



The Fostering Network's submission to the Competition and Markets Authority's study into the children's social care market

About the Fostering Network

The Fostering Network is the UK's leading fostering charity. We have been leading the fostering agenda for more than 40 years, influencing and shaping policy and practice at every level. We are passionate about the difference foster care makes to children and young people and transforming children's lives is at the heart of everything we do. As a membership organisation we bring together individuals and services involved in providing foster care across the UK. We have approximately 60,000 individual members and nearly 400 organisational members, both local authorities and independent fostering providers, which cover 75 per cent of foster carers in the UK. Our views are informed by our members, as well as through research; in this way we aim to be the voice of foster care.

Why we are making this submission

The Fostering Network has 158 independent fostering agencies (IFAs) in membership which includes 9,901 independent fostering household members. This compares to 201 local authority (LA) services and 26,148 local authority fostering households.

We have seen a considerable rise in the number of independent providers in membership over the years reflecting the expansion of the independent fostering sector in that time. As a result, we convene national and regional forums with independent providers which allows us to understand the current issues they are facing and provide advice and practice support. In Wales, we hold joint forums with local authority and independent providers to encourage collaborative working and communication across both sectors.

As the voice of foster care across the UK, we are ideally placed to share our views and experience of the independent fostering sector in the provision of care and support to children in care. We accept the mixed economy of care that has grown up and developed over the last three decades. The development of commissioning and outsourcing accommodation and care is now firmly embedded in the children's social care system. However, as the Competition and Markets Authority (CMA) has stated in its Invitation to Comment document, the current system is not perfect and can be too often focused on unit costs rather than the needs of the child and families providing foster care. This is as much to do with limited financial resources on the part of local authorities as it is to do with the actual delivery of care.

In making our comments, we do not seek to make a judgement on whether local authorities are better placed to provide direct foster care provision than the independent sector. We have many excellent examples of high-quality care delivered by both local authorities and independent fostering providers. However, it is also the case that poor strategic planning and lack of collaboration between the public and private sector has led to fragmentation and poorer outcomes for children in care. We see this occurring across all nations in the UK.

Currently, it is unclear how we measure outcomes for children and young people in care and who has the national and local oversight for outcomes. There are challenges around collecting a comprehensive and

consistent set of data and measuring the impact of fostering (or any other form of care) in terms of children's outcomes. This was highlighted in the National Audit Office report which found in 2014 that the Department for Education (DfE) could not demonstrate that it is meeting its objectives for children in foster and residential care. The report stated that the DfE did not have indicators by which it measures the effectiveness of the care system. In addition, there was a lack of understanding of what factors contribute towards the costs of care.

We welcome the announcement of the CMA study for two main reasons:

1. Poor outcome data and limited financial transparency are barriers to assessing the efficacy of the independent fostering sector in relation to local authority provision. The study will hopefully enable us to shed more light on the impact of IFAs in relation to improving the lives of fostered children.
2. The CMA study has commenced at a significant time for the future of children's social care, with the announcement of the Care Review in England and the implementation of The Promise in Scotland. Further reforms are also on the horizon in Wales and eventually Northern Ireland. Recommendations made by the CMA are therefore more likely to have major impact on policy change in the near future.

The approach we have taken to this submission

Our comments reflect our core belief that foster care, whether provided through local authorities or the independent sector, is the right option for the vast majority of children in care, and we know that it can transform their lives. But we also know that it can be and should be improved. We want to see stability for fostered children, who are supported to make and maintain relationships, to achieve their educational potential and to have good mental health and wellbeing. We want to see foster carers valued as key members of the team around the child, with the practical, financial and emotional support they need to provide the best possible care for children.

This submission will broadly follow the four themes set out in the consultation document but will not attempt to answer every question, especially as some are not relevant to fostering. In doing so, we will take the opportunity to make some wider observations setting out a number of policy recommendations for further consideration.

Our comments are mainly applicable to England where we find the highest number of children in care being looked after in fostering placements. This amounts to 72 per cent of the total number of 80,080 children who are cared for away from home across the UK.

However, as cited in the CMA consultation document, there are notable differences in the independent fostering market in Scotland and Northern Ireland. While Wales is similar to the English approach, there are some distinct differences which we will highlight towards the end of our submission.

Theme one: Nature of Supply

The provision of foster care to children who enter the care system has been the prime model for their accommodation and care needs for many decades. Over time and thanks to the work of organisations such as The Fostering Network, the importance of providing loving and supportive care within a family setting is widely evidence based as being able to improve long term outcomes for looked after children.

Fostering, while rooted in providing families for children, is not a single entity. Some foster carers offer occasional short break care, others emergency or short-term placements, while some provide children with a home for their whole childhoods and transition into adulthood. In addition, some foster carers have developed specialist knowledge and skills to provide care to children with extra needs, e.g. children with complex health needs. Many foster carers do a mix of these forms of fostering.

Over the last 30 years, local authorities have invested in developing their fostering services to recruit and retain foster carers in their communities to meet their statutory duties to children in need brought about by the passing of The Children Act 1989.

At the same time, we saw an increase in the numbers of children placed in the independent fostering sector through relatively small agencies being established across the country. These emerged in light of the

embryonic commissioning culture which developed in children's social services in the 1990s. Many agencies were established by former children's social work practitioners who utilised their extensive knowledge and experience to identify, recruit, train and support foster carers; addressing shortfall in local authorities unable to place a child within their own fostering service and in response to the additional and acute needs of children entering the care system. Many agencies, driven by social work values, invested in additional services providing wraparound care for children and extra support to foster carers who looked after them. Innovative practice has developed which has in turn influenced the emergence of similar services in local authorities, for example direct referral routes for therapeutic support through local CAMHS.

As the CMA document points out, the majority of fostered children in each nation are in the care of local authority foster carers. However, a significant proportion of children are cared for by foster carers provided by IFAs owned by private providers and the not-for-profit sector.

In discussion with our practice teams and helpline staff, there are many issues for foster carers and fostering services that are common to both local authority and IFA fostering services. However, whilst many local authorities differentiate within their management structure between 'purchaser' and 'provider' services, a local authority fostering service operates within the same overall local authority governance structure.

For IFAs, and perhaps some Trusts, they are 'external' providers. This impacts on:

- Geographical location – some are small, local agencies with close links with a particular local authority, whilst others are more regional or national in their operations, where agency staff and foster carers may be located at a distance.
- This spread of carers means that children and young people might be placed at a distance from their home area. This can impact on travel time (outside of a pandemic) for social worker visits and attendance at meetings. Also, as IFA staff support carers over a wider geographical area, caseloads which are generally smaller for IFA supervising social workers than for local authority supervising social workers.
- Local authority fostering services overwhelmingly provide placements for the children in the care of their local authority which are governed by a consistent set of policies and procedures. Most IFAs offer placements to children from a range of different local authorities and must adapt their care to the expectations of that local authority – policies and procedures vary greatly between differing authorities.
- When looking after a child or young person in a foster placement, communication between the foster carer, the supervising social worker and the child's social worker is key. Whilst there are common issues in relationships between LA and IFA foster carers/supervising social workers and the child's social worker lines of communication are more accessible to local authority fostering service staff who have an ongoing relationship with their local authority children's social workers. For IFAs, this relationship may last only for the duration of a child's placement and often the time and focus needed to develop a close and positive working relationship is not forthcoming, given other pressures on children's social worker's time.

Whilst none of these are insurmountable, and there are many examples where IFA and local authority staff work well together to the benefit of children and young people, this has the potential to impact on outcomes for children, especially where issues arise in placement that require additional support over and above the statutory minimum, or that agreed in the original contract and/or placement agreement. Commissioners have a role to play in developing and supporting relationships between their local authority social work colleagues and staff within agencies that care for their children.

We have no evidence to suggest that those providers funded through private equity investment operate differently to other providers. Although there is undoubtedly a perception amongst some social work practitioners that the larger the provider, the greater the risk that value based social work practice will be diluted. In order to address this perception, there is a need for detailed performance and financial data linked to child outcomes framework which should be made available through the inspection and monitoring regime.

Finally, all foster carers provide a vital service to society in undertaking the care of vulnerable children and we believe this should be properly recognised and supported. We know from our regular foster carers that the provision of support between local authorities and IFA providers can vary.

Theme two: Commissioning

Good commissioning is key to ensuring that the needs of vulnerable children within a locality are matched with the right family to care for them. Unfortunately, our experience suggests this is not always the case resulting in instability and placement breakdown. The requirement on the part of local authorities to publish sufficiency statements which detail how they intend to meet the accommodation and care needs of their looked after children population is fundamental to planning services effectively. This statement should be the foundation for partnership between local authority and independent providers. We have some fundamental criticism of the current system which has bearing on the questions asked in the CMA document under this theme. Our concerns are summarised below.

The National Audit Office (NAO) report (Children in Care, 2013) stated fostering services were not being commissioned based on thorough assessments of the child's needs but rather based on costs. The consequence of this is placements are being measured on cost rather than on improving outcomes for children and young people. Over the last few years anecdotal feedback from our members continues to be in line with the NAO finding.

In order to measure whether commissioning for fostering services is effective, we have to be clear of the purpose of the care system and specifically the purpose and benefits of foster care. The Fostering Network believes the purpose of the care system is to protect children from further harm, offer an environment where the child can rehabilitate from past harm and neglect and improve the outcomes for the child so they can realise their potential.

Over the last 10 years the foster care sector has steadily moved to a more formal contract commissioning framework. There are approximately 35 different contract frameworks operating in the UK at the moment, some with capped price contracts. The Fostering Network has long pressed for the development of a national contract framework to be drawn up that can be adopted across all local authorities to purchase fostering services. This would provide stability in the market and a set of data that would vastly improve planning and commissioning.

As well as the commissioning approach changing over the years the market split has changed. When the independent sector first began to operate in fostering it was to meet the local authority shortfall and to offer specialist placements; the independent sector now accounts for 34 per cent of the market share (Ofsted 2019).

However, even though more formalised approaches have been developed, through frameworks, many local authorities still resort to spot purchasing where they are unable to find a foster carer for a child within their own pool. Price and unit cost has become a focus of commissioning foster care placements. In the absence of a nationally agreed outcomes framework, decisions are being made based on short term affordability rather than what are in the long-term best interests of the child.

The fixing of local authority budgets annually does not lend itself to long-term care planning. There are clear tensions between local authorities and IFAs about the true costs of a foster placement, and the differing methods used to calculate costs make it almost impossible to assess value for money.

Local authorities often adopt a sequential approach to commissioning fostering services and look at the in-house services first where they have invested resources and then look externally, based on a tiered contracts approach. There needs to be consideration of how we move away from the competition created between the two sectors and develop a more collaborative approach whereby all potential foster carers are in the available pool for children referred.

Commissioning teams within local authorities are often split from practice teams and can be removed from the frontline detailed knowledge of fostering. Some local authorities have adopted a regional commissioning approach, for example in Yorkshire and Humber, the North West and the North East of England. This approach is a big step forward in terms of planning for sufficiency; standardising contract arrangements and building trust and partnerships between the public and private sector. Regional commissioning works best where commissioners meet regularly with providers to share information, good

practice and actively encourage feedback. We have heard anecdotally that some providers feel communication can often be a one-way process and discussions focus on price point and not quality of care. This has led in some cases to IFAs withdrawing from a framework, rather relying on spot purchasing from individual local authorities.

In relation to Question 4 under this theme - *the extent to which local authorities proactively forecast demand and seek to attract providers to their areas* - we would draw attention to the variability in approach to producing sufficiency statements across the country.

We understand the challenges around assessing and predicting need but there is much room for improvement. Many local authorities say the sufficiency duty is beset with the following issues: national shortage of foster carers, increase in the complexity of children's needs pressures of rising unit costs and shortage of funding. However, it is essential that individual social care assessments of children and young people are aggregated in each local area in order to strategically plan the services required for the looked after children population and to drive commissioning and recruitment.

We believe all sufficiency statements could be scrutinised more closely at a local, regional and national level to determine the types of care placements required and to inform targeted recruitment programmes for foster carers who are able to meet the needs of the current care population. Local authorities must assess not only the placement needs of children and young people but also other social care, educational and health needs in order to provide therapeutic services and support for children and young people.

There is a sector data gap in that we do not know how foster carers are distributed across the country or their approval details. As a result, there is a lack of national level workforce development and planning. The CMA should consider if the care sector would benefit from a strategic national workforce planning approach.

Theme three: Regulatory System

In England, Ofsted are responsible for inspecting the quality of children's social care provision in the public and private sectors. However, an inspection of a local authority fostering service is carried out within the broader context of inspection of the wider children's social care department and not subject to its own rating. Inspections of IFAs are comprehensively undertaken by Ofsted and are rated accordingly. As of 31 March 2020, the proportion of good and outstanding IFAs nationally was 93%.

While these ratings are extremely positive, it is very difficult to compare this performance with local authority fostering services which are not inspected separately. In addition, the current regulatory system in England needs to be strengthened placing improved outcomes for children at the heart of monitoring and inspection. There is some concern that the most challenging placements are being commissioned to independent providers and that these commissioned placements are subsequently being disrupted to bring the child back in house. Where these placements break down, children are subsequently moved to another placement, usually to the care of a local authority foster carer. Local authorities are required to establish why placements break down by holding so called disruption meetings, as they are known. However, there is further work to be done on how information gathered by this process is used to quality assure services and commissioning practices and to assess the impact of placement breakdowns on children's outcomes. We believe that the regulators have a role to play in scrutinising why these moves are happening and ensuring they are always in the best interest of the child, and not for financial reasons. Our 2018 State of the Nation survey found that there is not consistent practice in scrutinising placement move decisions.

Theme four: Pressures on investment

We will confine our response to question 2 and specifically barriers attracting and retaining appropriate foster carers, highlighting recruitment issues and terms and conditions of foster carers.

Recruitment

Local authorities constantly require a diverse and steady supply of foster carers to meet their statutory duties to children in need. The demand for care has consistently outstripped supply and placement teams can choose to place a child with their own foster carers or through an IFA.

No child in care is currently without a home, but they could be in the wrong placement for them – residential care rather than foster care for example, or with a foster family that is providing a safe and secure home but is not the ideal match to meet all of the child's needs. Some children also get placed a long way from family, friends and school.

The Fostering Network estimates that, in England, a further 7,300 foster families are needed in the next 12 months in order to ensure all fostered children can live with the right family for them, with the skills, knowledge and experience to meet all of their needs¹.

Recruitment of foster carers is a year-round activity. In an ideal world, this recruitment would only be to find foster carers to meet children's needs; all recruitment would be targeted and based on needs analyses, with local authorities/trusts and IFAs working together to identify who is needed and where. There are many local authorities that are taking this approach but this needs to happen consistently across the country. The current system can lead to a disconnect between the supply of foster carers and the demand for their services.

The mixed economy has therefore led to a situation in which recruitment in foster care is often driven by increasing numbers rather than by meeting the needs of children currently in the care system. Anecdotally, we hear of local authorities recruiting foster carers to bring children back "inhouse", and IFAs recruiting foster carers without reference to whether any local authority has a need for the skills and placements they can offer. We know that some foster carers have vacancies for long periods of time, and that they understandably find this very frustrating, particularly if their local fostering service is still recruiting new foster carers. In fact, fostering services often operate in competition with each other over access to new foster carers, with potential applicants being exposed to advertising from multiple fostering services in any one geographical area. This leads to duplicated costs of advertising, as well as potential confusion.

We believe the sector should consider tailored recruitment strategies to recruit specifically for long term and permanent foster carers who may only foster one child or a sibling group.

We believe that fostering services should work together to make best use of the existing foster carer workforce, and to recruit only where there is a need. We would like to see the increased use of regional consortia for needs led and targeted recruitment, to increase effectiveness and reduce duplication.

Foster carers terms and conditions

There are two components to foster carers' income from fostering. The allowance is designed to cover the costs of caring for a child. All foster carers in England receive an allowance. The other component is a fee which recognises the time, expertise and skills of the foster carer. Not all foster carers receive a fee. National minimum allowances are established in England and Wales but there is no national minimum allowance in Scotland. On the whole local authorities in England and Wales pay at or above this level. In contrast to allowances there is no minimum recommended fee for foster carers in any country of the UK, nor even a requirement for fees to be paid by fostering services. Due to the lack of a framework around fee payments the amount received across the country varies widely.

Our latest State of the Nation's Foster Care report in 2019 received the following feedback from over 4,000 foster carers on allowances and fees:

- 59% of foster carers feel the fostering allowance and the expenses they can claim do not meet the full costs of looking after their fostered children. This is a slight increase on the 58% from 2016, and we therefore have continued concern that allowances are still not meeting the full costs of foster care.
- 90% of foster carers agree that carers should be paid a fee for their fostering work.
- 60% of foster carers say that they receive a fee, a slight increase from 2016 when this was 57%.
- Only 9% of foster carers are paid at or above the equivalent of the national living wage for a 40-hour week.

Fostering across the UK

The Fostering Network operates across the UK below is brief summary of fostering market in Scotland, Wales and Northern Ireland.

Scotland

As the Invitation to Comment document makes clear, IFAs in Scotland must be registered as not-for-profit. They are referred to as Independent and voluntary fostering providers and includes registered charities. All must be not-for-profit. Some are part of larger UK companies but to comply with Scottish legislation they do not make a profit. Most charge a head office management fee as part of the placement fee for the child. All are members of The Fostering Network.

All fostering providers that do operate in Scotland are registered with the Care Inspectorate, inspected regularly and rated by them in terms of quality and performance, but this does not include any scrutiny of fees.

Wales

In 2015 the Welsh Government supported the development of a National Fostering Framework with the central aim of ensuring that the best quality foster care placements are available to all the children and young people who need them in order to reach their full potential and that foster carers are valued, supported and highly trained. Over the last five years a significant amount of work has been carried out through different workstreams with the aim of:

- Improvements in permanency planning for children and quality of placement provision;
- A more cogent and compelling and strategic intent in relation to fostering services;
- An increase in collaboration and co-operation by all key stakeholders;
- A greater consistency and transparency about performance of fostering services and efficient use of resources;
- To make use of economies of scale where appropriate but to respect localism; and
- More shared services in planning and commissioning as well as communicating best practice models.

As the National Fostering Framework draws to a close we would recommend the CMA look at the impact of the Framework on the quality of care and assess if other countries could learn from this approach.

Northern Ireland

Northern Ireland has been excluded from the study on the basis that the vast majority of looked after children are cared for by foster carers through their local Health and Social Care Trusts.

All fostering agencies, statutory and IFAs, are members of The Fostering Network. With a population of 1.85 million, Northern Ireland has approximately 3,200 children in care. Just over 2,800 children are living with foster carers, of whom, 51% are kinship foster carers.

Four IFAs operate in Northern Ireland, providing foster carers to the five Health and Social Care Trusts on a spot purchase basis. Two of these agencies are registered charities and the other two are not for profit companies. The Fostering Network in Northern Ireland chairs a forum with all four agencies. Currently, IFAs provide foster care provision for approximately 18% of those children cared for by non-kinship foster carers.

Although there is no legislative requirement stating that IFAs must be not for profit in Northern Ireland, those agencies which are part of large UK fostering providers, have chosen to be separately registered as not-for-profit.

The Health and Social Care Board in Northern Ireland is currently in the process of taking forward a procurement exercise, which will, for the first time in Northern Ireland, create a regional framework for foster care provided by IFAs. It is unclear at the time of writing what the requirements of this will be or how it will be implemented or indeed how it might impact fostering provision in Northern Ireland.

The Fostering Network's recommendations

Comparison data

- More detailed performance and financial data linked to children's outcomes is required in order to make an assessment of whether those providers funded through private equity investment operate differently from other providers.

Sufficiency and planning

- Each local authority must conduct an annual needs analysis of their local looked after children population in order to determine types of care placements required including long-term fostering and post-18 care. This analysis must drive all commissioning and recruitment of foster carers and form the basis of every local authority sufficiency statement.
- Department for Education and other key government departments should play a greater role in sufficiency duties in terms of providing the tools, guidance and training for local authorities to carry out meaningful and live statements that drive commissioning and recruitment planning.
- Current statutory guidance on the sufficiency duty in England published in 2010 is urgently in need of updating. This should include good practice examples and a national toolkit for commissioning foster care provision in the independent sector.
- Sufficiency statements should be live documents allowing providers to respond dynamically to local need.

Commissioning

- Commissioners should actively build relationships with their local independent providers, including those operating beyond local authority boundaries to fully understand the nature of services and support they can offer to ensure compliance with the sufficiency duty.
- All the different contract frameworks currently in operation should be reviewed and assessed to see if a common approach can be adopted. We would recommend a national fostering contract framework.
- The commissioning framework for fostering needs to link to outcomes for children and young people rather than cost. The Care Inquiry in 2016 recommended that frameworks for commissioning services for children in care and leaving care should require a minimum 60/40 weighting in favour of quality over cost.
- Commissioners need to understand and exercise their duty of care to looked after children as part of their corporate parenting role.
- Long-term fostering and post-18 care need to be embedded as part of the commissioning contract and be part of every local authority's sufficiency duty.

Regulation

- Ofsted should play a greater role in ensuring that the regulations requiring a case review to happen prior to the end of the placement are being applied consistently across the fostering sector.
- Ofsted should scrutinise the reasons why placements are ending to ensure they are in the best interest for children and not driven by any financial reasons.
- The current regulatory framework measures against national minimum standards but the framework should be assessed to ensure it measures quality of care based on children's outcomes.

Recruitment

- All recruitment of new foster carers should be targeted to meet needs of the current care population, based on a local authority's needs analysis. No fostering services should be recruiting foster carers for whom there is no demand. Instead, local authorities and IFAs should work together to make best use of the existing foster carer workforce and ensure they are recruiting the right foster families to meet the needs of the children in and coming into care i.e., target and match skills of carers with the needs of children. Fostering services should encourage any

potential applicants whose skills they don't currently need to contact an alternative fostering service which does need these skills.

- Closer joint working protocols should be encouraged between local authorities and IFAs.
- An increase in regional consortia for needs-led and targeted recruitment should be encouraged, to increase effectiveness and reduce duplication.
- Government should play a role in leading national workforce planning and development.

Terms and conditions of foster carers

- Fostering services should pay their foster carers between placements. While some foster carers may choose to hold a vacancy until a young person who matches their skill set needs a placement, many foster carers offer a home to a broad range of children and expect to be working as a foster carer on a full-time basis.
- If a fostering service thinks it is unlikely that they will place a child with a family, they should be clear about this. For short term gaps, they should consider whether the foster carer can widen the range of children they take or use their skills more creatively between placements (as long as they are being paid a retainer) to support other foster carers, provide short break care, undertake or deliver training, or assist in recruiting foster carers.
- There should be a government-led review of the level of the national minimum allowance and related expenses in England to ensure it covers costs, not least because increases have been falling behind the rate of inflation.
- Foster care should be appropriately resourced to ensure foster carers receive a fee which recognises their time, expertise and skills, preferably via a tiered payment scheme, and carers should receive retainer fees between placements.

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