

# Competition and Marketing Authority Children's Social Care Market Interim Report Invitation to Comment



**Organisation:** Social Work Scotland

**Date** 10<sup>th</sup> November 2021

## **Introduction:**

Social Work Scotland is the national professional leadership body for the social work and social care professions in Scotland. We are led by our members, and work to influence policy and legislation and to support the development of the social work and social care workforce. Alongside organisational support Social Work Scotland run a number of national projects around design and implementation of policy and legislation.

As an organisation, we welcome the publication of the Competition and Marketing Authority (CMA) Interim report on the Children's Social Care Market. The concern of the CMA to consider how market conditions impact on outcomes for children in care settings, and the clear aim to ensure that the market works to both protect children and improve outcomes is acknowledged. Social Work Scotland would agree that market conditions and risks that may be acceptable in other settings could have serious implications for children who require state care, and that our corporate duty of care extends to ensuring that the conditions framing the care system work to improve that system rather than make it more complex. While recognising that aspects of the market in Scotland differ from that in England and Wales, there are significant similarities in terms of impact on children's care provision. Our comments reflect the position in Scotland, but identify where issues have cross-nation significance.

## **Context:**

Scottish children identified as unable to remain at home, and requiring alternative care provision, will primarily be cared for within alternative family placements, with a smaller proportion, around 10%, being looked after in a range of types of residential settings. Whilst the range of provision in Scotland is broadly similar to that within England and Wales, the legislative context is significantly different:

- Care and protection is provided within the Children's Hearing System, which also oversees situations where a child has come in to conflict with the law. The hearing system is unique in its approach, with decisions taken by a panel of lay people.

- The term 'looked after child' in Scotland refers to:
  - children who are subject to compulsory measures of care (both at home and 'in care')
  - those subject to 'voluntary' care (section 25, Children (Act) Act 1995) where a person with parental responsibilities has requested that their child be accommodated by the local authority
  - those where parental rights have been removed from a parent/person with parental responsibilities and vested in the local authority.
 Scottish Government returns distinguish between children looked after in community settings (home, foster care or kinship care) and those looked after in residential setting, and the legal status of looked after children.
- Registration with Care Inspectorate and adherence to the care standards is a requirement for all care provision for looked after children. Services are inspected against those standards.
- Kinship Care in Scotland has a specific profile. Looked after children placed with a kinship carer as a condition of a compulsory supervision order are deemed looked after away from home. Kinship carers in that situation must be assessed and approved in a manner similar to that expected of foster carers. There has been a policy thrust to accommodate more children in kinship care over the past decade, with associated provision and support for kinship carers.
- In Scotland, providers of alternative family care may not profit from their work.
- The right to continuing care – to remain in placement until the age of 21- is a principle Social Work Scotland supports. The implications for the wider care sector however are significant in terms of impact on availability of placements for children under the age of 18, and cost to local authorities.

A contextual aspect relevant to the Scottish context, which may also influence the similar work in England, is the outcome of the independent review of the children's care system, the Promise<sup>1</sup>. This was accepted by Scottish Government and is now being implemented over a 10-year period in recognition of the fundamental change being sought. The first 3 year action plan is nearing the end of year one. While this is not focussing on commissioning, the foundation of the Promise is a change in the nature of the care system to ensure that all aspects from early intervention and family support to family based and residential care, are underpinned by positive nurturing relationships which have the needs and voice of children and young people their heart. If the care system is to be transformed in this way there must be changes also in the market and commissioning which provides aspects of that care, specifically to allow it to be responsive to children's needs rather than market conditions.

Flowing from this work, recent legislation – the Children (Scotland) Act 2020<sup>2</sup> has brought in additional provisions that required local authorities to place brothers, sister, and those with a 'brother or sister like relationship' together. Where this is not

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<sup>1</sup> <https://thepromise.scot>

<sup>2</sup> <https://www.legislation.gov.uk/asp/2020/16>

possible, they must be placed near to one another, with contact plans for maintaining their relationships in an active manner that allows for change over time. This is a move which Social Work Scotland, and indeed the social work workforce, supports but which has implications for the market in terms of placement finding, availability and regulation of placements, and ability to meet the needs of the children being placed.

An additional factor within Scotland is the implications of the independent review of adult care undertaken following the initial stages of the Covid 19 pandemic. The resultant report – Independent Review of Adult Social Care<sup>3</sup> - recommended the creation of a National Care Service for all adult social work and social care. The Scottish Government accepted all the recommendations within the report and moved in August 2021 to a consultation on the nature and scope of a National Care Service. The consultation period ended on 2<sup>nd</sup> November 2021.

Unexpectedly, the consultation proposed extending the scope of a National Care Service to cover not only adult social work and social care but also children and families, and justice services. The scale of change to service delivery and commissioning from a local to a national model will influence the social care market significantly, regardless of the ultimate inclusion or otherwise of children's services with a National Care Service.

## **Comment:**

### **Analysis of market outcomes**

Social Work Scotland recognise the contextual and analytical approach taken to this work, which is well grounded and clear in the fundamental goal of improving outcomes for children. The analysis of the market provided in the interim report is a picture with which we concur and recognise.

We agree that there are regulatory and other barriers, and that cross border placements create particular challenges. We would welcome the opportunity to explore both of these areas further with CMA.

While we appreciate and agree with the use of evidence and data from agencies such as Care Inspectorate as a benchmarking tool, we would note some caveats for consideration. Of note is the different way in which standards are applied to local authorities as distinct from third sector providers. For example, both may be registered, inspected and graded as fostering agencies, with those grades compared on an equal basis. The independent fostering agency grading is based on provision a foster carer service while a local authority grading will reflect a wider and more complex service; assessment and support of foster carers, assessment and planning for children and matching processes.

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<sup>3</sup> <https://www.gov.scot/groups/independent-review-of-adult-social-care/>

## Emerging conclusions on the potential drivers of market outcomes

We agree with the three key conditions for an effective market

- Ability of local authorities to efficiently find and purchase appropriate placements for children at prices that reflect the cost of care.
- local authorities can indicate likely future needs of children to existing and potential providers, and current gaps in provision
- Providers can react effectively and quickly bring new supply to the market

The inherent challenge in the children's sector is that placements are usually required at short notice. The impact of this is that matching considerations and children's needs can become subservient to the urgency of identifying immediately a place for that child to live/sleep. This aspect is true within Scotland as well as south of the border. Consequently, the position of the local authority is inherently weaker than that of the provider, and the needs and required outcomes for the child placed are seldom the defining issue in sourcing a placement. The desire to meet assessed need is at the heart of social work and the challenges therefore do not sit well with our social work principles and values.

Additionally this leads to an uncertain market with providers responding to existing need and demand rather than local authorities being able to identify, predict and respond to trends in a proactive and managed manner. Examples of this are:

- The increase in external providers of fostering services operating in Scotland over the past 10 years as the need for family placements expanded with the reduction in residential provision
- The trend for external providers of both family based and residential provision to categorise their services as 'specialist' or 'enhanced' to both attract placements and increase prices.

The reality in Scotland has been that much of the need for externally purchased care is driven not from a need for specialist provision though this can be a factor, but from a lack of basic local authority provision. The implications of greater understanding of the conditions required to enable reparative and trauma informed care has rightly led to smaller residential settings and restrictions on the number of children a foster care may look after. This sits alongside an increase in demand for placements and greater complexity of need at point of placement, as provision to support children and their families within the wider community increases. The policy and legislative framework for this is Getting it Right for Every Child<sup>4</sup>

Scotland is not a large country and related to this, provision for specific specialist needs is therefore not lucrative or always available. For example

- There is little family based provision for children with disabilities – their care tends to be provided the form of residential school placements with related rights issues

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<sup>4</sup> <https://www.gov.scot/policies/girfec>

- Provision for those requiring secure care related to mental health issue is often sourced south of the border with all the ramifications of this

Processes for setting up new provision is also a barrier. Appropriate checks are vital for ensuring that the care provided is safe and suitable, but the time these processes take can be prohibitive against creative and responsive service development. For local authorities there is the additional impact resulting from procurement legislation and Committee processes, which can contribute to delay.

Working effectively there would be sufficient provision to meet a range of need, and to provide choice of placements to allow for matching considerations; a responsive market, and a more cohesive relationship between the local authority sector as purchaser and external providers.

### **Thinking on possible remedies**

Social Work Scotland would broadly agree with the report recommendations and would welcome continuing conversations around exploration of recommendations for national or regional bodies with a remit around ensuring the right placements are available for children. Within this, we would emphasise the importance and need for local and responsive provision to ensure children can remain in their own community as much as possible. This has a particular relevance in Scotland given the implementation of legislation around sibling placements, and the legislative requirement to place brothers and sisters near to one another. The specific and additional issues related to rural and island authorities should be noted.

Core to any future development is the ability of local authorities to engage appropriately with providers, both internal and external, and to have the ability to be flexible and responsive.

As noted, we agree that cross border placements pose particular issues. As an organisation, we have undertaken work in this area through our Fostering, Adoption and Kinship Sub Group (a network covering the spectrum of providers and local authorities) in conjunction with Scottish Adoption Register. This can be shared with CMA. This forum has also considered in detail issues arising from the increase in kinship placements and the implications of the legislation for cross council placements, with the resultant development of a draft Kinship Care Protocol. On a similar note, the Scottish Government, following discussion with kinship groups and agencies, has developed a Kinship Care Collaborative with the aim of reviewing the current 'map' of kinship practice and provision, and progressing improvements.

While a national or regional approach is worthy of exploration, a change in structure in itself may not result in the desired change. The importance of regional or national frameworks assisting and supporting local authorities and not resulting in additional steps and barriers in the placement sourcing process is crucial to any change. This should sit alongside ensuring local placements and capacity for local authorities to deliver on legislative and policy commitments linked to children's rights e.g. UNCRC and Children (Scotland) Act 2020

## **Financial analysis**

The financial analysis and interpretation in the interim report resonates with Social Work Scotland's knowledge and information from members. We would suggest that further discussion and consideration is required in this area, and should include learning from the adult care sector and both the challenges and remedies applied there. Social Work Scotland can facilitate access to this sector in Scotland.

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