

Response to Competition and Markets Authority children's social care market study – interim report November 2021

1. About the Local Government Association

- 1.1. The Local Government Association (LGA) is the national voice of local government. We are a politically led, cross-party membership organisation, representing councils from England and Wales, though this response will focus on England only.
- 1.2. Our role is to support, promote and improve local government, and raise national awareness of the work of councils. Our ultimate ambition is to support councils to deliver local solutions to national problems.
- 1.3. We are pleased to respond to the Competition and Markets Authority children's social care market study [interim report](#).

2. Analysis of market outcomes

- 2.1. We agree with the report's analysis of market outcomes, which reflects issues councils have been raising for some years.
- 2.2. In particular, we welcome recognition that the market is failing to provide adequate supply to allow councils to ensure all looked after children can be found a home appropriate for their needs, and that prices are often higher than they should be.
- 2.3. We are also pleased to see our own concerns around the high and increasing levels of debt amongst some independent providers reflected in this report.
- 2.4. The interim report highlights that there is no different overall in the quality of independent and local authority provision. In [our response to the CMA's invitation to comment](#) on this study, we highlighted that it would be helpful to consider a wider range of measures when considering the quality of provision, for example the educational progress and health outcomes of children cared for by providers, and feedback from children themselves. However the interim report is clear on the boundaries of the CMA's study which limits the scope to include such detail, and therefore suggest this is an issue the Department for Education and the Independent Review of Children's Social Care should look into further to support better understanding of the quality of provision.

3. Emerging conclusions on the potential drivers of market outcomes

- 3.1. We also recognise much within the section on emerging conclusions on the potential drivers of market outcomes, many of which we highlighted in [our report earlier this year on children's homes](#).

3.2. There is currently some excellent practice in and between councils in relation to approaches to procurement, which were not reflected in the report. These include regional and sub-regional approaches to joining up procurement and commissioning, and work on national contracts. We would be pleased to facilitate discussions between the review team and relevant project leads for the next part of this study to ensure learning from this work can be built into recommendations.

3.3. Examples of positive collaborative work include:

- a) The Children's Cross Regional Arrangements Group (CCRAG). This group is a partnership consisting of Local Authorities from the East, South East and South West Regions of England who are committed to working together to support the sourcing, contracting, monitoring and annual fee negotiations for children's placements in independent and non-maintained special schools and children's residential care homes.
- b) The London-based Commissioning Alliance which supports 35 local authorities and aims to improve outcomes and value from social care markets by providing data and frameworks to support activity while supporting councils to retain local autonomy in decision-making.
- c) The West Midlands Commissioning Hub, which provides operational support for commissioning as well as strategic oversight, including looking at quality, sufficiency and data.

3.4. As part of a funded project through the LGA's Children's Procurement and Commissioning Network, a group of local authority commissioners and representatives from the Independent Children's Homes Association (ICHA) and the Nationwide Association of Fostering Providers (NAFP) are revising the current national contracts for placing children in foster care and semi-independent/16+ accommodation. There are now revised contracts for semi-independent and 16+ accommodation available for local authorities and providers to use. We would be pleased to discuss this work in more detail with the CMA.

3.5. We are concerned about suggestions within this section that councils could reduce their operating costs in children's homes by reducing staffing costs. We urge the review to consider issues beyond Ofsted ratings here, for example whether higher rates of pay impact on stability of staffing. Stable relationships have a significant impact on children's wellbeing and outcomes and we must do what we can to ensure these. Furthermore, it is right that those working in children's homes are properly remunerated for the work they do providing care and support to children when they most need it. While rewarding, this work can be difficult and requires a broad skillset; we must invest in those who are making a real difference to children's lives. This is even more important in a sector where recruitment and retention is a significant challenge, as highlighted in this report.

- 3.6. The report did not consider the role of health services in the provision of placements for children in care, which we believe to be an additional factor driving market outcomes. In our response to the invitation to comment, we highlighted that developing provision that effectively meets the needs of children and young people with particularly complex or challenging needs requires input from a range of stakeholders, in particular health services. Councils report frustration in engaging with health services in some cases to ensure appropriate provision, with differing priorities and significant pressures on budgets leading to siloed working. Councils report that they often find themselves paying for health services in the absence of investment by the NHS.
- 3.7. There are also challenges in relation to accessing health services, in particular mental health services, which can impact on the suitability of a placement for a child. It would be helpful for the review to consider the role of health services in the children's social care market and how councils and health can best work together to deliver the placements that children need.

4. Possible remedies

- 4.1. With regard to the possible remedies outlined in the paper, we can see benefits to some of these but highlight also some issues to consider.
- 4.2. In relation to proposals to support councils to engage more effectively with the placements market, we wish to emphasise the importance of local contexts, local decision-making and locally-led solutions. This does not prevent sub-regional, regional or even national work, as seen in existing examples of strong joined-up working by councils, but does help to avoid imposing structures or perceived 'solutions' on areas which will merely add additional layers of bureaucracy or benefit some areas to the detriment of others.
- 4.3. We must also be clear that improved engagement with the placements market will not on its own improve sufficiency. In this regard, we are disappointed that there is not more consideration of the ways in which providers could support improved operation of the market. For example, providers have access to information about children's needs via their own records and referrals made to them which can be used to inform the development of new provision, and the high levels of profit outlined in the interim report can be used to trial innovative approaches to care and support.
- 4.4. Providers can also consider upskilling staff and foster carers and using trauma-informed practice to enable them to support children with a range of needs and ensure they receive the appropriate support.
- 4.5. Councils are clear that they, working with partners and carers and listening to children and families, are best-placed to identify the right home for each individual child they look after, whether this is foster care or a children's home. They are corporate parents to these children and work to ensure children's voices help to shape overall provision while working with partners to build support around the child. Local autonomy in decision-making is vital to ensure councils are able to use this knowledge and local connections to provide the best placement for each child, keeping that child's voice and needs at the centre.

- 4.6. Relationships between individual councils and providers are also vital, particularly where providers are located within a council's locality. These are not only important in managing the placements of individual children, but in building local capacity and responding to local need.
- 4.7. Locally-led solutions, rather than structures imposed from above, allow councils to build on existing relationships and respond to local contexts. Many areas already have strong regional or sub-regional or local arrangements that have good relationships with local providers developed over many years. We would not want to see these lost. We must also recognise the very different challenges that may be faced by different areas; a shire county, for example, may have very different issues than an inner-London borough.
- 4.8. The interim report highlights that some of the challenge for councils is in the cost and time of carrying out market shaping, forecasting and other activity in a context of significant funding pressures. Where we see existing commissioning partnerships working well, often there has been investment in dedicated capacity to manage this. Rather than setting up new bodies to manage placements which would be expensive and add another layer of bureaucracy, funded support for collaborative arrangements could help to tackle some of the issues outlined in the interim report without infringing on existing good practice or removing local autonomy.
- 4.9. There are clear benefits to more collaborative working in many areas. The LGA has already highlighted its interest in a national approach to investment and coordination of provision for children and young people with the most complex and challenging needs. However, collaboration on other areas of commissioning would also be welcome (and as outlined, is already happening in many areas) and we welcome the CMA's recognition that there will be varying costs and benefits to different levels of scale for different elements of the system.
- 4.10. In particular, our members have indicated that alignment on contracts and collaboration on sufficiency planning would be helpful. It is also worth recognising that collaborative working can also support on issues such as quality assurance and improving quality across provision.
- 4.11. We encourage the review to consider how any proposed remedies would impact on smaller providers in the market and how they would support development of local provision, recognising the value that a diverse market can bring and the importance of local homes for local children.
- 4.12. We are also keen for the review to consider what is already working in this and other sectors such as health and adult social care and, crucially, what has not worked. The benefits of any proposed solution to children will need to be clear to ensure buy in from councils and providers.
- 4.13. We welcome the report's early thinking about regulation. We have previously expressed our support for [ADCS's call](#) for a comprehensive review of the regulatory system, which we believe could allow for more flexibility to provide children with the support they need without reducing protection for children.

- 4.14. We have also [called previously for a financial oversight regime](#) for providers to provide an early-warning system and mitigate against the collapse of providers. This should learn lessons from the adult social care oversight regime administered by the Care Quality Commission, and we are keen for consideration to be given as to how this could also monitor the impact of mergers and acquisitions on quality and the outcomes and experiences of children.
- 4.15. We also recommend that the review considers options for shared management of financial risk in establishing new provision, the involvement of health services in the provision of placements and improving access to emergency placements. We would welcome consideration by the CMA of the Government's role in provision.