

Individual response number 01

I have recently read the Children Social Care and Market study document, which I found very interesting and I wanted to make some comments.

I am foster carer with a private agency in Scotland. I have been a foster carer for [X] years and although I may not know what happens in each local authority area I am providing the information to the best of my knowledge.

In relation to Theme 2 – Commissioning

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

Private agencies cost significantly higher, some local authorities pay a total cost, inclusive of the child and carers fee, of about £1,300 per month whereas private foster carers received about £2,000 per month plus the private agency is paid about the same as the carers on top of this. The local authority have removed children due to the cost with no consideration that the children were settled/happy. Budget is an issue and if the local authority have their own carers who have capacity they will move the child from private carers to local authority to save money.

In relation to Theme 3- Regulatory System

1b. The range of the regulators' functions and whether they ought to be reduced or expanded in any way?

Private agencies offer a number of holistic training/therapy for the looked after children, however, if the child is on a temporary or short term basis then the child would not benefit from this due to them not being settled. This holistic training should be offered and available to all children, however, due to local authorities budget it is not. Every child should be given the same opportunity. Private agencies provide their foster carers with a supervising social worker, however, the local authority social workers do not work with them the same as they would if the supervising social worker was from their local authority.

In relation to Theme 3- Regulatory System

2. Are there particular problems in the way placements are supplied and commissioned that the current regulatory system is not well-equipped to address?

In Scotland if there is no available carers in the local authority then the child's social worker will seek a placement from private agencies then they will chose who to place the child with. I am unsure how much say the social worker has over placements within the local authority.

I would also like to provide a solution to ensure that every child is given the same opportunity.

Currently a look after child is a ward of the state to the local authority, if a child is moved to another local authority to be placed in foster care or residential care then the local authority they come from are still responsible for them and in my experience these children do not get access to the local Education psychologist because that child does not belong to the local authority they stay in. As each local authority are responsible for their own children hearings and meeting then other local authorities have not allowed foster carers to access their facilities so the foster carers could attend meetings remotely as the child the meeting is about is not from that local authority. This causes problems for foster carers to get back in time to pick the child up from school and costs the local authority further on foster carers travel expenses.

I propose that there is a national process in Scotland in placing children in foster/residential care run by the Government not private agencies. Each child will still have a social worker responsible for them but the social worker would not have the responsibility of finding placements, children will not be moved because the foster cares cost too much, and if the child is moved to a different area then they could be given the same services as other children living in that area. Supervising social workers would no longer work for the local authority but for the Government and could provide support to more carers. Having a national placing system would mean:

- Every child would have the same access to therapy
- Every child would have access to services in the area they lived in even if from another area
- Every foster carer/residential worker would be trained to the same level
- Every foster carer/residential worker would be paid the same across the country
- The matching process would be vaster, meaning that the match would be more suitable and less likely to break down.
- If there was a wider choice then residential placements may be less in turn saving money.
- There would be no require for private agencies therefore some saving would be made.

Foster carers are not in this for the money but they do need money to live and provide a good life for the child they are looking after. £1300 is not a lot of money

and personally I would not be able to live off that. That is one of the reasons I went with a private agency. Looked after children need foster carers who are doing it for the right reasons and who feel valued and supported. Of the knowledge I have many social workers do not value the foster carer and the foster carer feel they cannot challenge the social work in fear of losing their placement and livelihood. The model I proposed would allow for child to have the best opportunity to be match with foster carers and less likely to be moved. For foster carers to be trained to the same high level and supported by a national process so that they can be the child's advocate. It may also allow for more people to want to become foster carers as it will be a more secure job. As you pointed out in paragraph 56, which shows foster caring is not a secure job, in England *'around 16,000 fostering households having no child living with them at any one time'*.

In February 2020 the independent care review in Scotland produced a report about how there needs to be shake up in the system where children need to be loved (currently this is frowned upon but some local authorities). They indicated that children should not be moved from one placement to another, however this is still happening. I have found that it takes approximately 3 years for the social work to decide that a looked after child is staying in care permanently and often this child has been placed in a number of short term placements before finding their 'forever home'. This process takes approximately three years even though on occasions the social worker knows the child is highly unlikely to ever go home. Which causes further trauma for a child and negative affects building relationships. You can find the report here <https://www.carereview.scot/conclusions/independent-care-review-reports/>

I would like to remain anonymous but if you wish any further information then you can contact me by replying to my email with questions.

Individual response number 02

CHILDREN'S SOCIAL CARE MARKET STUDY, INVITATION TO COMMENT

I set out my comments below to the above and for ease of reference set out my conclusion first.

Conclusion

In my opinion and for the reasons set out in its Invitation (Invitation) and augmented below, the CMA's market study would be of considerable value and should continue. This is a market-place under considerable pressure in every respect. It is dysfunctional, has been dysfunctional for some time and does not enable adequate provision to be made for some of the most vulnerable in our society. There is evidence that the extent of the dysfunction is growing and it is likely that a significant percentage of placements by local authorities in residential provision and possibly more widely are in breach of the public contracts regulations 2015.

Whilst there are a number of parallel studies and reviews being undertaken at present, for example as identified in the Invitation, the Independent Care Review, these do not cover the same ground as the CMA and the CMA is best placed to consider the specific aspects of this market place as set out in the Invitation and more widely.

The study ought to be expanded to include secure children's homes and residential schools for children who are in long term care and/or with special educational needs, disabilities or health conditions because:

- Children who come into the care system have multi-needs and it is artificial to exclude these sectors. They are an integral part of the children's social care market-place.
- These are sectors with similar pressures and issues to the other sectors in this market-place which are included in the proposed study.

The Study also ought also to be expanded to include consideration of the extent to which the current procurement practices by local authorities are in breach of the public contracts regulations 2015

Note: As I have limited experience of the sector in Scotland these comments reflect my experience of England and Wales.

General Comments on the Broad Issues, Including on the Scope of the Market Study

General - the Issues

The proposed CMA study will consider and focus on the market-place and supply in the first theme and then in the second theme commissioning. In my view this is the wrong way round, as it is commissioning which ought to be the driver for supply. Theme three the regulatory system and then theme four, the pressures on investment then follow logically.

By way of explanation of my use of the expression market-place. This is not a real market, there is only one purchaser, the state. Arguably because of this in economic terms it is a monopsony. In practice though, as identified in the Invitation, local government consists of many legally separate organisations and the social care is devolved to the governments in Scotland, Wales and Northern Ireland.

Within each jurisdiction all authorities place/procure individually. In England, many local authorities are also part of and purchase through a number of different local authority consortia. In practice, there is internal competition for places with examples of local authorities each competing for scarce places and carrying out extensive searches for a suitable or in some instances any place, especially where a child has complex needs. This is therefore an unusual economic model because the state is the only purchaser but arguably, the state has many individual organisations within it. The market-place therefore has some characteristics of a multi-purchaser market. This is significant when considering the drivers for change, how change can be driven and delivered and how easy it will be to change local authority behaviour as a purchaser. In practice, a local authority which has a requirement for a place takes all

possible steps to secure this from a provider to the detriment of their colleagues in another local authority even if they are part of the same consortium group. As identified in the Invitation, it is each individual local authority which has the strategic responsibilities/duties to secure sufficient provision together with duties towards individual children and young people in their area, hence the competition for a place.

In any market-place it is demand and the consumer, or in this instance, local government, which drives supply as identified in the Study's introduction. In the case of a statutory service with one purchaser, it is the statutory purchaser which should drive the market-place, be responsible for what it consists of and how it meets demand.

Each individual local authority should therefore drive the nature and amount of supply which it requires to deliver their required demand to meet their statutory duties. There is a disconnect between the principle of the state as the sole purchase and the requirements of individual local authorities each of whom have similar statutory duties, are subject to similar guidance and if they are purchasing via a consortium theoretically all purchasing on similar terms and conditions. In addition as there is much inter-authority discussion and swapping of ideas, many of the consortia have a similar business model, procurement documents and approach. In my view, understanding this behaviour and how the market-place functions is critical to changing and improving this market-place. This is considered in more detailed below.

As identified in the Invitation, a conventional market would meet increasing demand by an increase in supply to meet unmet demand. This has not happened.

Therefore, what the CMA has said in paragraphs 4, 6 and 7 of the Overview and paragraph 27 onwards are particularly pertinent. As identified, this is a dysfunctional market place where the supply chain is not able/willing to expand to meet demand. Examining and understanding the reasons for this are essential to being able to address the problems. The second and fourth bullets of the CMA's paragraph 7 are key to this.

As the CMA identifies in the third bullet of paragraph 9, local authorities are suffering massive financial pressures. This is very relevant to the supply problems because it seems to be an important factor in driving local authority's behaviour.

Another important factor is the change in the law introduced by the public contracts regulations 2015 (PCR), in force for new procurement activity from then. These were made law by the then government with very limited lead-in time, no additional funds or practical guidance. The PCR require all contracts with a total value of above

approximately £660,000 (at present) to be procured in accordance with the regulations. This was a new requirement for social care contracts as prior to this the regulatory regime was far less prescriptive. The extent to which the market-place is currently compliant and the consequences of breach of the PCR are considered below.

The 2015 changes required an entirely new approach and infrastructure to achieve compliance. The increasing problems in this market-place are to a significant extent an outcome of this inappropriate legislation. The Green Paper, *Consultation on Changes to Public Procurement* recommends continuation of this model for these services, known colloquially as Light Touch. In my opinion this would be a serious error and perpetuate current commoditisation of these services (see attachment, my response on the Green Paper). The constraint of the PCR is a significant factor in the difficulties within this market. As the PCR were introduced with virtually no lead-in local government was not ready for this significant change in approach from a market-place where purchases of care could be based on a more informal personal approach to one of large, ineffective, rigid, portal based models of purchase (see below).

The current approach was introduced because it was required by European based law, with no identified service based justification. As social care is Light Touch, only limited provisions of the PCR apply. These still require a process driven approach, though and the detail is unfamiliar to many in the sector from Directors of Children's Services downwards. I would argue that the legislation is an impediment to achieving the placements that are needed.

Central government commissioned reviews (such as the two Narey reports into residential and foster care cited in the Invitation) and since 2015 the constraints of the public procurement regime have pushed local authorities towards an approach built on creating large regional and sub-regional multi-authority consortia. As identified although these consortia have various governance structures their approach to procurement only differs to a limited extent. Approaches to contract management differ across consortia. Consortia use two main mechanisms a framework contract and a specifically tailored version of a dynamic purchasing methodology.

By way of background, the two models are different and the difference is important. A framework is a list of providers fixed at the point the procurement is awarded whereas a dynamic purchasing system (DPS) is a flexible list allowing new joiners to the approved bodies during the procurement. A conventional DPS must have open joining (i.e. a provider can join at any time). As these services are Light Touch there is the opportunity to create a model which includes some of the characteristics of a

DPS, i.e. opening the DPS from time to time not at all times. In practice, it is this latter model, often known in this sector as a flexible purchasing system or FPS which is replacing a framework because a framework is too limiting in a difficult market-place. The development of this more flexible model has not changed the dysfunctional nature of the market-place or made any discernable improvements for the reasons set out below. These include (in no particular order and with some overlap):

- False assumptions within central government reviews and recommendations, replicated by local government commissioners and procurement officers in general (i.e. not specifically in social care) that large frameworks and consortia based on a price led approach are cheaper to manage than each authority doing its own thing, will be effective in driving down price and are therefore the preferred approach. The assumption that there is 'fat' in the market and this big consortium approach can reduce prices is evidently flawed and presumably based on other less complex market places such as purchase of supplies. The recommendations in Narey and decisions taken by local authorities are not evidence based. This approach has manifestly failed as Revolution Consulting have shown in their work with ICHA and so have NCERCC and the LGA showing that the average cost of residential care has increased well above inflation in recent years.
- There is no generally accepted definition of need and therefore future requirements cannot easily be identified or quantified. Local authorities have limited statistical information and without good quality information about the number and type of children who have current and future need and what these are, effective planning for an efficient supply chain is very difficult.
- A focus on the immediate not the longer term with cash strapped authorities cutting down or closing preventative services which may not be statutory, thus creating or exacerbating later need. Prevention is more effective than responding to the outcome of this failure.
- Inappropriate procurement documents and contract provisions within the procurement documents - see below.
- The public sector's constraints on capital spend. There are several implications of this. As local authorities do not have the money to spend on capital investment or do not want to or feel able to remedy the shortfall in residential provision by in-house build and delivery, they continue to be substantially dependent on the private and voluntary sector.

- In some authorities, turnover in staff, difficulty in recruiting and insufficient skilled resource leading to an inability to plan effectively to meet children's needs. Add this issue to the shortage of suitable places even in foster care, where the Invitation identifies that in practice, whilst there may appear to be no objective overall shortage of foster placements in practice there may be only one available place for an individual child. The problem is far worse in the residential care sector especially for children with complex needs. If a child comes into the care sector, that child has to be placed somewhere. The consequence of all of this is that unsuitable placements are made, too often as an urgent placement against a backdrop of the failure of an existing placement. Scarce time and resource are spent on the urgent (ringing round for an urgent placement) not the longer term planning of a future road map for and with the child. The outcome of this is that placement decisions are all too often made against a backdrop of failure and unplanned removal and re-placement. This does not meet the requirements and needs of these vulnerable children and can lead to multiple failure of placements.
- The limited finance and staff resource for strategic consideration and planning for innovation, development and/or delivery of strategic change. An example, of where this is important and needed is to consider and deliver an innovative approach to commissioning and procurement including the documents which underpin the contractual relationships. Developing models which support longer term gains via block purchase and development of longer term relationships will take energy, time and cost. Budgets are under massive pressure and/or overspent. This is made worse by Covid-19. Developing new approaches requires time, thought, an understanding of short, medium and longer term requirements and initial funding with no guarantee of successful outcomes; although the evidence that there is suggests that these can deliver service and price improvements (see examples in *IPC Supply management: opportunities for a new landscape in children's commissioning post crisis, Discussion paper* June 2020). Whilst local authorities are often portrayed as risk averse, this is a misunderstanding of risk and cost. What can be more risky, for example, than insufficient places and having to place children in inappropriate placements that fail and for those children to then need more expensive provision?
- Budget cuts affect front line and support staff, putting remaining commissioning, procurement and social worker staff under considerable pressure. Although much procurement is cyclical as contract end dates are known and re-procurement processes ought to be capable of being planned well in advance, in practice much procurement in this sector is last minute, rushed and almost inevitably in these circumstances, the project delivery fails

to achieve its aspirations. Local authority procurement officers, lawyers, accountants, social workers and others are under considerable pressure because of cuts and work pressures, made much worse by Covid. This affects future planning. This is particularly noticeable where resources are required from different disciplines, local authorities or both (eg because of multi-authority consortium arrangements) and a delay in the delivery chain affects the quality, timetable, therefore outputs. One of the repeated provider complaints is the limited time and scope given to providers to respond to documents. Late strategic decision making at political level may also be a factor. Providers may perceive this behaviour as an adversarial approach whereas the reality may be that hard pressed staff who may be under threat of cuts genuinely find it very hard indeed to meet the demands placed on them.

- Extensive wasted resource by both local government and providers in a number of ways, for example because of repetitive re-procurement of short contracts and management of annual extensions. The cost of delivering a procurement, managing it and then re-procuring are considerable and could be reduced by longer contracts. There is also a massive cost and waste of resource by providers who spend repeated time and energy seeking to get onto multiple frameworks and dynamic purchasing systems, repeatedly completing similar information about their track record and commercial history without any guarantee of being offered placements. A more effective and streamlined approach could save resource, provider frustration and may mean more provider interest.
- Multi overlapping consortia with local authorities purchasing from more than one consortium depending on which has an available place and providers participating in more than one consortium. This adds to the lack of focus in a market which is arguably a free-for-all with no 'brand' loyalty as well as a massive waste of scarce resource.
- The mutual distrust between local authorities and providers. This is exemplified by some public statements by senior local government officers. Local authorities need providers and the services they deliver to meet their statutory duties but criticise providers and their delivery models with allegations of inappropriately high profit margins. Some of this may well be true and it is to be hoped that it will be investigated by the CMA. However, there is an alternative perspective as set out below.
- The providers' perspective (at its most extreme) is that:

- local authorities do not respect or trust them. Providers are highly regulated by Ofsted, are skilled and experienced professionals working in a high pressure, high stress market-place, in the case of providers caring for the most vulnerable children and in the case of independent fostering agencies recruiting, training and managing the foster families who do this work. Providers are taking all of the risk (capital, service, regulatory, voids etc.). They have a high stress and complex task and they are unfairly castigated. They have no reason to trust or like organisations who do not value them and who publicly criticise them;
- the local authorities seek to procure services based on wholly unrealistic pricing models with no commitment to inflationary payments even though costs increase for unavoidable reasons such as staffing, overly complex and internally inconsistent poor quality legal documents hundreds of pages long, a single stage approach to procurement so that in order to be considered providers have to provide a large amount of information with no guarantee that they will be offered a place on a framework or DPS or thereafter work. This view is a key driver for the statistics set out at page 15 of the ICHA *State of the Sector survey of November 2020*;
- there is little or no pre-procurement consultation or any co-production and the approach is adversarial;
- there is insufficient time built into the timescale to respond properly to the procurement opportunities with changes throughout the process further limiting time for a response;
- responses are sought through a rigid portal based approach with, no real attempt to respond to questions as the approach is adversarial;
- short-term contracts which are typically 3 years with the possibility of annual extensions of up to 2 years (though with no commitment to extensions) are inconsistent with building up relationships and are very resource intensive.
- As identified in the State of the Sector Survey, currently most residential care purchases (82%) are via spot purchases and without any commitment to purchase by local government (see paragraph 22, CMA invitation). This model is inconsistent with planning and delivering a healthy supply chain which is able to meet future need including securing finance to meet increased demand or the development of relationships.
- Increased demand and complexity of children as identified in the Invitation as

being a reason for difficulty in placing in foster care. As identified above, some children have had multiple, failed placements for reasons including inappropriate placements with some children moving many times.

I have advised in cases where the procurement documents are so poor that providers have asked approaching 200 clarification questions on the documents some of which point out basic commercial inconsistencies which cannot be remedied. The outcome can be several material revisions to the published procurement bundle affecting essential aspects such as the basic pricing model included in the documents to be returned as part of the tender. In some instances, the amended documents are so late that providers have already responded and have had to withdraw and re-submit. In other examples standard local authority procurement documents are used, which are unsuitable for this sector as this is requirement of the authority's centre.

Providers see all of the above as a waste of time and as identified in the State of the Sector research are reducing their participation in frameworks and DPSs or FPSs based on the above approach. They see them as pointless as they are offered work and are full in any event, often in circumstances where they can charge way above the fee levels in the procurement documents or their tenders. They are not interested in the governance, procurement and other complexities of local government; and indeed why should they be? They see no value or purpose in following a prescriptive, complex and arguably adversarial approach because of the constraints of local government (including those set by central government in the public procurement regime) and indeed why should they as their focus is on delivery of services for children!

I appreciate that the above paints a very negative picture. My objective is to provide a broader perspective than the narrative put forward by some local authorities and to put an anecdotal and human perspective behind the statistical work carried out by ICHA and Revolution Consulting and NERCC.

Anecdotally, many in local authority social care, commissioning and procurement teams are as frustrated as the private sector by the constraints under which their local authorities function, constraints that they have no ability to change. Within these they do their best to act professionally and competently and there are many, many examples of good relationships and relationship commissioning and procurement in difficult circumstances.

In conclusion on this section, I consider that the research supported by my own experience identifies that there are a number of systemic problems in this market-place and it requires a wholly fresh and innovative approach. A starting point would

be a repeal of a procurement regime which is inconsistent with relationship arrangements for children and its replacement with something more sympathetic. The public procurement regime encourages hard edged adversarial procurement. Whilst it is possible to procure effectively and achieve good outcomes within this, it is hard work.

True partnership working with a co-produced approach and longer length contracts and different more flexible models which encourage provider investment at all levels ranging from recruiting, training and developing staff through to capital investment is needed. This could be augmented by local authority investment in delivery of its own provision. All the various stakeholders need to talk to each other and understand the points of view and perspective of each other.

The problems in this market-place will take years to fix even if all parties involved are motivated to do so because of their complexity and the multiple, overlapping difficulties. The first step though is to acknowledge this and start in a small way to resolve some of the problems. If the CMA proceeds with its Market Study it is to be hoped that it is part of this process.

General - Are there Widespread Breaches of the Public Contracts Regulations 2015?

I have identified this issue separately to the above issues because it is a specific legal issue which does not seem to be referred to publicly or as an expressed concern.

The logical and likely outcome of the statistical analysis carried out by the Independent Children's Homes State of the Sector and State of the Market surveys referred to in paragraph 22 of the Invitation is that a significant percentage of the spot market is procured in breach of the PCR. The paragraphs on page 15 of the November 2020 State of the Sector Survey following the quote about 82% of the residential market being spot strongly infer this because they identify that up to 50% of the spot market is outside formal procured activity. In addition, the extent to which purchases within the procurement frameworks or dynamic purchasing systems are within fee levels and other terms of the procurement process is unclear

As identified above, the current threshold for a requirement to procure in accordance with the PCR is about £660,000. There are very complex anti-avoidance aggregation provisions in the PCR. A procurement intended to or in circumvention of the PCR for example by treating each of several placements with one provider (e.g. in different homes or regions all within the same provider group) as separate would be anti-avoidance. If aggregated, the PCR threshold would be triggered and awards without

procurement potentially illegal. Alternatively or in addition, providers may receive multiple placements from a single authority over a period of time which should also be aggregated and again, with aggregation they are above the critical £660,000 threshold.

In addition to the threshold in the PCR requiring a fully compliant process, there are requirements in the PCR for local authority contracts with an estimated value of £25,000 or above to be advertised. This is very widely ignored as it is frankly far too prescriptive and unnecessary. It should be repealed; there is no practical penalty for ignoring it.

It is outside the scope of this response to provide an analysis of the PCR, how it is applied in this sector and how far current practices are in breach of the PCR. The statistical information referred to in the Invitation do not consider this and it is unclear how far local authorities would be willing or able to share this or even appreciate the legal implications of their procurement behaviour. From anecdotal discussions which I have had, the problem is understood by some commissioners, at least and the response is that the requirements of the duties towards children come first. That is not a legally satisfactory answer and to the extent that they are behaving in this way local authorities are at risk of successful court challenge such as that mounted by Good Law against the Secretary of State for Health and Social Care (*R v Secretary of State for Health and Social Care ex parte Good Law Project Ltd and Ors* [2021] EWHC 346 (Admin) (18th February) [§]).

If there is a successful challenge under the PCR or no award procedures are followed, providers are also at risk of the consequences of the 'contract' being held to be ineffective or void. The implications of this on placements and any business or governance issues for providers are unclear.

All of the above adds to the risks within this market-place as all it would need is one successful challenge or possibly even a serious threat of challenge to open a 'can of worms' causing market-place chaos.

I therefore suggest that as this is such an important matter with such significant implications that the CMA ought to consider this aspect which adds to the market instability.

General - Expanding the Scope of the Study to Include a Wider Cohort of Children

I do not understand why the CMA does not intend to focus on either secure children's homes or residential schools. Residential schools for children who are in long term care and/or with special educational needs, disabilities or health conditions and secure provision are a core part of the social care market-place for children.

Children who require these types of places may well be the same children who have been in other residential care, foster care or have to be placed in unregulated provision when another placement cannot be found.

There may be a relatively small number of children involved but these are very costly services. In addition and most importantly, there are similar difficulties in these sectors with insufficient places especially for children with multiple and complex needs (see for example the widely reported recent difficulties with two Doncaster-based children's homes and one in Surry suspended by Ofsted). Children who need secure accommodation are by definition children with complex needs

General - Suggested Solutions and Opportunities

There is a need for radical change at many levels. Once the CMA confirms that it will carry out study and requests responses, I will be happy to respond with suggestions.

Responding on the Themes

Theme one: Nature of Supply

As identified, to focus on the nature of supply is the wrong starting point. The review ought to consider statutory requirements and the nature and extent of need as it ought to be this which drives the market-place not the nature of the supply.

One driver for demand in the residential care market includes the limited amount of in-house residential provision. If in-house provision was sufficient or there was a considerable increase in this there would be a better balance between the in-house and external market. Whilst my suggestion will not be quick to implement, it could sensibly be a medium stage approach.

Some local authorities have no internal residential provision, many have little and the statistics quoted in the Invitation identify that the percentage of in-house fostering provision is reducing. The reasons for this are complex and I suggest ought to be considered and evaluated as part of the study. The increase in demand including a demand for services for children with more complex needs seems to drive the requirement for services to be purchased from the private sector because the public

sector is unable or unwilling to respond to meet increased need either sufficiently fast or at all. This aspect needs further study.

Comments on the individual questions are set out below:

These are statutory services (or in the case of unregulated soon to be fully statutory) and are driven by legislation, market need and in some sectors (residential children's homes), the closure by statutory providers (i.e. local authorities) of their in-house provision. The requirement for provision remains and the private and the voluntary sector fills the gap.

I am not qualified to respond in detail but all are subject to statutory regulation.

In practice, if a local authority is required by law (either a care order or a parent requesting accommodation) to provide a service for a child and a suitable place cannot be found a place, any place must be found. Refusing to provide a service and turning a child away is not legally sound and cannot happen. This is where there can be a conflict of law if there is a place found which is not place procured properly, local authorities are putting their duties towards children first. However, breaking one law to achieve compliance with another is not sound.

See in the introduction to the extent I am qualified to respond.

See in the introduction, to the extent I am qualified to respond. In addition as identified, it is not the governance of the provider which ought to be the placement driver. It ought to be the nature service which can be provided and as part of this there is a requirement for transparent and effective identification of the service/child's needs and whether the individual provider meets the identified requirements. It is the matching of suitability which is the proper driver. All too often the client side work in identifying what is needed is insufficient or a suitable place is just not available. Whether a provider, whoever they are, takes a child should depend on a rational and partnership approach to suitability based on a well drafted contract with appropriate specification, quality assurance structure and individual purchase agreement. I doubt that there is evidence which demonstrates this depends on the status of the provider, however, could be investigated.

I am not qualified to answer this.

Theme two: Commissioning

See above for analysis for consideration of the procurement drivers. How the market-place develops in the future depends to an extent on changes to the public

procurement regime, statutory requirements relating to duties towards children, such as proposed changes to unregulated services and the behaviour of commissioning local authorities, providers and the market-place. This is an area where the CMA have an opportunity to offer real value.

The evidence suggests that they are not able to do so for secure provision, children with more complex needs or residential schools in particular.

See above.

See above.

[X]

Theme three: Regulatory system

Not responded to.

Theme four: Pressures on investment

As identified above, a pattern of spot purchase is a major inhibitor to private or third sector capital or service investment. With regard to local authority investment, it seems that local authorities' concern about taking all risk and financial stress are inhibitors to investment.

I am not equipped to answer this.

Please see the answer to 1 above.

The DfE has a strategic role in supporting local government and it could issue guidance encouraging local government to invest in in-house provision either for in-house delivery or for services which could then be externalised with a split investment model. This happens in other local authority market places, for example leisure. As funder of local government the Ministry of Housing, Communities and Local Government could offer financial and/or guidance support for appropriate investment. In the leisure sector, local authorities invest the capital in new provision or in upgrading existing provision and partner with the private sector via a procured partnership to secure third party service delivery reducing the cost and risk to the market of major capital investment. Local government can invest more cheaply than the private sector and providers are arguably better at service delivery. This is a tried and tested solution in leisure with a model of 10 or 15 year service contracts procured by local government, capital risk being retained by local government and

income risk transferring to the private sector i.e. playing to the strengths of each. The model could easily be adapted for this market-place, in spite of the differences in the market-place. Local authorities and even health bodies could collaborate on managing purchase to reduce void risk. I have no opinion on the role of regulators.

In conclusion, if you wish to discuss any aspect of this letter with me, please do get in touch.

[✂]

Individual response number 03

The responses offered below are based on my personal experiences [X]

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?

Response:

I believe there has been a significant increase in the supply of services over [X] (5 years). [X] new providers who have setup across Scotland who want to engage [X] and understand how to access referrals for placements for children and young people.

In addition to new providers, there has also been an increase in the number of residential units which some of the larger providers offer, thus increasing their overall capacity in the market.

My understanding is that this has been driven by a peak in Local Authority placements approx. 3-4 years ago when demand was at its highest. The increase in capacity was delayed as it takes time for the market to identify/ build property and go through the registration process, planning and recruitment period needed in order to physically offer a service.

Some of the new units or expansions have been to cater for specific needs or groups - through care after care/ outreach based services for example – with a general focus on smaller unit sizes (3-4 beds).

Only a single provider has closed down [X] that I can think of.

This increase is in stark contrast to the strategic direction of the Council, which is to keep children and young people at home and in their community of origin wherever possible. [X] now have less than half the number of children/ young people in residential placements compared to [X] years ago. This is mirrored across a number of other local authorities.

Locally, strategic change has been driven by a number of factors including research on better outcomes for children/ young people when supported in the family/ community, cost pressures, availability of suitable local provision etc.

I am concerned that rates payable by the authority are often set on an anticipated occupancy level. For example, Secure Care rates are typically set on an 85%

occupancy level in Scotland. Residential (non-secure) is generally much more variable than this. However, I know of multiple providers at this time who are operating in an under occupied state (compared with fees which were set). This will result in providers either seeking to pass costs onto purchasers through rates set at lower average occupancy levels, or provider failure.

My personal view is that the combination of increased supply, with strategic change nationally now driven by *the Promise*, to reduce the number of children/ young people in external care, could result in significant levels of provider failure. The consequence of this could be a corresponding reduction in choice in the Scottish market which could result in increased distances experienced by children/ young people.

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?

Response:

Yes, we have a broad spectrum of provision available in Scotland. The easiest separation is that of the SEBN specific providers, vs those who cater for complex care/ additional support or disabilities specifically. The latter category are in the minority and there has been significantly less growth in provision in this area during my time in post when compared with SEBN provision.

Providers may offer residential only services (with mainstream school accessed), residential education provision (where schooling is also offered by the provider) or day education only (for specialist schools).

Providers may be priced as a residential service where the core fee is specific to the bed and associated staffing for a child/ young person or the core fee may be inclusive of therapeutic interventions (psychological supports, speech and language therapy etc). For the former, some providers will offer these types of intervention as paid for additional services, typically at a specified hourly rate.

There are also the Grant Aided Specialist Schools (GASS) in Scotland. These are provided with funding for specific purposes by Scottish Government. All of these, with the exception of [X], are focussed on disability or ASN provision. The GASS funding is being phased out over several years, resulting in sharp increases in the cost of these providers annually as they balance loss of income.

Individual providers range from single units (one building services) – for example, [X], through to campus based models, such as [X], where residential units, specialist school and a secure facility are clustered in one geographic area.

Fewer providers offer services across the breadth of Scotland – with most having a locus of provision. I can only think of the likes of [X] and a number of services in the

[X] area, but who also have units in other locations such as [X]. This, I think, is less common.

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

Response:

This depends on a number of factors. On the surface, I believe that there is significantly more bed spaces available in Scotland, at this point in time, compared with demand. However, the following factors can influence the availability and choice for an individual child/ young person heavily:

- Predominant need of child – Children with disabilities have significantly less provision in Scotland, compared to SEBN provision. For example, I can only think of three providers who are Autism specific and probably less than this for complex care needs. This may result in children/ young people having to travel further to access a service and can make points of transition between children and adult services more complex.
 - Scale of need – the strategic direction of the Council to return children/ young people to the care of family or the community of origin is easier to support and maintain in lower tariff children/ young people. This has meant that the young people who remain in residential may have more challenging or complex behavioural support needs. This profile of an individual, and potentially a history of previous placement breakdowns, can limit the options for an individual as providers may refuse to offer a placement. There is also often a significant disparity between the services offered by secure care centres and those of more regular community based residential resources. This can make finding suitable alternatives at the end of a secure placement difficult. Some providers offer ‘step down from secure’ type provision, often at very high cost as units typically are smaller with higher staff ratios. Some of the secure care providers themselves have ‘regular’ residential units alongside which are used for this purpose.
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.

Response:

I am able to offer a limited response to this question. On the whole, [X] Council maintains and manages a significant pool of internal foster carers. There is only [X] external foster care placement commissioned by the authority.

We have [X] internal children's residential care home and several supported accommodation type resources to help assist young people into independence. This is an area planned to expand over the coming couple of years to ensure high quality transition for children and young people.

The external provision of residential care for children and young people is made up of a mixture of independent and third sector provision. Many will be registered Scottish Charities.

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?

Response:

The vast majority of placements purchased [X] are commissioned through the Scotland Excel national frameworks (Secure Care, Residential Care and Education – including Short Breaks, and Fostering and Continuing Care services).

The providers on these frameworks will be a mix of private companies and registered charities. I am not aware of a disparity in price created by a difference in status of the individual providers.

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?

Response:

Unknown.

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?

Response:

As above, a strategic change was brought in almost [X] years ago to prioritise:

- [X];
- [X]; and
- [X].

Significant investment was made to commission specialist [X] services to increase support to families and returning children and young people to assist this change.

The numbers of children and young people now in external residential placement are now approx. [X] or less of that 4/5 years ago.

The priority has now switched from returning children and young people to that of preventing the need for residential care in the first place. A wide range of community supports have been put in place from early intervention/ prevention parenting support, through behavioural support and therapeutic interventions, to intensive edge of care services.

Internal resources – for example, supported lodgings, internal foster care/ intensive foster care and supported accommodation options - have also been increased.

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

Response:

This depends. The average fee for a placement is probably in the region of £3,000-4,000 per week [X]. However, costs have been up to £6,000 a week for an individual child or young person with particular needs - single bed unit ('singleton placement'), high staff ratio etc. Secure prices are all now in excess of £6,000 per week.

Choice is always led by the needs of the child/ young person, with consideration for outcomes to be achieved, anticipated duration of placement and geographic location of available services. However, as noted above, the individual needs of young people being placed into external residential care may be more complex than they were historically. This can lead to a restriction in choice as providers will offer placements on whether they feel they can safely accommodate the individual.

The predominant driver for cost for services is typically driven by staff ratio. However, there can be disparity in relation to this from one provider to another. Visibility regarding this can be very difficult.

For example, when [X] purchase a placement from the national (Scotland Excel) framework for residential care this will have an associated pricing schedule and staff ratio (day and night). The fee will be broken down by core cost and additional services. Different providers have different methods for handling a placement:

- Provider A may charge a single core fee for the duration of the placement;
- Provider B may have multiple rates – beginning with a high cost ‘assessment rate’, stepping down to a ‘transitions rate’ and then moving to a ‘core’ rate at the point that a child/ young person has stabilised. This may take several weeks/ months to work through; or
- Provider C may have a core rate and charge an hourly rate for an additional staff member (typically working 1:1 with a child/ young person). This cost varies significantly – for example, one local provider charges £15.50 per hour, where another provider charges £31 per hour. This cost, especially when required 24/7 can significantly escalate a cost over the ‘core’ fee.

It is not always clear why one provider’s fees vary so significantly to another. There has also been occasional concern that a stated staff ratio which dictates the fee for a service is not what is actually provided ‘on-the-ground’. An overnight staff member may also be on a sleepover shift and not a wakened night. All of these factors create complexity in deciding whether a stated cost is ‘reasonable’ or even comparable to another provider.

Concerns have been escalated to Scotland Excel in relation to annual uplifts for services and the visibility available to purchasing authorities on how fees are set and negotiation is conducted. For example, based on increases to living wage and CPI in 2021/22 a [X]% threshold was established as a reasonable benchmark for increases from the commencement of this financial year (per the terms and conditions of the framework agreement). Many providers requested no uplift at all, with others requesting significantly more than the established benchmark. [X] the audited annual accounts of a provider requesting a significant increase in weekly fee. [X] established that the provider would have stood to make a profit/ surplus for the year, had it not been for the use of reserves in relation to a significant investment portfolio which ran at a loss due to impacts from Covid. [X].

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?

Response:

As noted above:

GASS grant reductions from Scottish Government are driving cost increases to Grant-Aided Special Schools. This disproportionately affects the cost of provision for children with disabilities as all but one of the GASS providers is focussed on additional support needs.

Under occupancy of providers is a concern. If prices for services have been established on an occupancy of 70-90% and they are operating at less than this it is very likely that the provider will either experience financial difficulties, or look to pass on significant increases in fees to purchasers. This has only begun recently in Scotland, but I expect national COVID supports may be covering up some of the challenges for providers.

The complexity of need and age for a young person does impact availability of choice. [X] strategic direction is such that young children are less likely to be placed into residential care. Older young people with complex behavioural concerns are typically harder to resource.

The increase of availability with a corresponding decrease in demand (either through strategic change over recent years or anticipated strategic change as a result of the Promise) is likely to financially impact providers.

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?

Response:

[X] purchase [X] external resources almost exclusively off of national Scotland Excel framework agreements. The need to purchase resources through any alternative means has reduced as the number of young people being placed externally has diminished, coupled with an increase in the coverage of the national framework agreements.

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

Response:

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.

Response:

The regulator for both internal and external resources in Scotland is the Care Inspectorate. The Scotland Excel national frameworks seek to promote positive grades in relation to the assessment of care providers on the various quality themes. There has not been an issue with this locally that I am aware of.

2. Are there particular problems in the way placements are supplied and commissioned that the current regulatory system is not well-equipped to address?

Response:

3. Does any aspect of regulation create any perverse incentives on local authorities, providers or other actors, which are driving sub-optimal outcomes?

Response:

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?

Response:

N/A

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.

Response:

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.

Response:

[X] commissions [X] external Foster Care placement. A significant number of foster care placements are available as internal resources.

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?

Response:

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?

Response:

Anonymous 04

I am a social worker working in a local authority fostering team in Scotland. As part of my role I am involved in the purchase both of independent fostering placements, and of children's home placements. I am answering only those questions where I feel able to comment:

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?

The larger providers (foster care services) generally have larger advertising budgets and can therefore attract more foster carers than the smaller providers. This can lead to 'poaching'. We 'lose' a lot of foster carers to our large local authority neighbour that can afford to advertise on national TV. Some local authorities simply do not purchase from independent providers. Where they are geographically far away from other local authorities, I think independent sector organisations do not invest to the same extent in those areas. If they do have carers in those areas, inevitably it means that any child placed there is placed far from home.

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

To a large extent. The key word here is 'suitable'. Your report identifies there is surplus capacity in fostering, but are they 'suitable'?

Many fostering vacancies will be 'unsuitable'/mismatched to demand because either:

- They are offering poor quality placements
- They are limited in what they offer (ie very young age range, or they have young children at home limiting their capacity etc)
- They are not able to cope with 'challenging' children.
- What they are offering doesn't meet demand – ie I am sure that demand for teenaged foster placements outstrips supply. The same is possibly true for sibling placements, and for permanent (as opposed to short-term or emergency) placements.

Matching children to the right placement is crucial to better outcomes for children. When we get this wrong, placements break down leading to poorer outcomes for children, and ultimately more expensive placements for local authorities

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?
 - Financial constraints faced by local authorities (exacerbated in the last 10 years of austerity) lead to increasingly chaotic purchasing practices – ie we purchase now very often in a crisis, with limited scrutiny/analysis of all the options
 - Financial constraints faced by local authorities lead to lack of investment in in-house fostering services (in my own local authority there has been no increase in allowance since 2013) and in advertising to attract foster carers. This means increasingly we are unable to compete with independent sector organisations or with larger local authorities whose advertising budget is larger
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.

From what I can see our local authority does this very poorly. We seem to have minimal involvement from procurement/commissioning teams, and most placements are purchased in a crisis with little understanding/scrutiny of alternatives.

4. 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?

Smaller local authorities will spot purchase individual places rather than block purchase. It is difficult to predict demand, and we want to be child-centred therefore we want to consider each child's needs on a case by case basis. Our own local authority does not have a comprehensive list of residential options for children. We approach each one on a case by case basis and are guided by the child's social workers' knowledge of suitable resources. As far as I am aware we don't have any centralised system for collating feedback on our placements and many of the decisions seem to be made based on anecdotal feedback, or whether a worker liked a unit when they visited.

5. 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;

See above. We lurch from having 'no money' to 'really having no money' so we do not invest in advance.

25 b. the extent to which local authorities proactively forecast demand and seek to attract providers into their area;

This may be happening somewhere above our heads but I'm not aware of it!

c. levels of collaboration between local authorities in planning and purchasing;

We do buy and sell fostering placements with neighbouring local authorities but not residential home places.

d. ability to recruit and retain appropriate staff to carry out their planning and procurement functions;

As stated above, I am not aware of formal procurement involvement in the sport purchase of either fostering placements or children's home placements. We use Scotland Excel providers where possible and there is a set contract/set rates laid out.

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

If there are we would like to know!

26 Theme four: Pressures on investment 1.

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?

Financial constraints mean that we (local authority) will not invest in paying foster carers more and our advertising budget is limited. This is short-sighted.

Financial constraints lead to service redesigns (I've gone through 3 in the past 10 years) that keep cutting back staff. This means that everyone is more stretched and nobody has time to plan properly or to think strategically because there is always a pressing crisis that needs resolved. This is false economy.

4. Are there actions that government, regulators, local authorities (acting independently or collaboratively) or other actors could take to support more

In my honest opinion the creeping privatisation of this sector terrifies me. Why should companies be making a profit from traumatised children?

Your logic at point 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*) is I believe flawed because **this is not a free market place**. Your purchasers face severe budgetary constraints. Also the market place means that providers will be in competition for the 'easier' children, whilst those with the most complex needs will be the ones that no-one wants