

Consultation response: Competition and Markets Authority, Children's Social Care Market Study interim report

This response to the CMA's Children's social care market study interim report has been informed by The Children's Society's direct work with looked after children and 16 and 17 year olds in unregulated accommodation, as well as our extensive research on the subject.

The comments relate mostly to issues around sufficiency of provision and placement of children in children's homes and unregulated provision, including in accommodation outside their home areas.

Our analysis of market outcomes 1) Do you agree with our analysis of market outcomes, as set out in Section 3 of this interim report?

Overall we agree with the report's analysis of market outcomes. But there are also some additional issues that we would like highlight:

- **Importance of considering market analysis findings in the context of short-term and long-term outcomes for individual children**

In 2019 The Children's Society supported the inquiry by the All Party Parliamentary Group on Missing children and adults into children going missing from out of area placements. The Inquiry's report 'No Place at Home'¹ highlighted similar issues as outlined in the CMA's interim report, and came to the conclusion that the care placements system is failing the most vulnerable children as there are simply not a sufficient number of placements providing good care in the locations that children need them.

As the result of placements insufficiency there has been an increase number of children placed into out of area placements, often on an emergency basis, and often in placements that are not best placed to meet their needs.

The biggest area of concern highlighted by the inquiry was regarding the outcomes for children placed in residential children's homes and semi-independent provision far away from home, who go missing frequently, and who also experience frequent placement breakdown. As well as an immediate outcome of increased risk of going missing and being targeted for exploitation, the inquiry highlighted the long-term impact on children's mental health and wellbeing, the risk of children missing education and consequently becoming NEET in late adolescence and/or young adulthood, and ultimately bringing into focus the significant cost impact that failures in the system have on the lives of children who experience it.

We believe that it would be helpful if the final report from the CMA provided more focus upon outcomes for children. It should also highlight gaps in collected and published data related to the care market, which currently prevents more child-centred decision making about the future of the care market.

For example whilst, as the report highlights, in-house local authority children's home provision may be comparable with private provision in terms of cost and the outcomes of

¹ <https://www.childrensociety.org.uk/sites/default/files/2020-10/no-place-at-home.pdf>

Ofsted inspections, but further analysis is needed to understand how both types of provision compare in terms of achieving stability for all children placed there; ensuring less disruption to children's lives, maintaining contact with families and friends, and longer-term outcomes. These measures are currently not reported on but they should be considered in future decisions in the same way as the cost. For example, the impact of clustering of private children's homes in certain areas of the country should be considered in the context of how it drives the increase in the number of out of area placements and the consequence this has on children's lives.

A greater level of understanding of what provision is included in comparable prices would also be helpful. For example, from our practice we know that staff to child ratio in children's homes is important, particularly in cases where children go missing, as it allows staff to have more time with individual children. The report has already highlighted the staff to child ratio difference between private and local authority children's homes provision and it would be helpful if this was considered from the point of difference it makes to relationship with children and support they receive, in addition to the cost.

We believe that there are some gaps in the data currently that do not allow for a proper overview of how the care market operates. Information on the number of placement decisions made on emergency basis, the number of refusals to accept placements by care providers, and the number of placement moves as a result of children placed in unsuitable accommodation on a temporary basis, are all some of the types of information that would be helpful in informing further decisions. And we would welcome if the final report provided an overview of data needed to help decision makers to understand how the market works in the future.

- **More focus on unregulated accommodation**

We would also encourage the final report to look closer at the outcomes and drivers related to unregulated accommodation as part of the care market. The interim report has helpfully highlighted some trends around profit levels and the increase in the number of these placements.

The APPG Inquiry highlighted a trend of an increasing number of children being placed in semi-independent accommodation not regulated by Ofsted that is also located out of area. There is currently no data reported at the national level on the number of children in unregulated placements. The Children's Society's research into children in unregulated accommodation highlighted that such accommodation is often used to house looked after children, care leavers, 16 and 17 year olds who are homeless and those accommodated under homelessness legislation, as well as vulnerable adults up to the age of 24. It was estimated that around 8,400 young people aged 16 and 17 were living in unregulated accommodation.

According to responses to parliamentary questions posed by Tim Loughton MP, at the time of the APPG inquiry between 2014 and 2018 there has been a 53 percent increase in the number of looked after children living independently in supported or semi-supported accommodation (up from 3,280 in 2014 to 5,020 in 2018) and 97 percent increase in the number of children living in supported or semi-supported accommodation outside their home local authority area (up from 1,020 in 2014 to 2,010 in 2018). Concerns about the quality of provision and oversight of provision have been persistently raised.

The Children's Society has been concerned about the use of unregulated provision by local authorities to house 16 and 17 year olds who seek help from Local authorities due to the risk of homelessness. Despite the Southwark judgement which requires that in such cases children should be accommodated as looked after children under Section 20 of the Children Act 1989, many are accommodated under Section 17 of the Children Act and/or under the Housing Act. Some children retrospectively gain looked after status through legal challenges

to the their local authorities. This issue has been highlighted by The Children's Society research 'On your own now'² as well as more recently by the Just For Kids Law charity in their briefing 'Not in Care, Not Counted'³.

We understand that the main reason behind the increase in the number of placements in unregulated accommodation is due to the increase in the number of children in care and the lack of placements overall. Yet for the purposes of analysis it would be helpful to understand whether the cost of provision and the lack of regulatory framework around the provision may also be a contributing factors leading to increased use of that provision, despite the negative outcomes for children placed there.

An overview of what unregulated provision is available would also be helpful to inform future decisions, particularly in light of reports that boats, caravans and even tents are used to house children and the increase in deprivation of liberty orders as highlighted recently by BBC reports⁴. It is important to acknowledge that the lack of sufficient provision for looked after children, combined with the lack of oversight of currently unregulated accommodation is driving the inappropriate use of unregulated accommodation and that it has detrimental impact on children's safety and wellbeing. Secure children's homes market should also be included in the review.

Our emerging conclusions on the potential drivers of market outcomes: 2) Do you agree with our emerging conclusions on the potential drivers of the market outcomes, as set out in Section 4 of the interim report?

We agree with the analysis of potential drivers. The additional area in terms of drivers that we would like to receive more focus in the final report is the use of unregulated accommodation as outlined in response to question 1.

In terms of the overall performance of the care system, it is our view that the increase in the number of children being placed into care is also being driven by long-term reductions in spending on early intervention measures such as family support, youth services and children's centres across the country. Research undertaken by Pro Bono Economics on behalf of the children's services funding alliance⁵ demonstrates how, without the support of preventative measures, the number of young people and families that go on to develop more severe difficulties is likely to increase. This will drive up the demand for late intervention services such as care placements. The supply constraints that already exist in these markets are likely to be further exacerbated, leading to further cost increases for these services.

We also believe that more work needs to be done to ensure that Local Authorities' sufficiency strategies are of good quality and address the same range of issues across the country. Currently sufficiency planning is of inconsistent quality and misses out many important drivers, such as those related to the use of unregulated provision.

Our recent (and still unpublished) analysis of sufficiency strategies has found that there is a disparity in the quality and availability of these strategies, with some local authorities not having published their strategies entirely and others missing vital information on their looked after children population. On average, the strategies indicate that 16-17 year olds make up 25% of the looked after population across local authorities. Many local authorities have reported a rise in this cohort entering care with complex needs, placing additional pressures on the local authority to meet their sufficiency duty. Efforts to reduce out of area (OOA) placements for teenagers are not widespread, with only a small proportion of local authorities outlining in their strategies how they aim to reduce OOA placements.

² https://www.basw.co.uk/system/files/resources/basw_122039-4_0.pdf

³ https://justforkidslaw.org/sites/default/files/fields/download/Just%20for%20Kids%20Law%20-%20Not%20in%20care%2C%20not%20counted%20-%20June%202020_0.pdf

⁴ <https://www.bbc.co.uk/news/uk-59147367>

⁵ <https://www.probonoeconomics.com/a-decade-of-change-for-childrens-services-funding>

As we highlighted above some important data that can inform sufficiency strategies is not routinely collected, including on the number of children placed in emergency accommodation, the number of children experiencing placement breakdown due to temporary nature of their placements etc. There is a need for a national co-ordinated effort to understand and fill these gaps in data. In addition to that there is a need for a good practice guidance for local authorities on how to put together a good sufficiency strategy, how to update it on an annual basis in a meaningful way and overall oversight of the quality and consistency of local sufficiency planning.

Our thinking on possible remedies 3) Do you agree with our thinking about possible remedies as set out in Section 5 of the interim report?

We support possible remedies that look at more national co-ordinated effort to address the lack of good quality placements where children need them.

The APPG inquiry came to the conclusion that it would not be possible for local authorities on their own to resolve this issue in the context of such significant cuts to local budgets, and recommended a national action. The national action recommended needs to go above and beyond of helping local authorities to secure placements (e.g. as considered in para.5.14 in the interim report). It should instead focus on addressing the whole raft of issues, including considering the needs of children and how to meet the best interests of children through placements.

The APPG inquiry recommended that the Department for Education should develop an Emergency Action Plan to significantly reduce the number of out of area placements. The Government should then take responsibility for ensuring that there are sufficient local placements to meet the needs of looked after children. The plan should address the supply and distribution of children's homes nationally, the use of unregulated semi-independent provision, and should be backed by funding. We support this recommendation.

We would also like to see changes in regulation and registration of currently unregulated accommodation for children. We believe that all accommodation for vulnerable children should be registered and regulated to ensure quality of support for children as well as to remove incentives within the system to commission temporary placements of poor quality that are not meeting the needs of children, but in some cases are even increasing the risk of abuse, exploitation and long term negative outcomes.

In our view, any changes to how unregulated accommodation operates or is regulated need to be introduced as part of a wider programme of reforms that addresses the lack of sufficient placements for looked after children in foster care and children's homes in locations where children need them. This helps avoid the unintended consequence of reduction of placements available.

Lastly, we believe there is a need for care placements market to be led not just by costs of placement information and an analysis of market needs, but also by the needs of children themselves, their wishes and consideration of how to deliver the best long-term outcomes for them. We would therefore not support any solutions that would further remove decision-making from children themselves, such as if regional or national bodies were to be established to make placement decisions. Any solutions put forward by the CMA Social Care Market Study must aim to deliver a system which is driven by the needs of children themselves and the potential for delivering the best long-term outcomes for them, rather than being purely driven by cost and other economic factors.

