



Ymateb i Ymgynghoriad / Consultation Response

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Subject / Pwnc: Childrens Social Care Provision - CMA

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

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?

Over time, two major developments are, firstly, the rise in provision by private providers and secondly a rise in regulated provision for young people aged 16 and over, including over 18s in 'When I'm Ready/Staying Put' arrangements.

During my time as Commissioner, I have worked to capture the voices, experiences and ambitions of children and young people living in care in order to shape positive policy change in this area to support children to reach their potential.

In 2016, I published "The Right Care",¹ which was developed as a result of conversations with young people living in residential homes across Wales. It came to light that whilst many young people did have positive experiences of residential care, too often they faced unnecessary criminalisation for behaviours that would be dealt with differently in the home, were placed far away from their homes and communities and were impacted by poor placement planning by Local Authorities, police and health care. This was often the case for children who had come from English local authority areas. This report instigated the creation of the Welsh Government's Task and Finish Group on Residential Care, which has sought to strengthen care provision in Wales, is currently developing a Protocol to Reduce the Criminalisation of Care and is working to strengthen commissioning practices to ensure children can be placed in

¹ <https://www.childcomwales.org.uk/wp-content/uploads/2016/06/The-right-care.pdf>

the most suitable placements. The T&F Group was also tasked with exploring the need to remove the element of profit from children's care services, however, progress on this has been slow. Welsh Government have expressed a commitment to move towards this model of provision, firstly in the First Ministers Manifesto and more recently in their White Paper for Social Care, which has committed to 'rebalancing the sector'. Whilst in Wales it seems we are in a relatively strong position to address the challenges in the provision of children's care placements, concrete action or clear decisive leadership to fulfil this action has been lacking.

In Wales there has also been a commitment to broaden the offer of publically commissioned placements, particularly for children who require support from both health and social care. This type of provision is for children who have more complex needs, with my team working to raise awareness of the impact of the lack of this type of provision in my report 'No Wrong Door'². Whilst we have seen a small number of innovative, jointly commissioned proposals develop, we continue to wait further progress in this important element of provision for children.

In 2017, I published "Hidden Ambitions",³ which highlighted the challenges young people leaving care often face, and called for greater support from local authorities, charities and private enterprise in order to help young people leaving care reach their ambitions and thrive after care. The report noted particular challenges for those leaving residential care, as they do not have the same level of access to "When I'm Ready" support as those leaving foster care placements, particularly in regards to housing options. Having accepted the report's recommendations, action was taken by Welsh Government to explore how corporate parenting and accommodation options could be strengthened for care leavers, however, work in this area has been delayed by the Coronavirus Pandemic pressures. I have recently raised concerns with

² <https://www.childcomwales.org.uk/publications/no-wrong-door-bringing-services-together-to-meet-childrens-needs/>

³ <https://www.childcomwales.org.uk/publications/hidden-ambitions/>

Welsh Government Ministers about the lack of regulation that exists for some types of accommodation for those aged 16+, which means that vulnerable young people can be placed in accommodation that varies widely, with no clear minimum expectation or standard of accommodation. I have called for greater regulation in this area and a ban on children under the age of 16 being placed in unregulated accommodation, except in specified circumstances. I am aware of the commencement of work on this in England but there is nothing similar in Wales currently taking place. I have raised this with the Welsh Government but there are currently pre-election restrictions in place, so this will need to be raised with the newly appointed Government.

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?

Whilst all children's homes in Wales will be regulated by Care Inspectorate Wales (CIW), the quality, cost and approach taken at the provision can vary greatly, which can result in different experiences of care for children. This was evident in CIW's 2018-19 review of children's homes.⁴ For example;

- Children had the best outcomes in care when holistic models of care were followed that combined therapy and education;
- Local authorities were experiencing difficulties in securing appropriate placements to meet the needs of children, and the needs and risk factors for children have increased in complexity.
- Placement breakdowns had affected the wellbeing of some children, including their ability to form attachments; many referrals were made following placement breakdown impacting on the ability to plan transitions;

⁴ <https://careinspectorate.wales/sites/default/files/2019-09/190926-national-review-of-care-homes-en.pdf>

- Better local commissioning arrangements were required to ensure children's needs can be met as close to home as possible;
- Not all children in residential care receive their statutory entitlements for example, in health or education - often exacerbated if local authorities and health boards were not working collaboratively for children;
- There were varying levels in the use of physical interventions to manage behaviour, some homes had higher levels of reports of criminal behaviour, suggesting varying thresholds and approaches in managing difficult and challenging behaviour.
- Local authority and third sector homes had higher levels of staff with the required levels of qualifications than privately run homes.

Furthermore, the 4C's have worked to better manage the children's residential and foster care provision in Wales, having developed a commissioning and quality framework, which helps to understand commissioning in Wales, regulate costs, monitor reinvestment and measure outcomes for children. However, not all providers or Local Authorities in Wales are signed up to this framework, which is indicative of the varying approach taken in Wales by providers.

I have been made aware that in children's private fostering provision, larger corporate firms are undertaking acquisitions of smaller organisations, which is resulting in them having a larger share of placements. This also creates concern that financial motives are at play in the provision of care. For some children this can mean that decisions relating to their care are quite far removed from their needs.

3. To what extent is a lack of availability of suitable residential and fostering placements driving undesirable outcomes for local authorities and children?

I am aware of growing concerns about the use of unregulated placements in Wales, as there is little available data on its usage. I am told by Local authorities that commissioning pressures result in children being placed in these arrangements when there is nowhere else for children to go - this is particularly acute for children with complex emotional and behavioural needs. Local Authorities are to notify CIW of when a child is to be placed in unregulated accommodation, however, I do not have access to this data. We know that due to a lack of regulation in this area, the quality and cost of this important type of accommodation for looked after children can vary widely. There have also been concerns in Wales that young people were being driven towards secure care placements, not necessarily because this was the best placement option for them but because of a lack of suitable alternatives within the sector. At times, unregulated care can become interchangeable with the term 'bespoke placements'. For some children, this small type of placement may be in their best interest and result in better outcomes for example, than entering secure care. However, a lack of regulation or data on this hinders our ability to fully understand the impact of its usage.

Some Local Authorities are beginning to reopen their own in-house children's residential care, following a trend of closing their homes and relying on private provision. However, there are still local authorities without enough or sometimes without any provision in their area, and even with some Government funding this has not been sufficient to quickly shift these trends. In addition local authorities tend to be reluctant to create their own provision at the 'higher end' of complex needs, and so the options for these young people can be very limited.

Some local authorities have also spoken about having to pay large sums of money for placements very far from home, such as children from south Wales being placed in the north east of England. This has a significant impact on children's rights to maintain family contact, and to accessing ongoing support services to meet their needs, as well as to resettling/reintegrating into their home community. We know that a

significant proportion of young people aged 16-18 return home to live with family upon their exit from care so the ability to successfully reintegrate is often directly impacted by having lived out of area and some distance away.

I remain concerned that the small number of Welsh children and young people with complex mental health and social care needs who require support in a residential setting too often do not receive the service they need. There is only one low secure mental health facility for children and young people in the whole of Wales, so children are all too often either placed in unsuitable accommodation within Wales, or placed in low secure residential settings hundreds of miles from home. Where children and young people do receive residential care in either low secure mental health or inpatient settings, or in social care placements, the care provided often does not cater for their needs including emotional and behavioural needs rather than simply a diagnosed mental health need. In my Annual Report 2019-20, I have called for action by Welsh Government to establish new multi-agency commissioned and resourced residential provision within Wales, which meets the needs of children and young people with complex needs.⁵

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.

Welsh Government, Local Authorities, The 4C's or CIW will be best placed to provide this data.

⁵ <https://www.childcomwales.org.uk/wp-content/uploads/2020/10/Annual-Report-2019-20.pdf>

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?

Local Authorities, The 4C's or CIW will be best placed to provide this data.

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?

We often hear concerns about proliferations of private children's homes in areas of affordable housing. These tend to house children from other geographical areas which is not always in the child's best interests in terms of being a long way from families, schools and communities. It can also put a strain on local education, health and policing services. The regulators, Care Inspectorate Wales do not look at local supply issues when registering a home, only that the home itself meets standards.

Private establishments need to maintain a certain level of occupancy to fulfil their business model which may make them prepared to accept children from geographical locations that are far removed from the home itself.

- 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?

I have consistently called during my time as Commissioner for concrete steps to be taken to remove the element of profit making as an incentive to offer provision from children's care. I first called for action to be taken on this in 2017/18 and 18/19, and have since reiterated this in my 2019-20 Annual Report.⁶

This recommendation was caveated, with the need to ensure this was not to the detriment of children and young people who were doing well in placements, regardless of whether they were in the private, public or social enterprise sector. These calls have been informed by the voices of children and young people, many of whom are very aware of the costs associated with their care.

There is a broad demography of care providers in Wales; many are very small providers who have set up to provide unique therapeutic care for vulnerable children operating with very small/no profit, and a small number of new third sector homes are opening in Wales, such as the Action for Children homes in North Wales. However, I have also been made aware that there are large corporate acquisitions taking place of smaller providers, particularly in the independent fostering sector.

Children are too often placed far away from their families and home local authorities. The existence of a market-element in provision exacerbates

⁶ <https://www.childcomwales.org.uk/wp-content/uploads/2020/10/Annual-Report-2019-20.pdf>

this, as private care provision often clusters in rural areas and those areas with cheaper housing.

I fully recognise that it is not necessarily cheaper for the public purse to provide care for children in the public or third sector. However, my call to end profit in children's social care relates to the principles behind offering care, removing any incentive of accruing profits from vulnerable children's circumstances and ensures that every penny is spent on provision rather than being diverted to often distant shareholders.

In my recent response to the Welsh Government's Rebalancing Care and Support White Paper, I put forward that any commissioning practices and fee methodologies must focus on quality for the service user and that the driving principle for fee methodologies and commissioning must be to promote children's rights, such as Article 27, a right to an adequate standard of living, Article 20, a right to alternative care that respects the child's language, culture and religion if they cannot live safely with their families, Article 24, the right to the best possible standard of health care and Article 39, the right to recover from trauma and neglect.

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?

A lack of an All-Wales system for taking stock of the landscape in Wales has resulted in authorities competing with one another for placements which has shifted commissioning practices in the favour of providers. The recent White Paper on Rebalancing Care and Support has put forward proposals to developing a national approach to commissioning. Despite efforts by organisations such as the 4Cs who provide valuable placement/provision oversight to promote further transparency of

commissioning practices with foster and residential placements who use their commissioning framework, Wales lacks a clear all-Wales approach, which can contribute to competition rather than a managed and mutually supportive commissioning system.

4Cs have worked with Welsh Government to develop a national fostering framework, to improve consistency in fostering placement. However, there is a general shortage of placements which creates difficulty in planning for needs in a time of crisis leads, which can lead to competition

2. How able are local authorities to secure appropriate placements to meet the varying needs of children in their care, for a reasonable cost?

The challenges in this area have been recognised in Wales with Welsh Government recently consulting on whether Market Stability Reports could ease pressures in this area. Similarly, the Welsh Government's Rebalancing Care and Support White Paper has proposed developing a national body to support care commissioning. Local authorities aim to provide in-house and in-area placements for most of the children in their care, but most commission a proportion of out of area placements, often at high costs.

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?

Welsh Government, Local Authorities, The 4C's or CIW will be best placed to provide this information.

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?

Welsh Government, Local Authorities, The 4C's or CIW will be best placed to provide this information.

5. Are there examples of good practice within or among local authorities that have been effective in overcoming any of these potential difficulties?

As above.

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.

As mentioned above in regards to unregulated placements, there is a requirement for local authorities to notify CIW of when unregulated placements are used for children under the age of 16.

- 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?

For children who require support from both health and social services, for example, when they require provision that meets their complex emotional and behavioural needs, whilst some progress has been made, my casework service still receives cases where there are debates about who should provide support. This results in arguments over payment delaying decisions, or local authorities having to spot purchase health services as an add on to their placements. My No Wrong Door report and approach, referenced above, seek to address this as children in care should have the support of wider public services as their corporate parents. It is particularly concerning when children and young people are aware of the arguments happening over their heads, and conversations about finances indicating to them that services don't value them enough to pay for or provide the help they need.

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?

As mentioned above, unregulated provision would benefit from strengthened oversight and regulation in Wales to better understand the benefits and challenges of this type of placement. Whilst it is important to maintain some flexibility for children and local authorities, it is unclear how routinely this type of placement is relied upon for children and the impact it has on children's experience, outcomes and access to other important services integral to their care, such as access to health care, education and links with family.

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;

I have been informed by Regional Partnership Boards (RPBs) in Wales, that short-termism in funding has been a barrier to developing jointly commissioned services in Wales. For example, RPBs told me the long term culture shifts they are asked to prioritise as part of the 'A Healthier Wales'⁷ agenda are difficult to achieve when funding is one or two-year 'kick-starter' funding. Transformation funding and Integrated Care Fund (ICF) provision from Welsh Government has had some impact in pockets across Wales, but there has not been enough progress for this to shift the landscape of provision in Wales.

- 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;

⁷ <https://gov.wales/healthier-wales-long-term-plan-health-and-social-care>

- g. Any other factors you think are significant drivers or barriers.

Welsh Government, Local Authorities, The 4C's or CIW will be best placed to provide this information. Regrettably, I have met some children who are acutely aware of the cost of their care with some perceiving that the costs associated with commissioned care have been a barrier in them accessing this support. Children and young people have, on a number of occasions including of their own volition, raised with me their concerns about feeling like 'commodities' and how the procurement system feels like a market place for their care. Young people have even been aware of the sums of money involved, and felt, when certain places or options are not being pursued, that their care is therefore not seen as being 'worth' a particular amount or placement. It is unacceptable that any child should feel that they don't 'deserve' a particular placement. In order to move towards the reduction and ultimate removal of profit making from children's social care, the Government needs to make appropriately clear and strong statements and commitments from this point onwards. Whilst transparency of costs is hugely important, greater efforts need to be made at all levels of the commissioning processes to protect children from this.

- 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.

Welsh Government, Local Authorities, The 4C's or CIW will be best placed to provide this information. However, it may be helpful if Wales was to make a stronger commitment to removing the element of profit making from children's services, and set out a clear road map of how this could be achieved and offer support to local authorities and third sector/social enterprise services to make this shift. Without this there is little incentive for Local Authorities and providers to undertake this shift in commissioning.

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?

Welsh Government, Local Authorities, The 4C's, Providers or CIW will be best placed to provide this information.

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?

Welsh Government, Local Authorities, The 4C's, Providers or CIW will be best placed to provide this information.

Submitted by:

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