

Friday 29 April 2022

ADCS response to the Competition and Markets Authority children's social care market study

Introduction

1. The Association of Directors of Children's Services (ADCS) welcomes the study carried out by the CMA into children's social care and how the placements market is operating. ADCS has long raised with government the excessive prices associated with independent provision and the role of private equity in supporting some of our most vulnerable children. The report makes a number of strong recommendations for central government as well as for local authorities (LAs). ADCS awaits the government's response to the report and how it plans to help shift the dial on LA's reliance over time on costly independent provision. The services explored within this study support some of the most vulnerable children in society who each require the right support at the right time and in the right place. The priority focus must always be on meeting their needs through provision that is fit for purpose, not generating profits.

General comments

2. The social care market study provides a comprehensive assessment of the sector and the challenges within the placement market regarding access to, and the costs of, children's social care placements. The study also aimed to respond to concerns about whether placements were fully meeting the needs of the current cohort of children in care.
3. The report does not offer a judgement on the role of private provision in the market. However, ADCS is clear that profiteering through the use of public money in supporting children and young people is unacceptable. Children's services have long operated in a mixed economy with a range of providers involved in the delivery of services locally and many independent providers are committed to providing high quality care and support for the children and young people in their care. However, multi-million pound mergers between providers are becoming an increasingly common occurrence, as is the entry of private equity in the sector which is a source of concern for ADCS members. The risks associated with the impact of provider failure or withdrawal from the market are significant. ADCS has previously called for the introduction of legislation which prevents for-profit operations or at a minimum provides a common pricing structure for the fees chargeable in fostering and residential services, linked to children's needs. Whilst this cannot happen overnight, and will take time to achieve, ADCS remains committed to the aspiration of a shift towards a not-for-profit model. By providing support for some of our most vulnerable children, this is not a market in the

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traditional sense. ADCS believes government should explore exempting care for vulnerable children and young people from competition law, therefore allowing councils to invest in and prioritise local services.

4. The report notes that there is no material difference in the inspection outcomes of independent and in-house children's homes provision. However, 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 concludes it has not seen evidence of systematic differences in outcomes between these two types of provision. A different picture of quality may emerge if the wider outcomes of children are explored, including both health and education outcomes.
5. Further, this conclusion overlooks two key factors: the ability of independent providers to refuse to support children with the most complex needs at the point of referral, and the ability of independent providers to serve notice on a child due to their behaviour. ADCS does not believe homes should be able to serve 24 hours' notice on a child without an identified placement to move to and the opportunity for an orderly transition. 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. A two-tier model is emerging as private sector homes are able to pick and choose which referrals they accept. This is not child-centred practice and should be considered under the report's recommended review of existing regulations.

Commissioning

6. ADCS welcomes the recommendations that central government should play a more active and supportive role to help LAs improve sufficiency and forecasting of placements. However, ADCS members would question whether the creation of regional or national bodies can solve the challenges in the current system and ultimately improve children's experiences and outcomes; structural reform has a legacy of over promising and under delivering. Further, the report's recommendation of an oversight structure that assesses the extent to which sufficiency of placements is being achieved lacks detail on how this will interplay with the work of the regulator nor the penalties for not meeting these duties.
7. ADCS is clear that whilst strengthened regional commissioning arrangements may offer some additional benefits, this will not address the key issues, particularly the growing challenges in access to services in the right place for children with the most complex needs, particularly at short notice or in a crisis situation. If more regional working is required at a greater scale, the government may have a role to play in reviewing the viability of potential collaborative arrangements, and assisting with market shaping, but this should not be directive. As the report highlights, local context can shape the extent to which local collaboration takes place. ADCS therefore does not believe that any new

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arrangements should be mandated. Indeed, effective procurement cannot be undertaken when there is a fundamental undersupply of placements. Although sub-regional groupings have benefitted from joint commissioning arrangements, it is not clear that groups of 10 or 20 local authorities will have the combined resource or expertise to influence the multi-national private equity investors and organisations which are now more common.

8. Should the proposals to support forecasting and market shaping be taken forward, the government will need to provide strategic oversight in helping to build a clear picture of the market and help regional consortia understand what is, or is not, working well and why. This will also require the provision of practical resource and funding to allow new and different ways of working with a view to scaling up. In the context of a 50% real terms reduction in funding, it is not surprising that capacity to strategically plan and commission services has been impacted. Over a decade of fiscal austerity has had a clear impact on the ability of local authorities to plan and commission coherently.
9. ADCS welcomes the recommendation that government offers targeted support for local authorities to recruit and retain more foster carers to reduce their reliance on IFAs. However, ADCS members would call on government to consider replicating the legislation brought in by the Scottish government which essentially removes the ability of organisations to generate profit from fostering. Growing in-house fostering provision has been a priority for local authorities in recent years but there is not enough capacity within the fostering system. For some time, ADCS has been calling for a national foster care recruitment campaign to address the shortage of foster carers, mitigate against the growing age profile of carers (who are typically retired or older) and help build capacity to deal with any unforeseen placement demands, such as the increased numbers of unaccompanied asylum seeking children arriving in the country.
10. While ADCS members work in cooperation with independent fostering agencies to secure the best outcomes for children and young people, the shortage of approved foster carers has increased competition for recruitment, including the growing use of a range of incentives to encourage switching which does nothing to increase capacity in the wider system. Placements via an independent agency can cost local authorities significantly more, when compared to the cost of in-house foster care placements. The CMA's study found that there is up to a 40% difference between the total cost of an IFA placement compared to an in-house placement for a local authority, with a local authorities' operating costs per child being approximately half the level of fees paid to large providers.

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Creating capacity in the market

11. ADCS agrees with the issues set out by the CMA regarding regulation, planning and the associated barriers. ADCS members report that the process for opening new homes can be cumbersome. The approaches taken in Scotland and Wales, where applications can be progressed but not determined without having a registered manager in place, offer more flexibility and it would be helpful to learn more from this example; there is a significant undersupply of registered managers.
12. The call for standardised planning guidance on 'change of use' is to be welcomed. The use of smaller residential children's homes is growing and there is a need for closer working between planning and children's services teams within local government, particularly with regards to two-tier authorities. The report recognises the uneven geographical spread of homes across the country and ADCS would also welcome linking the planning process to sufficiency planning; this could curb the number of homes opening in areas of cheaper housing and provide us with a clearer line of sight on all provision in a given locality.
13. ADCS agrees that a comprehensive review of the regulatory system is required to ensure it is fit for purpose. The ability to better meet the needs of children and young people should be central to this, so greater fluidity and flexibility would allow us to respond to individual needs. A change in the regulatory framework to register providers rather than physical settings, similar to longstanding arrangements in fostering and adoption services in England, would assist us in standing up emergency/ crisis placements while also allowing local authorities to develop bespoke and tailored care and support packages to wrap around the individual needs of children and young people.
14. As the report notes, the regulatory framework in England is outdated and is primarily focused on the performance of individual homes rather than the efficacy of the increasingly large provider chains/organisations or the contribution they make to children's outcomes. There is no single record of who owns the services which deliver care for children available for a local authority 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. Additionally, assessments of financial health and stability should look beyond individual homes to the ownership group given the rise of private equity and the increased debts and risks this model carries. Given the specialist nature of this work, this should be carried out nationally and not by individual local authorities.
15. Regarding workforce sufficiency, the residential sector faces significant shortages and an annual state of the sector report, commissioned by government, would be

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a welcome start in both understanding and addressing this pressing issue. There is a significant undersupply of registered managers which is compounded by the regulatory system. Whilst low wages are a clear barrier to recruitment and retention, more attention is needed on initial training and continuous professional development for children's residential staff. They are critical in achieving positive outcomes for children and young people. Increasing the profile of, and regard for, this important, life-changing work with the public would be helpful too. It can be the case that the workforce that spends the greatest amount of time with children and young people are the least qualified and the lowest paid.

Resilience of the market

16. ADCS has long been concerned about the risk of some of the largest providers suddenly exiting the market. This would pose significant risk to the care and stability of a significant proportion of children placed in residential care, which is recognised in the final report. ADCS agrees with the report's call for a contingency framework to ensure children's interests are adequately protected if a provider goes into liquidation or fails. There may be benefit in exploring the local authority provider failure duty in adult social care under the *Care Act 2014* and how this could be replicated in children's services.

17. The report rightly notes that as the recommendations in the report take effect, the government may want to consider the balance between public and private provision. ADCS believes that the report could have gone into greater detail on the need for a more equitable balance between the two. Any action that addresses the growth of profiteering in the sector and restates the central importance of children's best interests is welcome. ADCS looks forward to the government's response to this market study and the *Independent review of children's social care*.