12 November 2021

Submission by Horizon Care and Education Limited in relation to the interim report on the CMA's children's social care study

We are pleased that the CMA's interim report (**Report**) has recognised the positive contribution made to the children's social care sector by independent providers of children's homes. The Report acknowledges that independent providers are able to offer crucial supply to the market at prices which are not materially more expensive than the equivalent in-house cost for local authorities and at a level of quality which (in the eyes of Ofsted) does not materially differ from equivalent public sector homes. Indeed, as the Report acknowledges, independent providers are typically tasked with caring for children who, on average, are older and have more complex needs – when this is properly factored into consideration, we believe independent providers offer homes at better prices and better quality than the public sector.

Independent providers are able to make a profit in doing so but, as the Report acknowledges, this is due to lower operating costs and increased efficiencies (for which private providers should not be penalised). This profit margin is also important in light of the significant risks faced by independent providers, including reputational risks of receiving a low Ofsted rating, difficulty of predicting future local authority demand for placements, and exposure to volume and inflation risks under current contracting arrangements. To the extent the CMA considers there to be an under-supply of homes, this should underscore the need to incentivise the development of new capacity – and, in our view, profit helps provide the correct incentive to the private sector to do this.

Given this, we do not intend to comment on the CMA's analysis of profits and prices in the children's social care sector. This is not because we agree with all aspects of the CMA's calculations, but simply because the Report has not identified any harms caused by private sector prices or profits, so we see no case for progressing the analysis further. In particular, the Report has not identified a pattern of persistent and rising profits, nor any indication that profits are resulting in higher prices for local authorities or worse outcomes for children.

We do not agree with the CMA's proposals to recommend measures to regulate levels of financial leverage in PE-owned firms. Ultimately, the Report does not provide any evidence of higher prices/lower quality for local authorities or worse outcomes for children from PE-owned private firms. While there is always a risk that a PE-owned firm could become insolvent, this is true of any business in any sector – and, in our view, the Report does not explain why these risks need special regulations in the context of children's homes. In any event, we would want to be consulted on any possible proposals to ensure they do not impose an unnecessary regulatory burden which undermines the positive cost efficiencies that the sector has managed to achieve. We also fear that further regulation could encourage potential investors to seek alternate investment opportunities and ultimately reduce the capital available to invest in the sector.

The Report has correctly identified many issues in relation to local authorities' approach to commissioning which, in our view, reduces the incentive of private providers to invest in further capacity. For example, the lack of visibility we receive as to local authorities' future demand makes it very difficult to plan the number, size and location of future homes. Local authorities' unwillingness to provide fee increases to private providers in line with cost inflation also creates uncertainty which deters future investment. And, in our view, local authorities should be more willing to provide better priced and longer term block contracts with volume and inflation protection in order to provide private providers with the certainty needed to formulate a build programme (this would, in our view, be a more efficient use of local authority funds than the current approach of prioritising in-house provision first which, as above, is in our view less cost-efficient than private sector provision when complexity of needs is properly taken into consideration). We would welcome any CMA recommendations to tackle these issues.

We are also pleased that the CMA is considering recommendations to review current regulations on private sector providers. Currently, cumbersome and uncertain processes for attaining planning permission and Ofsted approval for new homes slow down our programmes of investment in new homes. The extensive regulations which apply to the recruitment of new Registered Managers is also a challenge. The current regime should also be reviewed to ensure it properly takes account of the differing complexity of children's needs. In particular, the current Ofsted inspection regime disincentivises providers from taking on more challenging cases on the basis that doing so would inevitably create a greater risk of a worse Ofsted rating – even though these are exactly the sorts of cases that private providers are, on average, expected to cater for.

We would welcome the opportunity to discuss these points further at the CMA's planned workshops.