

By email: children@cma.gov.uk

Wednesday 14 April 2021

ADCS response to the invitation to comment on the Competition and Markets Authority 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 comment on the Competition and Markets Authority's (CMA) children's social care market study.
2. The social care market study provides a comprehensive overview of the sector and outlines some of the challenges in terms of access to, and the costs of, children's social care placements, however it is silent on two fundamental issues. Firstly, it does not recognise the impact of ten years of fiscal austerity on local authority's (LA's) ability to plan and commission coherently. In the context of a 50% real terms reduction in funding, it is not surprising capacity to strategically plan and commission services has been impacted. Secondly, ADCS members would question if the provision of services for vulnerable children and families is a valid area of social policy for a market to exist at all? The current system is a placement monopsony whereby LAs are the only purchaser and due to demand, providers are able to pick and choose which referrals they accept and at what price.
3. The market study would further benefit from consideration as to whether the current accommodation models / options are meeting the needs of children and young people in care. The needs of children and young people have changed over recent years and therefore the requirements of the provision have also changed, for example, increased complexity of mental health needs; identified special education need and disabilities; impact of exploitation etc.
4. The study does not differentiate between different types of residential and foster care, yet the needs of young people are more nuanced. Taking purely a demand and supply approach does not pick this complexity up; supply must be informed by an analysis of need. Models of good care are crucial and shouldn't just be focused on the support provided day to day within the home. The wrap around support available for children and young people is also key, how this works when a home is operated by a LA compared to those run privately would be an interesting line of enquiry.
5. The market study touches on the appropriateness of placements and outcomes for children and young people but does not explore how we can ensure that providers are offering quality services and the role of the Regulator in relation to this, especially where placements are deemed to be specialist. ADCS has previously called for a review of specialist residential provision for children with complex

mental health needs and the development of clear criteria for providers of specialist therapeutic services to evidence the therapeutic nature of their offer.

6. The study recognises the uneven geographical spread of homes across the country. Typically, the supply of homes hasn't developed in response to need but rather providers have taken advantage of low cost accommodation, often in areas with pre-existing challenges which are exactly the wrong areas to place vulnerable teenagers. The challenges this poses are twofold. LAs with an oversupply of residential services, typically those with low cost property, will become the 'host' authority for children placed within the area by other LAs. This can place additional pressure on local services, particularly in areas where demand for services is already high. In contrast, those with an undersupply will be reliant on costly out of area placements. This interdependency can present a challenge when LAs are trying to influence and manage the provision that is available in their area.
7. The annual cost of children's social care in England is £4.5billion, it would be helpful to understand what proportion of that relates to profits made by the for-profit sector from children's residential and foster care placements. Although children's services have long operated in a mixed economy with private, voluntary and community providers, the entry of private equity into the provision of fostering and residential care placements is a source of worry. For some time, ADCS members have been concerned about how private equity is driving rapid changes in the ownership, financial models and service delivery in residential services for vulnerable children. The proportion of the market controlled by just a small number of providers, along with multi-million-pound mergers between providers who are diversifying across the sector and buying up smaller firms, increases the risk within the system. The risks associated with the impact of provider failure are significant and only increase as ownership continues to contract.
8. The current regulatory framework dates from 2002 and is primarily focused on the performance of individual homes rather than the efficacy of the increasingly common large provider chains / organisations or the contribution they make to children's outcomes. There is also little focus on or scrutiny of the financial stability of parent companies. There is no single record of who owns the services which deliver care for children available for LA to refer to as corporate parents, nor is there a mechanism for recording or managing the risk of provider failure, as there is in adult social care.
9. Many adolescents entering care have complex, over-lapping health and social care needs requiring a multi-disciplinary support response tailored to needs. The current inflexible regulatory framework does not serve these children well. Demand for registered places is outstripping supply and 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. This is particularly true for the cohort of young people on the edge of hospitalisation, criminalisation or those that need a welfare secure placement.

10. ADCS would suggest a comprehensive review of the regulatory system, with a view to achieving a more fluid system which aims to better meet the needs of children and young people. A change in the regulatory framework to register providers rather than physical settings, similar to that in fostering and adoption, would allow the flexibility needed to make emergency/ crisis placements while also allowing LAs to tailor the care and support around the individual needs of children and young people.
11. The recent government announcement of reforms to unregulated provision may result in a number of unintended consequences. LAs that have placed young people under the age of 16 in independent/ semi-independent provision have done so, without exception, as a last resort because no other regulated or registered placement was available. It's not clear from the government's plans what the expectation will be if and when a registered placement can not be found for a child under the age of 16. The introduction of regulation for independent and semi-independent accommodation could also see providers becoming more risk adverse to guard their Ofsted rating, replicating the challenges we currently face with regulated children's homes and therefore leaving LAs with even less choice for young people in crisis. If these unintended consequences emerge, this will result in an increase in the number of unregistered placements as LAs will find it difficult to place complex young people who display risky behaviour in regulated, registered provision. Our collective focus should be on how the regulatory system can be reformed so it supports providers and LAs to meet the needs of children and young people rather than seeking to boost powers and more prosecutions.
12. The market study is silent on workforce issues, both in relation to social workers' initial training and continuous professional development, and staff who work in children's residential settings. A greater focus is needed on our residential care workforce, they are critical in achieving positive outcomes for children and young people. The workforce that spends the greatest amount of time with children and young people are often the least qualified and the lowest paid.
13. Registered managers have a central role in matching children to their home, there is no mention as to how the regulatory system may influence their decision not to admit a child to their home. ADCS has raised concerns with the inspectorate about the speed at which registered managers can issue notice on a placement, in some cases as little as 24 hours, with very little scrutiny or accountability measures. Placement matching must work to meet children's needs first, while also giving security to those who are personally responsible for homes. Striking this balance can be challenging and often doesn't lend itself to straightforward block contracting arrangements.
14. A number of LAs are now actively considering re-entering the residential care market. It would be helpful to have a better understanding of the barriers to investment by LAs working collaboratively or with partners to create local provision. The Local Government Association has recently completed research exploring this issue.

15. The market study is silent on the role of the Home Office, the level of the grant allocation to LAs to support unaccompanied asylum seeking children (UASC) and the use of unregulated accommodation for UASC and former UASC care leavers. The study may also wish to explore the impact of welfare reform and the barriers current welfare policy may have created for people who would wish to be foster carers but do not have a spare bedroom. The market study would benefit from an additional theme about the role of providers and how they can better support the collective endeavour here.
16. If there any questions or comments about this feedback or if representatives from the MCA would find it helpful to talk through this response in greater detail with a representative group of the Association's membership, please contact esther@adcs.org.uk in the first instance.