

## CMA Interim Report Response

### Specialist Education Services Ltd

#### **Unwitting Barriers through Regulation**

*20. 5.21 With that important proviso, however, an effective review should also take into account any potential barriers to supply in the existing frameworks, and the potential for unwittingly creating barriers in any future regulatory frameworks, to ensure the effective functioning of the placements market, whilst at the same time not compromising the quality of care. The CMA is not best- positioned to decide on the appropriate level or final design of regulation, but it is able to advise on the impact of different approaches to regulation on the way the market is likely to function.*

There is no doubt from our experience that regulation has helped raise standards of care across the residential children's home sector. The benchmarks are much higher than they were 16yrs ago.

In understanding where we are now it might be useful to reflect on what the influences and decisions were to bring us to this point.

When we (SES Ltd) started our original registration for Avocet House, 16 yrs ago, it was done by CSCI who were the regulatory body for Children's homes. In the wake of serious case reviews the political agenda understandably moved to recommendations for unified children's services, this was reflected within local authority structures where education departments and social care departments came under a single leadership structure and twin positions of Directors of Education and Heads of Social Care were replaced with Heads of Children's Services.

The common-sense structural change was to bring education and social care regulation for children under the remit of a single regulator. Hence CSCI was replaced or subsumed by / with Ofsted. Ofsted had lots of experience in being a driving force for the raising of standards across the education sector. Overtime Ofsted, both in terms of its approach in schools and children's homes has evolved. Built into its DNA at the point of taking over CSCI was its previous experience and approach. Much of this cannot be fully separated or disentangled from an era that was highly political and very much in the media spotlight. From the formation of Ofsted under John Major, to the "Education, Education, Education" mantra of Tony Blair and the growing role of the European Union, Education, being one of the few policy areas that central Westminster still had control over. Children's future through education and their living conditions are emotive subjects and the media have been and continue to be, hypervigilant to events and trends in this area. Politicians are both consciously and subconsciously acutely aware of this. This in itself is a potential barrier to policy makers making brave and radical decisions, that in turn remove and refine structural barriers to create new conditions for positive change.

Ofsted is a curious 'animal' on the one hand it has undoubtedly contributed to positive change. It's journey through the educational and social care landscape has not been straightforward. All along it has had to deal with accusations from schools and providers about inconsistency of inspection and variance between inspectors. A lot of this particularly in the early days of school inspection was very stark and legitimate. Ofsted has resolved this by increasing standardisation and refinement of its frameworks and standardisation of language in reports, thus reducing the scope and licence for inspectors to express in detail and bring alive what they are actually seeing. Along with this was the legacy of complaint and injustice schools felt in the early evolution of Ofsted in the school's sector and Ofsted has developed into a model where you can complain and point out factual accuracy, but have little recourse on interpretation. You simply cannot, as much as you do standardise, totally remove the subjective aspect of individual inspectors interpreting frameworks according to their own values and experience. All this history and the principles associated with it, embedded into the school's framework have informed and have now been imported into the social care frameworks.

Some of this is legitimate, 'it's worked here, it will over there', thinking, why reinvent the wheel?

Unfortunately, there is a picture of unconscious bias that fails to see the broader unintended consequences. The current Ofsted frameworks do not need radical change and overhaul, there is far more positive, than there is unintended negative, but it does need a step back and honest appraisal of what Hargreaves in school research used to term the 'hidden curriculum', the messages we are giving and what's happening beneath the surface, despite best intentions. Key forensic refinement is needed that would make a world of difference.

In many respects Ofsted can't win, they are accused by schools and children's home providers of inconsistency and they have listened and combatted this with a standardised model and rigorous training of inspector's adherence to the model. Language in reports is also standardised and restrictive in nature. There's very clear 'guidance' on how judgements of Good and Outstanding can or cannot be made and although limiting judgements relating to even single safeguarding concern are not categorical, there is an overt pressure on inspectors to err on the side of caution in respect of anything related to safeguarding. Confident and very experienced inspectors are dispassionate, don't panic and look at the broader picture before coming to ultimate judgements, less confident who have not themselves worked at the chalk face of looking after the most complex children, are risk averse and get preoccupied because of individual events and fail to put that against a broader picture, it is easier and safer to cover themselves with the lower judgement in case something comes out later.

The difference in approach between confident and less experienced inspectors would be an issue whatever, the structure and system, it's a fact. The issue is more about the framework and ultimate choice of judgements all inspectors have at their disposal and the implications of certain judgements for school leaders and children's home providers and ultimately the children.

Language is powerful. The move away from inspectors' licence to judge a school 'satisfactory' came from political rhetoric "Ever Child Deserves a Good Education". The aspiration to deliver this is very noble and nobody can argue with that. We could equally say from a perspective of equality why shouldn't ever child deserve an outstanding education?

No politician was daft enough to pin their colours to the mast on that one, but the reality is both are undeliverable in practice. The truth is that life is relative there's Super rich, rich, okay, poor and absolute poverty. In this day and age with the resources at our disposal, we should absolutely deal with and never accept absolute poverty or inadequate children's homes. There are families that appear to be loving caring, well resourced, children engaged and stimulated, are they outstanding or good? The truth is there are children living in families where not everything is ideally in place, but they are loved by parents or a parent who are doing their best in extremely challenging circumstances. Who are we to judge them as 'requires improvement'? Maybe it's good enough considering the circumstances?

There clearly have to be thresholds and there's nothing wrong with aspiration to be better. No children's home provider wants to be described as satisfactory and the idea that using terminology of "requires improvement to be good" the original long hand version that got shortened to "requires improvement" (by both media and professionals, everybody inadvertently colluded with that) to fit conveniently with a political mantra that "Ever Child Deserves a Good Education". This unintended, thread applied to the education sector by Ofsted was transferred and imported in Ofsted's standardised think to the children's home sector with all its unfortunate and unintended consequences that the CMA interim report is already picking up upon.

Satisfactory has connotations that are unpalatable in the hypervigilant media scrutiny world we live in. It influences politicians, it influences financial backers, it influences placing authorities. "Requires improvement" is on another scale! Placing authorities have wholesale removed children from the stability of their home because their home carries a label that is a risk to how they, the placing authority, will be publicly judged.

Sometimes we just need to tell the truth, would they remove a child from a home described as 'satisfactory' or 'good enough in the circumstances' Or 'Satisfactory in the current circumstances' or more neutrally. "Not good, but not inadequate". Perhaps just a brave variation on language from Ofsted is all we need to make a big difference in this market place?

We would advocate removing the emotive terminology that is a business threat to providers and a threat to children's stability. More specifically remove the "requires Improvement" judgement. There are safeguarding controls and monitoring for children at individual and placement level, through LAC review, LADO, Social Worker level all with recourse to the regulator even in-between inspections. If satisfactory isn't palatable to the political / public eye then maybe some other descriptor is?

## **‘Churn’ Factor and the need to promote quality**

The market does not promote and reward quality of outcome.

The regulator inspects individual homes and also periodically the placing authorities at moments in time. It forms an Outstanding, Good, Requires Improvement, or inadequate judgement. Providers and placing authorities navigate their path between inspections.

The regulator and even its own framework float above a hidden and opaque data set that tells a better story of quality, or lack of it in respect of what works for children over time. Ofsted judges, in its own words, improvements or otherwise ‘since the last inspection’.

Local authorities do not appear to hold key data on the outcomes for children for the respective providers they chose to place their children with.

Nor does their appear to be an accountability through the Ofsted regulatory inspection model on individual providers or Local Authorities to hold and publish some key outcome data for looked after children over time.

Tracking over time seems to be completely lacking. Providers are not incentivised to publish the data either, perversely partly because they don’t need to in order to secure placements, there’s an undersupply in the market. Many of them might be quite happy not to do so, the statistics are stark. (See Narey Report 2016)

It’s what we would describe as the churn factor the revolving door of repeated failure for Looked After Children.

## **Length of Stay**

What is the length of stay data for each children’s home in the UK? It’s not all that simple because homes vary in remit but it can be measured against those remits.

Do placing authorities have and actively use the length of stay data for individual children and hence the global data for all their children and through it generate the data on the providers they use?

## **Why is length of stay important?**

Crudely, it’s a critical indicator of whether in simple terms children are happy and settled. Children whose early life has been one of trauma and abuse cannot recover until they have a secure base, they cannot engage in meaningful education and therapy without a secure base. A secure base cannot be magically achieved in a matter of months, it takes time. It takes more time after that before children are ready for one to one therapeutic support if necessary, they will only access it if they have trusted and solid adults around them that introduce them to it. Even high, quality foster carers sit in a que at the behest of the local authority CAMHs waiting lists. So, one of the reasons private providers exist is that they can ensure these services are all available, through their own consultants, at point of contact at the right moment for the child. The reason local authorities consistently fail with their own

provision for the most complex children is that they are too bureaucratic, they through 'efficiency' reasons rely on their own services which are fragmented into silos of health care and education and are often choked up in terms of demand and waiting lists beyond the realm of their most needy responsibilities, Looked after children... there's competing need all of which the hypervigilant media are ready to jump on the first time something goes wrong. Layer on top of that the unwieldy local authority machine with its variance in philosophy and approach through the layers of hierarchy, enter a new local authority commissioner with a new solution, often an edict, such as "every child deserves to live in a family" or "every child should be placed locally". Aspirationally and a touch stone to test against then this is fine, when it becomes a doctrine, as it often does, it's dangerous and short-sighted. Geography isn't the limiting factor, it's the vision and intent to meet need irrespective of geography. We have children at SES that the move away from local authority of their origin was the saving factor, we have children that didn't want to go back at 18 yrs to where they came from because they found a secure base, love and a future close to their secure base in Norfolk, others through the secure base and the family systemic work offered made it to a strategically planned transition home back into the family, irrespective of the geographical barriers, way ahead of the commission to look after them until 18yrs of age.

The missing aspect of the Interim Report is the importance of analysis of and the requirement to, publish quality outcomes for children placed in residential and foster care overtime. We at SES have those statistics transparent and available on our website for all to read right down to every child that has ever been placed and subsequently left us. The question that bemuses us is why are Placing authorities not second guessing us with their own tracking data and why do they and the regulator not hold providers to account for this data.

So, the challenge to Government, advisers, policy makers, local authority heads of service and other providers are why are you not tracking and publishing this data?

**There are other data sets that are important:**

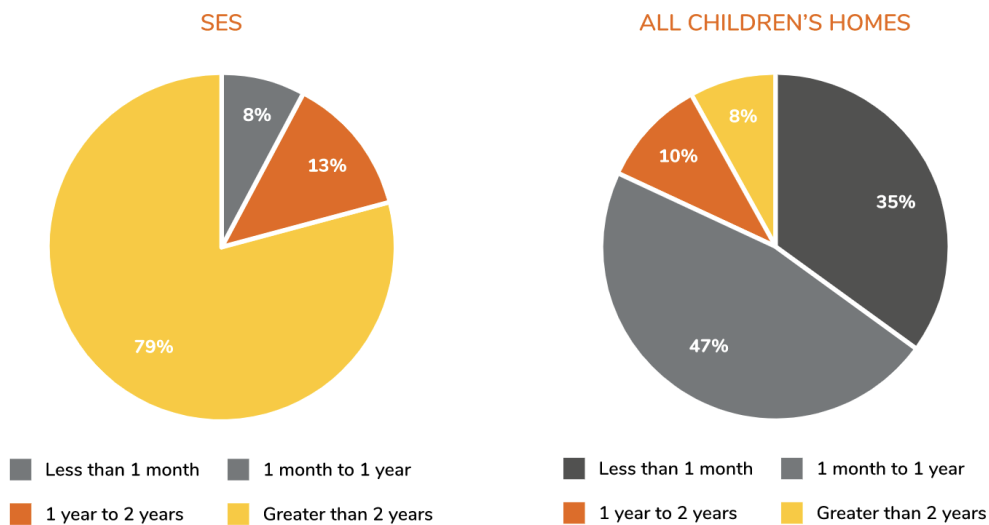
What are the outcomes beyond specific provision... did they go to prison?

Were they in full time work and employment.

Is this data transparent and can be verified down to individual child level and available to the regulator if the regulator wants to a 'deep dive' (current descriptor for Ofsted's new framework for inspecting curriculum provision in schools re Maths or English) into a child's journey through the social care system. Clearly not all Ofsted's framework principles have been migrated across to how local authorities care for their looked after children.

<https://www.specialisteducation.co.uk/admissions-information/ses-performance-outcomes/>

## Length of Stay



Source - Residential Care in England: Report of Sir Martin Narey's independent review of children's residential care (2016)

The issue here is that quality overtime is a huge factor in reducing “The Churn”. At SES we take THE MOST COMPLEX children, some of them step down from Tier 4 secure provision, yet the SES statistics show it can be done way beyond national averages even for all children in all children’s homes.

### **A missing component is that quality reduces the market need.**

Despite the level of complexity of admission at SES provision the real and transparent fact is that the children placed in our provision by placing authorities (They don’t pay our fees lightly) is because they are at an end stop. At the time of admission, they perceive that they the children placed need provision through to 18 and independence. Yet a quality model that works with the child, their personal circumstance and systemic family working uncovers other unforeseen possibilities. Out of the 47 leavers in the 16-year history of SES, 18 (38%) have been strategically transitioned out of residential care through being reintegrated into their natural family environment and / or foster care. The vast majority is the former, we are not a replacement for their family but we are a second family and provide a familial experience they have not previously had the fortune to enjoy. Our longitudinal studies following, as well as we can, all our leavers indicate that only 2 (4%) out of the 47 spent any time under her majesties pleasure, as care leavers.

There is 16 years of data at SES that is indisputable and proves that positive outcomes are possible, but it isn’t easy to deliver such results.

25% of the adult prison population are former Looked After children. Rates of mental health and suicide for care leavers equate to being four times more likely than other people. One in five homeless people are care leavers.

Once again are placing authorities who are responsible for each care leaver until age 25 tracking this data and putting that against their own strategic planning and the placement decisions they make?

In 2003 two Gentlemen, Jon Lees and Steve Lord, both county council employees explored whether they could open up their own provision to cater for children who appeared to get the worst deal. As successful Headteachers in highly successful local authority, 38-week SEMH boarding school settings, they saw that the children who failed even in such high-quality provision were those who were on the edge of care, whose family situation broke down. They simply, at that point in their lives, didn't care about classroom rules and targeted learning, there were bigger considerations and struggles in their lives.

The concept was a provision of care, home and education totally personalised to their educational and therapeutic needs in one place. A responsive model where learning is seen beyond the classroom, a blended model of social, health and educational learning where one of those three areas isn't presented as hierarchically more important than the other, truly integrated teams from all those disciplines delivering and driven by the young person's individual needs. We opened Avocet House in 2005 and sixteen years on, the results speak for themselves. Part of the motivation was professional excitement to do something nobody else was doing for these children and proving it could be done. Part of it was entrepreneurial excitement of being in control of your own business and cutting free from the county council red tape and bureaucracy to deliver a quality model without restraints and interference. Avocet House achieved across the board Outstanding judgements with Ofsted in 2009 for both school and social care and that remained the case uninterrupted for 12 years. In the same timescale with a capacity for 8 children only 32 children were admitted. Interestingly and sadly, we currently average 31 referrals a day.

However, had that journey started now we don't believe it would have ever got off the ground.

We did a business plan, we took on the best corporate solicitors and accountants to help introduce us to the high street banks, HBOS (Now Lloyds) were willing to back us. We re-mortgaged our homes and put £100,000 each into the business as seed funding. HBOS gave us an unsecured overdraft facility of £100,000 that a few years into our journey, due to circumstances, later grew to £400,000. Of course, all of this was before the financial crash. When it got to 2012 when we were ready to open our second provision, Turnstone House it was done on a secured basis against the remaining equity on our homes, the financial landscape had changed.

We had hardly rushed our expansion, opening a new provision is hard, it's a dream, a blank slate but taking over failing provision is easier. Failing provision is always about poor leadership and management, but there is always some structure, a skeleton to start to build upon. Some existing staff who were previously perceived as 'weeds' actually turn into

flowers under good leadership and management. However, starting from scratch is akin to starting with a lump of jelly. The vision can be in place and you can recruit good keen people signed up to the vision, but the early stages are hard. Your business model means you have to admit children with a keen and willing, but inexperienced team. The traumatised young person who has been moved from pillar to post is going to test, you get early staff turnover and turbulence, the vision remains but the journey is hard. If you walk around SES provision tomorrow you would see happy thriving young people, a calm atmosphere and children engaged in school. Beautiful buildings and grounds that shout out “we care”. The record in the early days of our journey was 41 broken windows in one day! They were all repaired in 48 hrs but I do wonder what the Ofsted finding would be now, particularly if it was an inspector at the more inexperienced end of the continuum who is more risk averse and didn't have the facility to form a judgement of “satisfactory considering the circumstances”. A judgement of “requires improvement” that didn't exist then, would have ended the business, in the current climate placing authorities don't place children into that category. The Ofsted model means you have to live with that judgement for a whole year!

Another motivation to enter the market was partly to agitate it, we knew we could do better than the institutionalised model of children's home that were typical and what we were witness to when we were school head teachers back then at the turn of the millennium.

The market is large scale Private equity dominated. My former business partner, Steve Lord is ten years older than me and in a 50 / 50 partnership exit options have been challenging. We've had private Equity deals on the table that we've stepped back from because of a combination of questionable motives and integrity. Ultimately, I bought out my business partner in March 2021 with alternative lending at 8% borrowing, which means the company now carries debt. It's not a business you can hand on to your children, it needs acumen and informed passion, so at some point SES will be swallowed up by Private Equity, we might stave that off for another generation with a management buyout with the existing management team but it's probably inevitable in the long run. I'm pragmatic in that respect, but what saddens me most, are the barriers to entry for the future potential agitators, which relate to both the changing financial landscape but also the regulatory one. Any new start needs very serious financial backing beyond the means of passionate county council employed individuals which Steve and I were.

This is even more sad when we consider that high quality models and best practice are part of the answer to a proportion of the market imbalance and problems faced. The “churn” factor and instability the children face epitomised in the Narey report reflect the lack of quality and expediency of short termism associated with local authorities trying to find appropriate placements. Much of the market is a revolving door of repeated failure. This is a missing component to the interim report, Ofsted data is impotent, it's a here and now photograph of the quality of provision according to descriptors of Outstanding, Good, Requires Improvement and inadequate. Who is tracking the life paths of the individual children? Ofsted aren't nor are placing authorities.



#### At individual level

- How many changes of social worker has “Harry” had to endure.
- How many failed foster placements has “Harry” had before the decision to move to residential?
- How many failed residential placements has “Harry” subsequently had?
- As a placing authority how are we keeping data on failure and lengths of stay of the providers we chose to place all our “Harrys” with?

#### At a more global level

- How are the Placing authorities holding the providers to account in keeping their own data of outcomes and length of stay overtime for the children they place with them and triangulating that with their own data?
- Do placing authorities reward best practice by keeping data sets and placing according to outcomes produced by the respective providers they chose to use?

If the market was driven by more meaningful data rich decisions, it would drive up quality. There's great practice in the residential market dealing with complex issues but also there is a significant revolving door of repeated failure. It's almost accepted, residential is seen as a last option, there isn't a national or local authority vision that you can reduce the looked after child population through very high, quality residential provision. We have that vision at SES and have the transparent results to prove it can be done. It saves the public purse and reduces the market need. What if every children's home delivered such result, the market need for residential would be reduced significantly.

#### **Sharing of Best Practice**

As the interim report identifies there's an imbalanced market where there is way too much business to go around the respective providers. Yet there is a climate of secrecy and trade competition. There is a climate of being hung up on conflicts of interest above the best interests of the children. As referred to earlier at the point of opening up Avocet House in 2004/05, I was Headteacher of a local authority residential boarding school. The boarding element was inspected by CSCI. I respected the view and opinion of our allocated CSCI inspector. I shared with her in confidence our plans to open a children's home. She supported and accompanied me on a visit to the building to vet it's suitability and advise beforehand. This was invaluable. Under current Ofsted regime this would be seen as a major conflict of interest for an inspector. In the early days of inspection there was more of a flavour of inspectors being trusted to come to judgements but build relationships and advise. I don't think I have the answers because I can't see how Ofsted can win, they have standardised and sanitised as a result of school and provider criticism but there has to be a demerging of boundaries between commissioners, providers and between providers and regulators to move to more aspirational quality beyond the narrow here and now quality marks used by the regulator.

## **Profits**

We are happy to share our year-end figures with the CMA in total or summary form. There's no great milking of the public purse within them. It was years until we achieved a positive balance sheet.