

12 November 2021

By email to: [children@cma.gov.uk](mailto:children@cma.gov.uk)

## **ADCS response to CMA interim report on children's social care market study**

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) appointed under the provisions of the Children Act (2004). The DCS acts as a single point of professional leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to respond to the Competition and Markets Authority's (CMA) interim report into the market study into children's social care provision

### **Analysis of market outcomes**

2. The four outcomes of a well-functioning placement market described in the interim report are reasonable measures to use to consider the children's social care market. It is welcome that the CMA recognises the market is failing to provide adequate supply to enable local authorities (LAs) to meet their sufficiency duties and that prices and profits in the sector are above the levels expected in a well-functioning market.
3. The analysis focuses on supply of placements and does not consider the challenges some children and young people face in accessing registered children's homes. Although this is touched on later in the report, access to services is a critical element to sufficient supply. ADCS members have reported that registered children's homes are increasingly reluctant to accept children with highly complex needs, particularly at short notice or in a crisis situation, for fear of jeopardising their Ofsted rating. ADCS recognises that Ofsted does not want its work to directly or indirectly impact on LAs ability to place children, however, this is an unintended consequence of the regulatory framework supported by inspection. In contrast to what the CMA report states, ADCS members believe that where LAs have in-house provision, that provision is increasingly used for the most complex children which also adds to both cost and risk. There is a risk of a two-tier model emerging as private sector homes are able to pick and choose which referrals they accept.
4. The analysis notes the recent ban on placing under 16's in unregulated provision and the government's commitment to introducing minimum standards along with an inspection regime. There is a risk that by introducing regulation in this area, the challenges experienced in accessing placements in registered children's homes for those with the most complex needs will be replicated in unregulated provision making it even more challenging to find cost effective appropriate placements.
5. The report notes the increasing prices associated with independent provision, the entry of private equity into the sector, and the contracting ownership base, all of which are a source of concern for ADCS members. The risks associated with the impact of provider failure or withdrawal from the market are significant, both to children and young people, as well as the staff working in these homes.
6. The CMA analysis relies on Ofsted inspection gradings as the only proxy measure for the quality of children's homes. Using this information, the CMA conclude it has not seen evidence of systematic differences in outcomes between LA and independent provision. A different picture of quality may emerge if the wider outcomes of children are explored,

including both health and education outcomes. The views of children in care would also help to further illustrate quality outside of the inspection framework which is designed to measure compliance with regulation, something which ADCS members believe needs significant reform.

7. The market study presumes all placement markets are the same, however, there is nuance to the market which must be recognised when identifying outcomes, the challenges and solutions. For example, the provision of mother and baby placements is distinctly different from placements for young people with complex needs. There is further nuance in terms of how services outside of the scope of the market study drive instability in placements which ultimately increases costs. For example, if a child is unable to access inpatient mental health services or a placement in a secure children's home, often the only alternative is a placement in a social care residential setting with the equivalent staffing levels for 2-3 young people. This reduces capacity both in terms of availability of placements and the workforce.

### **Causes of the outcomes observed**

8. ADCS members recognise many of the emerging findings in the report, however, it is not clear how some of the potential solutions referenced would help to improve market outcomes, cost effectiveness and most importantly, outcomes for children.
9. The market lacks sufficiency and effective procurement cannot be undertaken when there is a fundamental undersupply of placements. There is little to no incentive for providers to work with LAs around block contracting or more competitive commercial arrangements when demand for their services far outweighs supply and they can generate additional profit as a result.
10. There could potentially be a stronger regional approach to needs analysis, forecasting demand and strategic supplier management. This may help to drive increased transparency in the market, help to develop relationships between LAs and providers, and develop the market more strategically and effectively. This would need to sit alongside investment in the capacity of LAs, to encourage collaboration where that works locally and takes account of place. The importance of place cannot be lost here; wherever possible, children should live as close to home as possible so they can stay in their community, maintain the relationships that are important to them, reduce any disruption to their education and continue to access wider services such as CAMHS from a familiar source. For any market shaping at scale, providers must be willing to invest in the geographical areas where there is need and an undersupply of placements.
11. Given the current financial context in which LAs operate, it is challenging to undertake commitments that carry a financial risk. LAs need to be able to develop the market and effectively share risk in the high cost low incidence placement markets, such an approach is currently being taken by the Pan-London Placement Commissioning Programme. There is also a fundamental role for government to play in stimulating market capacity to complement the work being undertaken by LAs.
12. For some time, ADCS members have advocated for the need for regulatory reform to allow for more flexible responses to children's needs. As mentioned above, regulation and inspection is unintentionally limiting access to registered children's homes for some of the most vulnerable children and young people. Registering providers to provide services rather than registering physical settings, similar to the approach taken in fostering and adoption, could provide some of the flexibility needed to allow LAs to tailor the care and support around the individual needs of children and young people, particularly those with

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such complex needs. It would also reduce the burden on providers when setting up new provision.

13. The challenges of recruiting and retaining both children's homes staff and foster carers are significant. This issue is particularly acute for some providers who have had to limit their capacity due to the shortage of available staff. The lack of focus from national government here is disappointing, especially when compared to how much focus and investment has been dedicated to recruiting and supporting adopters and the wider adoption system, and the focus on sufficiency of care staff in adult residential care.

### **Possible remedies**

14. ADCS members welcome the CMA's intention to explore issues of regulation, the barriers to the recruitment and retention of children's homes staff and foster carers, and whether changes to LA funding arrangements would provide more long-term financial certainty. There are clear benefits to further considering measures that would reduce the risk of unexpected disorderly exit from the market, such as a financial oversight regime with clear limits on leverage and financial risk-taking, and mitigate its effects, such as a step-in provision for alternative providers to take over. The CMA acknowledges the lack of resources to undertake long-term forecasting is one of the possible causes of the care sector failing to deliver consistently the right outcomes for children. Children's services are in a situation which many of our families find themselves. Because revenue funding is pared back to the minimum, LAs have no financial headroom to look at more cost effective, longer term options, similar to a family having to buy expensive pre-paid electricity rather than using cheaper direct debits, because LAs and they don't have the security of available finances over the long term. ADCS has long advocated for the need for long-term sustainable funding for children's services and there is clearly a role for government in achieving this.
15. LAs have a unique, democratically mandated, place-based role drawing together multiple partners, providers, volunteers and professionals, community groups, and support services to meet the needs of children. Through the director of children's services, the LA can and does lead and convene this multiplicity of local partners, despite having relatively few statutory levers, orchestrating them to work together in a single, coherent system which has at its heart, a shared vision for children's best interests. Ultimately, directors of children's services are responsible for outcomes for all children across a place. Strategic commissioning and market management cannot be done in isolation from the wider context in which children's services operates. A care placement is often just one episode in a child's journey and the wider framework of early help and support services in place is critical when children leave care, plus access to quality support and activity is a key part of a successful placement for those in care. Where the continuum of services are not considered and planned in a holistic, joined up way, unintended consequences are inevitable.
16. There are barriers to local authority collaboration as the report points out and it would be beneficial for the CMA to further explore solutions to these. ADCS members would question if the creation of regional or national bodies is what the sector needs, structural reform has a legacy of over promising and under delivering. With appropriate investment in capacity, LAs are best placed to undertake strategic commissioning activity, the knowledge and expertise is within the local government family. As has already been pointed out, it is oversimplistic to look to a procurement solution in a market which lacks significant capacity. Consideration is also needed in respect of the potential role of health partners in joint commissioning and delivery of future care placements for very complex young people.

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17. As an outcome of the market study, the CMA should consider publishing details of the regional price variations LAs are being charged by providers. This would help to form the basis for the start of strategic supplier management. In addition, a national cost model approach, requiring providers to breakdown the cost of individual placements under standardised headings, would help to drive further transparency in the market and support the strategic supplier management role of LAs.
18. Any collaborative arrangements at scale must be flexible to reflect local need and enable LAs to come together where it makes sense for them to do so while maintaining their own autonomy and acting as single entities. Not all regional commissioning arrangements have delivered positive outcomes for children and young people e.g. in-patient mental health services where NHS commissioning arrangements are currently in the process of being reformed. There are also lessons to be learnt around the commissioning arrangements for secure welfare and youth justice placements. A mandatory approach here would not be welcome.
19. It is disappointing that the CMA is unclear about the benefits of limiting for profit provision or limiting prices/ profits. Current market conditions, operating as they do with one customer – LAs - and little competition between an ever shrinking group of providers tightly controlling supply, create ideal conditions for a cartel. When comparing the learning disability and mental health market to children’s services (both generally operate from similar sized homes), the level of profit made in the children’s sector is significant. For example, for one LA, the average cost of a placement for a younger adult with learning disabilities is circa £1,200 per week, compared with a children’s residential placement for a 16-year-old averaging £5,000 per week. While there are some differences in legislation and some allowances paid for children, these alone cannot account for the difference in cost.
20. The interim report recognises that effective early intervention and edge of care services impact on the functioning of the children’s social care market as fewer children will require care placements. As such, those children who do require a care placement are likely to have highly complex needs which providers are generally reluctant to take on due regulatory related issues. ADCS members believe that wherever possible, families should be supported to meet the needs of children so they can successfully live as a family unit. By limiting or removing profit, LAs would be able to invest in the very services that help to keep families together, while also developing the market with providers that are focused on delivering positive outcomes for children and young people, rather than significant levels of profit. The report states the market is ‘failing to deliver consistently the right outcomes for children and society’. One aspect of this should surely be value for money for the tax payer, this cannot be true in a market where providers are able to generate significant profits from the public purse. In this context, it would be helpful if the CMA further explored why voluntary sector providers retreated from the market and why they remain so under-represented as a percentage of the market.
21. ADCS would welcome the opportunity to meet with representatives from the CMA to discuss the next stages of the market study. Please contact [esther.kavanagh-dixon@adcs.org.uk](mailto:esther.kavanagh-dixon@adcs.org.uk) in the first instance.