



Early years education and childcare market study

Response to the Statement of Scope and representation under section 131 of the Enterprise Act 2002

CONSULTATION RESPONSE

Submitted to	Competition and Markets Authority (childcare@cma.gov.uk)
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Date	July 2026
Status	Non-confidential. This response may be published in full.

Advocating for all Early Years Providers

1. About Early Years Voice

Early Years Voice (EYV) is a provider-led advocacy organisation representing private, voluntary and independent (PVI) early years providers in England. We are a company limited by guarantee (company number 16353367), funded by providers rather than by government. Those we speak for range from childminders and single-site nurseries and pre-schools to multi-site groups; the large majority operate a single setting. More than 5,000 settings have publicly supported EYV campaigns.

This response is non-confidential and may be published in full. It responds to the Statement of Scope published on 1 July 2026 and, as invited by paragraph 44 of that document and by the Market Study Notice, makes a written representation that the CMA should make a market investigation reference under section 131 of the Enterprise Act 2002. This response addresses each of the questions published in the Statement of Scope; we note for completeness that the published question list runs from Q1 to Q11 but contains no Q4 or Q7.

2. Summary

- We welcome the study, and in particular that the Statement of Scope goes further than the Secretary of State's request: it asks directly whether government-funded hours cover delivery costs, and it places the conduct of local authorities within scope. Both choices are right.
- We represent that the CMA should make a market investigation reference under section 131. The features of this market that require remedy are structural, and the CMA's own 2017 care homes market study shows what becomes of structural findings delivered only as recommendations.
- The commitment at paragraphs 9 and 29 to take account of the overall funding envelope must not be allowed to constrain the assessment itself. The CMA should find and report the relationship between the funded rate and the cost of delivery as the evidence shows it to be.
- The evidence base must reflect the composition of the market. Group operators account for a minority of provision; the typical provider is a standalone setting or childminder operating at or near break-even on the government's own figures.
- The study should follow the entitlement funding end to end: from the Dedicated Schools Grant, through local authority retention and conditions, to the provider and the parent.

3. Representation under section 131 of the Enterprise Act 2002

The test for a reference is whether the CMA has reasonable grounds to suspect that a feature, or combination of features, of a market prevents, restricts or distorts competition. Features for this purpose are not confined to the conduct of firms: the structure of a market includes the funding and regulatory framework within which its participants operate. We submit that such

grounds exist here, on evidence the CMA has itself cited in the Statement of Scope, and that four features operate in combination, each a product of that framework, of the conduct of public bodies within it, or of both.

First, the price of the majority of the product is administered. On the CMA's own market-size estimate, funded entitlements now account for around 63 per cent of average provider income. For those hours there is no price formation: the rate is set by government and distributed by local authorities. The national average rates for 2025-26 are £6.12 per hour for three and four year olds, £8.53 for two year olds and £11.54 for under twos.

Second, that administered price sits at or below the cost of delivery for a large part of the sector. The Statement of Scope cites the DfE's finding of a median income-to-cost ratio of £1.01 of income per £1 of cost in 2025, with around one in four nursery class settings and one in three childminders bringing in less than £0.80 per £1. A market in which the typical supplier operates at break-even on a price it cannot adjust is not one in which competition can discipline anything.

Third, the consumer price of funded hours is fixed at zero by statute. Section 7 of the Childcare Act 2006 and section 1 of the Childcare Act 2016, with the regulations made under them, require entitlement provision to be secured "free of charge". Neither Act requires the funded rate to meet the cost of the provision it buys. Parliament has legislated the promise without legislating a mechanism that funds it, and that asymmetry, a statutory price of zero alongside an administrative rate at or below cost, displaces price formation into the only space that remains: charges for meals, consumables and services outside the entitlement, and fees for non-funded hours. The charges now described as hidden are the visible symptom of that displacement, and their root sits in the design of the legislation, not in the conduct of providers. The DfE's own evidence from the 2024 provider survey, published in September 2025, found that while 77 per cent of providers made some form of additional charge, income from additional charges amounted to 1.5 per cent of providers' overall income. We note, and raise ourselves, the report's caveat that some providers may fold costs into headline fees, so the figure should be tested rather than merely quoted. But on the government's own measure, the conduct referred to this study is marginal set against a sector at break-even. An intervention that restricts these charges without addressing the rate beneath them does not remove the cost, it transfers it to providers already at break-even, and the predictable result is exit and reduced supply. That is a consumer harm, not a consumer protection.

Fourth, local authorities stand between the funding and the provider, and both retain and condition it. Local authorities' own section 251 budget returns show they plan to retain £288 million of early years entitlement funding in 2025-26 before it reaches providers, up 73 per cent in two years. Separately, provider agreements in a number of authorities impose conditions going beyond the closed list of permitted objectives in the DfE's statutory guidance, including, in at least one agreement we have reviewed, a set-off clause purporting to allow recovery of any monies owed to the authority against entitlement payments. Providers have no realistic ability to negotiate these terms and no effective route of redress.

Why a reference, not a study alone

The CMA's 2017 care homes market study examined a market structured almost identically to this one: a state-funded cohort paid below the cost of provision, cross-subsidised by a higher-paying private cohort. The study made the central finding, that local authorities were paying below the cost of care by around £1 billion a year, and government welcomed the report and accepted the direction of its recommendations. The substantive reforms were then delayed and, in July 2024, cancelled. That is the ceiling of what a market study report can deliver: an authoritative finding, and recommendations that can be shelved.

A reference under section 131 places findings on a statutory footing, engages the duty to remedy, and produces orders enforceable against market participants, including local authorities in their market-facing functions. The funding decision itself would remain, rightly, with government and Parliament. But the difference between a recommendation that can be set aside and a statutory remedy that cannot is precisely the difference this sector's recent history shows to matter. This also answers the question of discretion: where the CMA weighs whether alternative approaches would address a problem, it can weigh the fact that the study-and-recommend route has already been run, in a market with the same structure, and did not hold.

Timing

The DfE is consulting on the entitlements funding system until 14 September 2026, with a government response expected during this study's evidence phase. We ask the CMA not to treat prospective departmental reform as a reason to withhold a reference: recommendations whose force depends on future policy delivery are exactly the outcome the care homes precedent warns against. Nor should that consultation's existence be mistaken for the reform being in hand: it concerns how funding is allocated and distributed, and does not propose to review the adequacy of the overall rate, which is the feature at the centre of this market. If the CMA is not minded to make a reference now, it should state expressly that its December 2026 update will include a reasoned decision on a reference against the evidence then gathered.

4. Q1: scope

We agree with the proposed service and geographic scope and with the five themes. We ask for three clarifications.

The funding envelope. Paragraph 9 attaches the funding envelope to possible outcomes, which is legitimate: recommendations must be capable of implementation in the world as it is. Paragraph 29, however, states that the CMA will take account of the envelope “in our assessment”. Findings and recommendations are different things. The department responsible for the funding under examination is an interested party in this study, and an assessment bounded by that party's spending preferences would compromise both the study's independence and its value. We ask the CMA to confirm that the envelope will inform the design of recommendations only, and that its findings on the relationship between the funded rate and the efficient cost of delivery will be made on the evidence, whatever their fiscal implications.

The distribution chain. The study should expressly examine the path of entitlement funding from the Dedicated Schools Grant through local authorities to providers: the amounts retained centrally, the variation in retention between authorities, and the effect of the 97 per cent pass-

through floor applying from 2026-27. The 2026-27 section 251 budget returns, expected in the autumn, will be the first to reflect that floor and should be examined within the study window. The study should also test whether the changes proposed in the DfE's current consultation, including the conversion of local authority central expenditure into a centrally administered grant, would reduce the amount retained before funding reaches providers or merely relocate it. We are able to share our analysis of the published section 251 data.

Provider agreements. The conditioning of funding through local authority provider agreements should be treated as a substantive part of the role of public bodies theme, not as background. The DfE's statutory guidance sets a closed list of permitted objectives for these agreements; the study should test actual agreements against that list.

5. Q2: the well-functioning market

We agree with the four characteristics at paragraph 30 so far as they go. They are, however, written for a market in which prices form through competition, and in this market the state administers the price of the majority of hours. A definition of a well-functioning market for childcare needs two further characteristics:

- the administered price bears a demonstrable, regularly evidenced relationship to the efficient cost of delivery, so that funded provision is not financed by compelled provider losses or by cross-subsidy from other families; and
- the public bodies that set, retain, distribute and condition the funding are themselves transparent and accountable in doing so, to a standard at least equal to that expected of providers.

Without these, the benchmark measures providers against a standard that the system's own price-setter is not held to.

6. Q3: does the sector display those characteristics?

No, against each in turn.

Availability of supply. In 2024, 39 per cent of parents said there were not enough local childcare places, up from 26 per cent in 2019, and the number of childminders fell by an estimated 39 per cent between 2018 and 2025; both figures are the CMA's own. Shortages are not evenly spread, and the pattern is structural: provision retreats first where the administered price sits furthest below cost and where children's needs cost most to meet, including children with special educational needs and disabilities (SEND), because the funding does not follow the cost. We can evidence this pattern from providers' closure and admissions decisions and offer to do so.

Effective competition between providers. For funded hours there is no price competition: the price is set centrally and cannot lawfully be adjusted. Competition operates only at the margins, in additional charges and non-funded fees, which is where public and political scrutiny has now been directed. Providers cannot be disciplined by a price mechanism that does not exist.

Informed and engaged consumers. Families are told the entitlement is free. Providers are simultaneously required to show funded hours at no charge on invoices and are, in practice, unable to explain what the funding pays for and what it does not. The result is an information failure created by the presentation of the policy itself: lawful, foreseeable charges arrive as an unpleasant surprise, and the relationship of trust between families and providers is damaged by a framing neither of them chose.

Well-designed regulatory environment. The statutory guidance permits charging for consumables while prohibiting charges for learning resources necessary for the effective delivery of the Early Years Foundation Stage, a line that is unworkable in settings where nearly everything is necessary for delivery. Provider agreement terms vary from authority to authority, and there is no effective mechanism through which a provider can challenge an authority's decisions about funding the provider is statutorily entitled to receive.

7. Q5 and Q6: consumer journey and vulnerable consumers

The most consequential information failure in this market is the word free, and it does not originate in marketing. Free of charge is the operative term of the legislation itself, so families are given a statutory promise, which government communications then amplify, in places attaching a headline annual value to it. The funding behind that promise was never designed to cover meals, consumables or hours beyond the entitlement, and every downstream complaint about hidden charges begins in that gap. Correcting how the entitlement is presented to families, so that they are told clearly at the point of application what the funded hours include and exclude, is available to this study without legislation and would remove more consumer confusion than any intervention aimed at providers. The deeper mismatch, a statutory promise of free provision with no statutory link between the funded rate and the cost of honouring it, is Parliament's to resolve; this study can put it on the record and recommend that Parliament address it. We are not asking for the entitlement, or the protection it gives families against top-up charges, to be weakened. We are asking for the statute that makes the promise to be connected to a mechanism that funds it.

On Q6, the families most exposed are those least able to absorb unexpected costs and those whose children have SEND. Providers are prohibited from charging for additional SEND support within entitlement hours, but the funding system does not reliably meet that cost, so provision for these children depends on providers absorbing losses. Where they cannot, access narrows for exactly the children the entitlement exists to serve. The DfE's current consultation proposes further conditions on SEND funding applied at local authority discretion, using assurance tests the consultation does not define; how such discretionary conditionality affects access for these children belongs within this study's role of public bodies theme. We ask the CMA to examine SEND access and its funding as a specific line of enquiry.

8. Q8 and Q9: competition, conduct and practices

On Q8: providers compete for families on quality, reputation, location and availability, and on the price of non-funded hours and services; the price of the majority of the product is not a

competitive variable, because the state sets it. Where places are scarce, and 39 per cent of parents report local shortages, competitive discipline weakens further, because families take the place they can get. Any analysis of how providers are incentivised and disciplined has to start from the fact that this market's central price is administered.

On Q9, we ask the CMA to apply the same rigour to the conduct of public bodies as to the conduct of providers. Practices we have observed, and can evidence, include the retention of entitlement funding beyond published central expenditure, provider agreement terms outside the closed list in statutory guidance, and set-off provisions of the kind described in section 3. These practices shape the market at least as much as any provider-side conduct within the study's frame, and unlike provider practices they are imposed on parties who have no ability to decline them.

9. Q10a, Q10b and Q11: regulation, redress and barriers

Redress (Q10a). A family dissatisfied with a provider has routes of complaint. A provider dissatisfied with a local authority's treatment of entitlement funding has, in practice, none short of judicial review. The assurance framework under which authorities account for their use of the Dedicated Schools Grant merits examination as a compliance mechanism for the conditions authorities attach to funding.

Barriers (Q10b and Q11). Workforce supply, property costs and regulatory compliance all matter, but the principal influence on entry and expansion is the economics of the core product. An administered price at or below typical cost does not stop expansion; it selects who can expand. The distribution the CMA itself cites shows over two in five private group-based providers bringing in more than £1.20 per £1 of cost while one in three childminders brings in less than £0.80, and the same document records places offered by private equity backed providers more than doubling since 2018 while childminder numbers fell by 39 per cent. Entry and growth remain rational for models that can raise capital and cross-subsidise at scale, and irrational for the standalone settings that make up most of the market. The funding settlement is not just a barrier; it is driving the consolidation this study proposes to examine. For smaller businesses specifically, the burden of engaging with regulation, and with this study itself, falls hardest; we return to this below.

10. Evidence gathering and representativeness

The Statement of Scope records that private equity backed providers accounted for around 8 per cent of places in 2024. Group operators of all kinds are a minority of the market: the typical English provider is a standalone setting or a childminder, operating at or near break-even on the DfE's own figures. Two points follow for how the study gathers its evidence.

Representativeness. EYV is aware that formal information requests issued in the opening weeks of the study have been directed at large group operators, with detailed questions weighted towards ownership structures, investor involvement and profitability. Evidence gathered predominantly from that segment will describe the economics of that segment. It will not describe the market, and findings generalised from it will misdescribe the position of the

majority of providers. The study's information gathering should sample deliberately across standalone settings, small groups and childminders, using qualitative research and voluntary routes where statutory notices would be disproportionate.

Proportionality of burden. A statutory notice backed by penalties, including criminal sanction for false or misleading responses, is a materially different event for a single-site owner-operator than for a group with in-house legal and finance functions. If the burden of scrutiny falls on the providers least equipped to bear it, the study risks accelerating the exit of small providers, and with it the very consolidation it has set out to examine. Consistent with the CMA's proportionality commitment at paragraph 33, information requests to smaller providers should use simplified formats aligned with the records those providers already hold, on realistic deadlines.

EYV can convene evidence from standalone settings and small groups at scale, including cost, occupancy and closure data, and would welcome the opportunity to do so.

11. Conclusion

This is the right study of the right market, and the Statement of Scope is a stronger document than the request that prompted it. Its value will be determined by whether the CMA follows the money the whole way through the system, from the Treasury to the local authority to the provider to the parent, reports what it finds regardless of whose budget the findings embarrass, and places its conclusions on a footing that cannot be shelved. That footing is a reference under section 131 of the Enterprise Act 2002. We ask the CMA to make it. We would welcome the opportunity to discuss any part of this response with the study team.

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