;
 - g. Any other factors you think are significant drivers or barriers.
2. What are the main drivers of, and barriers to, decisions by local authorities to expand their use of in-house foster carers, and to new independent fostering agencies entering the market or expanding their operation? Please consider:
 - a. Levels, nature and certainty of future funding;
 - b. Levels nature and certainty of future demand;
 - c. Expectations of the level of prices in the future;
 - d. Regulatory and policy frameworks;
 - e. Barriers to attracting and retaining appropriate foster carers;
 - f. Any other factors you think are significant drivers or barriers.
3. Within the private sector, does the ownership model, particularly whether or not a firm is private equity-owned, affect the appetite of a provider to invest in providing new placements?
4. Are there actions that government, regulators, local authorities (acting independently or collaboratively) or other actors could take to support more investment in capacity where it is required?

Responding to this invitation to comment and market study notice

88. Please email written submissions on the market study to children@cma.gov.uk by 14 April 2021.
89. 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.²⁶
90. Due to the ongoing Coronavirus (COVID-19) pandemic, we are not able to process any documents or correspondence by post or courier to our offices.
91. We intend to publish responses to this Invitation to Comment, 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.
92. If you are responding as an individual (i.e. 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.
93. An explanation of how we will use the information provided to us can be found in the Annex. The Annex sets out how the CMA may use information provided to it during the course of this market study, including where we may need to refer to information in order to pursue enforcement action against a business in this sector.

²⁶ 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’.

Annex – use of information provided to the CMA

1. This Annex sets out how the CMA may use information provided to it during the course of this market study.

Why is the CMA asking for information?

2. The information you provide will 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 and identify ways to help local authorities secure better value for money in their procurement in this sector (for further details of the issues considered see paragraphs 82 to 85).

What will the CMA do with the information I provide?

3. Your information will inform our market study report. The report will set out our findings and any proposed remedies to any existing or potential issues we find.
4. Where appropriate, we may also use information you provide to take enforcement action, using our competition or consumer powers, against businesses providing care and accommodation for looked-after children or may share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary.
5. We may only publish or share information 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 business of an undertaking which, if published or shared, might significantly harm the legitimate business interests of that business.
6. We will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.
7. If you wish to submit information either in writing or verbally that you consider confidential and therefore do not wish us to publish or share, please let us know when you contact us with your reasons.
8. Any personal data you provide to us will be handled in accordance with our obligations under the General Data Protection Regulation, the Data Protection

Act 2018 and any other applicable data protection legislation. Any personal data provided to us will be processed for the purposes of this market study under Part 4 of the Enterprise Act 2002. For more information about how the CMA processes personal data, your rights in relation to that personal data (including how to complain), how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.

9. Further details of the CMA's approach can be found in Transparency and Disclosure: Statement of the CMA's Policy and Approach (CMA6).