

Competition and Markets Authority (CMA) – Investigating the Care Market, Invitation to Comment: Leicestershire County Council, Children and Family Services Response

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?

Leicestershire County Council (hereafter referred to as 'the Council') has observed a growth in the market; within this, a growth in the number of larger companies (many of which have bought up smaller companies to form large conglomerates) is particularly noticeable. This is seen to be creating a 'providers market' with monopolies emerging who are dictating market conditions (cost, quality etc).

Furthermore, despite the apparent growth and expansion in the market, the Council still finds that on occasion it is difficult to source suitable placements for children with complex needs, especially within the IFA market, and the Council find competition for placements remains high. It is the Council's perception that the number of referrals from all local authorities nationally outstrips the number of placements available, particularly placements for children presenting with more complex needs and for young people (aged 14-17).

Within this expansion and growth of the market the Council has noted a specific rise in the number of unregulated 16+ Supported Accommodation providers in the market, but it is often the case that many of these providers do not yet have suitable properties and are therefore unable to take placements - this means the Council have a large number of 'unusable' 16+ Supported Accommodation signing up to work with the Council but many the Council can't use at the present time.

In relation to Independent Fostering Agencies (IFAs), the Council has observed that these agencies do not seem to have sufficient numbers of carers to support teenagers who are either new into care or moving on from a placement breakdown and/or carers who can foster sibling groups; as such, this means that young people are ending up in children's homes even though their behaviours do not necessarily require this type of support and accommodation. Within the IFA market the Council would ideally like to see a greater focus on the foster care side of encouraging carers to support and work with teenagers. In the Council's view, this would increase the availability of placements available in children's home settings, allowing more children and young people to be placed in provisions that are most appropriate place for their needs.

The Council has also observed a trend for the cost of placements rising over time. However, the quality of placements remains a concern and requires us to have a robust approach to the quality assurance of all external provisions and a good approach to dealing with issues and concerns. The Council remains concerned that, given the cost of many placements (and rising costs over time), that the Council may still not be getting value for money or positive outcomes for children and young people. Despite robust approaches to the commissioning and procurement of placements, as a Council, it is still felt that we unable to control and manage, as robustly as the Council would like, these rising costs. The Council notes that the rising cost of placements is very often associated with increases in the cost of additional support being requested by providers and not necessarily the unit cost for the basic placement. The Council often feels powerless to negotiate much over these additional costs given the scarcity of some types of placements.

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 Council has tailored our commissioning approach to try and encourage local providers (i.e. within Leicestershire) but it is still the case that the Council are seeing a large number of large providers in the market, many of which are based outside of the county (head offices and provisions). The Council has not observed significant variations in terms of where providers are operating (in terms of cost, quality etc) – from the Council's perspective these seem fairly consistent across the country. The Council has noted though is an increasing number of placements being made in Leicestershire by other local authorities which affects the availability of local places - this is thought to reflect ease of access to the county due to the M1 corridor. The Council wants to place young people locally, but this is hampered somewhat by other local authorities placing in those beds (and analysis has shown that there are enough beds' available within the County boundary to meet our local sufficiency needs but we are unable to access them when they are taken by out of county placements). The Council feels strongly that it is in the best interest of the majority of children and young people to be placed locally – within the County – so that they can retain links with their families, communities and heritage. In County placements are also easier for our workers to manage and maintain contact with our children and young people, and where they are local, additional placement costs might be sometimes avoided as the Council could offer that additional support more easily (thus potentially reducing the cost of the placement).

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

The Council has noted that providers will operate slightly different depending on the type of young people they are caring for. For example, the size of the home/ number of young people who can be placed will determine how many staff members are required at any one time. The Geographical location could influence providers due to resources they do or do not have access to in the local community. These factors can mean that although placements may be available, they may not result in the best (or desired) outcomes for children and young people.

The Council feels strongly though that the ability to achieve the best outcomes for children and young people is also contingent on the relationship between providers and the Council. Strong professional and collaborative relationships can have a significant impact on the success of the placement and outcomes for children and young people. The Council is continuing to put significant investment in to working collaboratively with the market to try and facilitate the growth and maintenance of these relationships.

4. How have the following four types of children's care home and fostering agency provision developed over the last decade:

a. Local authority

Although historically the Council had some internal residential children's homes, these closed over a period of time up to 2016. However, whilst that means the Council currently has no internal residential provision, it is the process of developing some specialist inhouse residential provision as a response to difficulties finding the right placements in the external market. This is being done in partnership with a strategic partner, Barnardo's, and this will see the development of 'Resource and Assessment' hubs which will be Ofsted regulated to support CYPs who require a crisis lead intervention in order to prevent further breakdown or trauma or to support those who are new into care and require additional assessments. This will support the Council's strategic aim to ensure that the right placement is made at the right time and to avoid breakdown or rejection.

b. Private – private-equity owned

The Council has observed an increase in private-equity owned children's homes opening in the County and many of these are filled with non-Leicestershire placements. This increases the number of children looked after in the County, but for whom the Council may not have much information about or direct responsibility for but which we inevitably put a demand on other local services.

c. Private – non-private-equity owned

The Council is unable to provide a response for this question (though response above, 4b) may also be relevant.

d. Third sector private.

As above – see responses to questions 1, 2 and 3.

5. Does the status of the provider (i.e. 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 (e.g. do they have incentives to invest in new capacity), price, value for money, location and quality of placements?

The Council naturally feel that that it is easier to control quality and price within our internal foster carers (and the same will be true of our internal residential provision once it has been developed). It is perceived that is (or will be) easier to make referrals to these provisions as the Council will have direct control over them and visibility of availability etc by virtue of their being a more direct relationship between operational staff, the commissioner and service delivery. Where the Council are working with private/third-party providers there is inevitably an additional raft of work because it is external, and this can affect how certain the Council can be of quality, value for money etc.

Whilst the Council is always keen to encourage the growth of local provision we do not usually incentivise that development as in order to place within that provision the provider is required to join our G2R DPS. Therefore, the development of a new type of provision within Leicestershire is not a guarantee of business from the Council. Where the Council might look to work in collaboration with an external provider or agency this would be done subject to compliance with national and local procurement regulations and following good practice around joint working.

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?

The Council is unable to provide a response for this question.

b. To what extent are property prices a driver of PE incentives to invest?

The Council is unable to provide a response for this question.

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?

The Council is unable to provide a response for this question.

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?

The Council is unable to provide a response for this question.

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?

The Council is unable to provide a response for this question.

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?

The Council have moved from a traditional regional framework to the use of a local Dynamic Purchasing Systems. This reflected the desire to have a more flexible approach to introducing providers to the DPS, and this was supported by feedback from the market. The Council has worked in collaboration with the market to understand what elements of different commissioning arrangements might put them off applying - such as lots of method statement questions - and worked with our commercial and legal teams to ensure the procurement approach reflected this feedback. The use of more flexible procurement approaches, such as DPS is likely to continue – the Council is keen to continue to develop more innovative approaches to working with and in collaboration with the market, but which also allow commissioning activity within a complaint framework consistent with local and national contract procedure regulations. The use of a DPS has also seen a change in the paperwork used for referrals and information sharing with providers, with a much greater emphasis on the voice of the child/young person and clearer outcomes to be achieved.

Historically, the Council has used less agile procurement solutions such as traditional frameworks and block contracts for residential and fostering provision with the external market. In terms of block contracts, it was felt that there was a pressure to place a young person in a block purchase provision as it was already being paid for and as such it may not have been the most suitable placement for the young person. It also meant that there was a risk that the Council could be paying for empty beds. These concerns encouraged the Council to move to the use of framework agreements to increase the numbers of providers that the Council were working with – this was done on a regional basis (known as the East Midlands Regional Children's Framework – EMRCF). This meant that the Council had accessibility to more providers, potentially placements and that the Council were only paying for beds that the Council used. It helped ensure that the needs of the young person were always taken into consideration and they were placed in the most appropriate placement for them at that time based on their needs and behaviours.

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 Council use a DPS and a category management system to procure placements through our Gateway2Resources. Although this allows us discuss prices at the point of referral the Council are not able to wholly control cost as in some cases (e.g. emergency placements) the Council feel the market still retains some control over what the placement cost is. The Council have written in to our Terms and Conditions that requests for placement costs uplifts (existing placements), must be made in writing and agreed by both parties and the Council is now working with other local authorities in the Midlands Region around fee uplift requests to ensure consistency across the region.

In general, though, it would be fair to say that the Council feel that the market still holds most of the control around cost and the Council are yet to successfully find a mechanism for controlling this further. A restricting factor is that often there is only one suitable offer from the external market for a placement which restricts the ability of the Council to use costs as a determining factor when choosing between two or more suitable placements. Furthermore, often the decision to look for an external market has been made when other options (such as internal capacity) have been exhausted. This can mean we are 'forced' to accept a high cost placement in order to ensure the

safety of a child and young people and in order to ensure that their needs are being met. Again, this can restrict the Council's ability to be more selective about which providers we place with or to successfully manage negotiations around cost, for example.

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;

The Council considers that this definitive is a factor. One way of potential reducing costs to the Council might be to have block contracts with a provider(s) but uncertainty about demand and changing needs of the cohort have prohibited us from going down this route (though the development of our own internal residential capacity will go some way to alleviating this).

b. nature of demand, e.g. age profile of looked-after children or prevalence of complex needs;

The needs of the cohort are ever changing, and the Council has noted (as above) that the needs are tending to become more complex, which in turn makes it harder to source appropriate placements. Because providers are aware that competition amongst local authorities for those placements, there is a sense that they can (are) 'cherry picking' the children/young people that they want to look after from a plethora of referrals that they see on a daily basis. It is the Councils view that this confidence leads providers to set their own prices as they wish.

It is noted, though, that providers are keen to understand the nature of demand from the Council (through data sharing, Market Position Statements, Sufficiency statements etc) and this suggests they are keen to develop provision to meet that need. However, in developing further specialism there is a risk that they will increase costs in the knowledge that there is that specific demand and competition for those types of specialist placements.

c. levels of uncertainty of future funding;

Our placements budget is under constant scrutiny and the Council are working to understand what is driving prices up and to look at how the Council can mitigate against this; however, where placements are required and are put in place the budget is available for them. Notwithstanding savings pressures, the Council recognises the need to ensure value for money and to ensure that the best outcomes for children and young people are being achieved in external placements. This is achieved through robust quality assurance processes and contract management. The focus on ensuring appropriate use of our placements budget is also being considered through a programme of work known as 'Defining Children and Family Services for the Future' (DCFSF) that the Council has put in place and through this there will be further exploration and development of process such as how savings can be achieved with the market and through better management of external placements – such as robust contract management approaches, review of placements (including step-downs), cost-volume discounts, sibling discounts etc as well as managing more closely (and with regional. Colleagues) fee uplift requests).

d. level of access to information on providers and individual placement options;

Through the brokerage process the Council will try to examine other options with providers but given the number of referrals providers receive it sometimes feel that they will settle for the easier, more straight-forward options and this perhaps precludes more innovative approaches. This is reflected in our decision to grow our internal fostering and residential provision (including access to therapeutic interventions) to provide some of those alternatives.

The Council feel that it is able to access an appropriate level of the information about individual providers at the point of them joining our DPS (and this is one of the benefits of having a compliant commissioning approach in place). Further, by working closely with the market and in collaboration with them, The Council feels we are able to successful increase our knowledge about individual/groups of providers.

e. any other factors?

No further comments, other than responses given above.

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;

The use of some sort of framework allows the Council to ensure that our approach is compliant (in regard to Contract Procedure Regulations) and to do initial checks on the quality and nature of the providers the Council work with. This doesn't seem to be a limiting factor, especially as there is a mechanism for making spot-purchases 'off framework' if necessary. The Council are aware of some providers who do not wish to join our DPS as they don't like frameworks/contracts per se, but the Council do not feel that this is overly limiting our access to placements at this time. By having a local procurement solution, the Council are reassured that it is able to hold providers to account and Council to monitor and manage providers against contractual expectations.

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

As a local authority the Council try to be demand led and have access to data to show us what current and future demand is - work is ongoing to strengthen our position on this and to ensure that the Council have published Market Position Statements and Sufficiency Statement etc. The Council is keen to encourage 'local placements for local children/young people' and the development of a local procurement solution that places an emphasis on local providers reflects this. The Council regularly revisits data to check on trends and demand and hold regular collaboration sessions with our providers to update them of placement requirements.

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

Although regional opportunities for a procurement solution for LAC placements was explored, ultimately LCC has developed its own local procurement solution - Gateway2Resources. This is used by colleagues in Rutland County Council and the Council share information with other East Midlands colleagues. The Council are also party of an East Midlands regional approach to fee uplift requests for existing placements. The Council also regular meets with regional colleagues as part of commissioning meetings at different levels within the organisation.

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

The Council have been successful in all recent recruitment and feel the Council have staff of a very high-quality working in our commissioning function - the Council therefore, do not see this as a limiting factor at present

e. any other factors?

No further comments, other than responses given above.

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

Leicestershire County Council has developed a dynamic purchasing system known as Gateway2Resources in collaboration with the market - the market and the LA co-designed the DPS, the approach to referrals and continues to work in partnership with the market to discuss and refine approaches to quality assurance, sharing of good practice etc. The use of a DPS by the Council has seen an increase in the number of local providers applying to work with us and use of a DPS has provided greater flexibility in terms of 'onboarding' new providers on a constant basis, helping ensure our sufficiency.

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, the Council welcome comments on:**

- a. The interplay between regulators and government, local authorities and providers.**

The Council feel this is quite good - there seems to be an effective dialogue between regulatory bodies and the LA, effective notifications of concerns and providers seem to engage well with the regulators. The Council feels that the need for regulation is imperative as it ensures that all providers are working within the same remit and have the same structure and oversight. The existence of a regulatory framework also supports the ability to make informed decisions (by the Council) at the point of brokering placements with a specific provider as well as providing a mechanism through which to develop our approach to quality assurance and contract management.

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

The range of functions seems appropriate, but the Council is interested to know what regulation of 16+ Supported Accommodation might look like if that proposal is taken forward and what Ofsted/CQC role in that will be. The Council feel that sometimes there are 'grey' areas around regulation/registration of those provisions which are current unregulated in the eyes of one body (i.e. Ofsted) but regulated by another (i.e. CQC) and the Council sometimes find that there is a lack of clarity around this or the way the regulatory bodies work together. This sort of clarity and collaboration would benefit the Council.

- 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.**

The Council is unable to provide a response for this question.

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

The Council has not noted concerns regarding this.

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

The Council has observed that it can sometimes seem that providers will avoid complex cases or short-term residential placements for fear that this will reflect badly when it comes to their own inspection - this can present issues for the LA placing in this scenario. Ofsted have assured the Council that this would not be an issue when it comes to provider inspection, but this message does not seem to be filtering through to providers who seem to be quite risk adverse when it comes to regulatory frameworks and inspection.

- 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?**

The Council currently don't have any placements in unregulated placements apart from those with 16+ Supported Accommodation providers (which are currently an unregulated activity). The Council expect all of our 16+ providers to be on our dynamic purchasing system (DPS) and are therefore subject to checks and quality assurance prior to placements being made to them and the subject to an agreed annual schedule of QA and contract management. The Council have an established approach to dealing with issues and concerns should they arise. The Council are aware that

unregulated provision exists and that our approach to reviewing and managing those provisions needs to be especially robust

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;

The Council assumes that providers are wary of developing new provision if they feel there may be savings cuts against placement budgets. In terms of the Council's development of its own internal residential capacity, this development is in part a reaction to increasing costs within the external market and the apparent inability of the market to meet the needs of children and young people with more complex needs – it is therefore seen as a way of partially mitigating against uncertainty around costs/future funding for placements.

b. Levels, nature and certainty of future demand;

As above – re: development of the Council's own internal residential capacity.

c. Expectations of the level of prices in the future;

As above – re: development of the Council's own internal residential capacity.

d. Regulatory and policy frameworks;

The Council believes this would only be a concern for providers who are not willing to deliver to required standards or providers of and/or developing unregulated provision (such as 16+ supported accommodation) and who are concerned about potential changes to that regulation (i.e. possibility of it becoming a regulated activity).

e. Barriers to the acquisition of appropriate property;

The Council is unable to provide a detailed response for this question – though the cost of property and concerns about taking a property through planning may well be limiting factors/concerns.

f. Barriers to the recruitment and retention of appropriate staff;

The Council is unable to provide a response for this question.

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

No further comments, other than responses given above.

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;

Pressures on funding and the rising cost of external placements has led the Council to explore expanding its internal capacity – particular when analysis of fostering placements with IFAs has shown children and young people with a level of need/complexity that existing internal carers – if they were available – could meet. Thus, by expanding internal capacity, there is potential to reduce external placement costs and therefore placement costs to the Council per se.

b. Levels nature and certainty of future demand;

The Council considers that a family-based placement is likely to be the best option for the majority of children and young people. Therefore, consider that there will always be a demand for foster carers. Therefore, expansion of our internal foster carers is an obvious option for the Council.

c. Expectations of the level of prices in the future;

As above – the trend in prices for placements with the external market rising is expected to continue; increasing internal fostering capacity is therefore seen as a way to reduce the cost of external placement costs to the Council per se.

d. Regulatory and policy frameworks;

Not considered too be a major driver of barrier to the Council as any internal provision will be developed/maintained in line with regulatory requirements. Potential changes to the regulation of 16+ services (which could affect our internal Supported Lodgings offer is a concern, but the Council will seek to ensure any regulatory changes are adhered to.

e. Barriers to attracting and retaining appropriate foster carers;

Retaining appropriate foster carers can be difficult - money will be a motivating factor - as well as appropriate training to give the best outcomes with a placement.

f. Any other factors you think are significant drivers or barriers.

No further comments, other than responses given above.

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?

The Council is unable to provide a response for this question.

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?

The Council considers that more support is needed to provide secure welfare accommodation as well as appropriate mental health beds/health care support beds. There needs to be support to local authorities when these placements cannot be found however the young people require suitable placements.

[✂]

Date: 30/03/2021