

Appendix 2: Children’s social care placements working group



Policy Framework

Contents

Competition and Markets Authority.....	1
Independent Review of Children’s Social Care	1
National standards for independent and semi-independent provision for children in care and care leavers aged 16 and 17.....	3
Children’s homes research	4
National Safeguarding Practice Review Panel review into safeguarding children with disabilities in residential settings	4
Wider context.....	6
Appendix A	7

Competition and Markets Authority

- 1) The Competition and Markets Authority launched a market study into children's social care in England, Scotland and Wales in March 2021 in response to concerns about how the placements market¹ was operating.
- 2) A briefing on the findings of the CMA was circulated to the Children and Young People Board in March 2022 and is attached to this report as Appendix A.

Independent Review of Children's Social Care

- 3) The Independent Review of Children's Social Care was launched in January 2021, and the LGA engaged with the review from the beginning to ensure the views of councils were represented.
- 4) The review team published its [final report](#) on 23 May 2022. The key recommendations in the report relevant to this working group are in [Chapter Five, 'Transforming Care'](#):
 - a) The development of new universal care standards for all types of care to guarantee care for every child in care, and provide the flexibility needed to ensure homes can meet the needs of children;
 - b) Moving the commissioning and running of children's homes, recruitment and training of foster carers into new Regional Care Cooperatives to bring a wider choice of homes for children closer to where they live;
 - c) A 'new deal' for foster care, involving recruiting thousands more foster carers, making more foster homes feel like loving family environments for children and providing significantly more support for foster carers.
- 5) Other recommendations consider how to ensure more children can stay safely at home with their parents through improving support and early help, and how many can remain with their wider family network via kinship care.
- 6) The LGA has previously called for a review of regulations relating to children's homes, recognising that these were established some years ago when the context was quite different. A review of regulations could allow for more flexibility to meet the individual needs of children and allow children to remain in the same home even where their needs changed, as far as possible. We would therefore welcome discussions around new care standards to see how these could improve children's experiences and enable councils and providers to effectively meet children's changing needs.
- 7) The LGA welcomed the recommendation calling for more support for foster carers, recognising that fees and allowances, training and support are all vital to ensure that we can recruit and retain sufficient foster carers.

¹ This briefing uses the same terminology as the CMA review for consistency, however it should be noted that the use of the term "market" in relation to the provision of homes for children in care carries its own challenges and is one the LGA uses reluctantly. The LGA also prefers to use "home" rather than "placement".

- 8) We have, however, raised some concerns about the recommendation on Regional Care Cooperatives. This would introduce up to 20 new organisations owned and run by councils which would have the sufficiency duty in the local area; run and create public sector fostering, residential and secure provision for the area; and commission not-for-profit and private sector care for children where they choose to do so. Local authorities would spend their existing care budgets through RCCs.
- 9) In our initial response to the independent review, we outlined those areas where we believed more collaborative working on commissioning would be helpful, and those areas where more work needs to be done:
 - a) There are clear benefits to more collaborative working in some areas of commissioning. In particular, we are keen to consider a national approach to investment in and coordination of provision for children and young people with the most complex and challenging needs.
 - b) Councils are clear that they, working with partners and carers and listening to children and families, are best placed to identify the right home for each individual child they look after. They are corporate parents to these children and work to ensure children's voices help to shape overall provision while working with partners to build support around the child. Local autonomy in decision-making is vital to ensure councils are able to use this knowledge and local connections to provide the best placement for each child, keeping that child's voice and needs at the centre.
 - c) Relationships between individual councils and providers are also vital, particularly where providers are located within a council's locality. These are not only important in managing the placements of individual children, but in building local capacity and responding to local need.
 - d) Locally-led solutions, rather than structures imposed from above, allow councils to build on existing relationships and respond to local contexts. Many areas already have strong regional or sub-regional or local arrangements that have good relationships with local providers developed over many years. We would not want to see these lost. We must also recognise the very different challenges that may be faced by different areas; a shire county, for example, may have very different issues than an inner-London borough.
 - e) Where we see existing commissioning partnerships working well, often there has been investment in dedicated capacity to manage this. Rather than setting up new bodies to manage placements which would be expensive and add another layer of bureaucracy, funded support for collaborative arrangements could help to tackle some of the issues without infringing on existing good practice or removing local autonomy.
- 10) The Government has confirmed that an implementation plan for the review will be published early in 2023.
- 11) We understand that no new money is expected in this Spending Review period to support implementation of the Review, and that existing DfE budgets will instead be reprioritised to enable a series of "pathfinder" projects to be set up to test recommendations in the review. These will be used to develop an evidence base for bids for the next Spending Review to roll out those recommendations that have proven most effective.

National standards for independent and semi-independent provision for children in care and care leavers aged 16 and 17

- 12) Following a consultation in 2020, the [Government has committed](#) to introducing national standards for independent and semi-independent provision for looked-after children and care leavers aged 16 and 17. This provision has to date been unregulated (that is, not subject to registration with or inspection by Ofsted), and has been of variable quality. The intention of the Government is to raise the standard of this provision to ensure high quality accommodation and support for all young people living in such homes.
- 13) Ofsted will begin registering providers from April 2023 ahead of new national standards becoming mandatory for all providers from Autumn 2023. Full inspections are expected to begin in April 2024. The Government will invest over £142 million to deliver the reforms, which much of this being allocated to councils as new burdens funding in recognition of the increase in placements costs these reforms are likely to bring.
- 14) A [consultation](#) on the national minimum standards was published on 5 December 2022. Ofsted and the DfE have been working with councils and providers to better understand the types of provision available and the likely impact of the reforms.
- 15) There is significant concern in the sector around the timescales for implementation. While the introduction of quality standards and inspection are welcome, there is a risk that they will lead to increased costs and fewer placements as providers exit the sector, at a time of significant pressure on placement capacity already. This is a particular challenge in the context of the current asylum crisis, with seven hotels currently housing hundreds of unaccompanied asylum-seeking children due to a lack of available placements; many unaccompanied children are aged 16 and 17 and are often placed in semi-independent accommodation of the sort that will be impacted by these new regulations.

Children's homes research

- 16) In 2020 the LGA commissioned SEC Newgate to look into the barriers to establishing new children's homes provision, and to identify good practice. The [final report](#), published in January 2021, identified the following barriers to establishing new children's homes:
 - a) The perceived role of children's residential care as an "option of last resort"
 - b) Challenges making a robust business case for investing in children's residential care due to high capital expenditure for setup and the lack of predictability in the flow of placements
 - c) Difficulties finding the right property and staff (in particular a Registered Manager) and having these in place in advance of being given licence to operate by Ofsted
 - d) The complexity and severity of children and young people's needs, with homes feeling overly-restricted in managing challenging behaviour due to stringent regulatory requirements
 - e) A perceived lack of co-ordinated and strategic commissioning practices to assess need, engage the market and develop services with the longer term in mind.

17) The report also identified some positive practice, including councils investing in in-house provision, support for the workforce, the co-development of services between social care, health and education, and profit-sharing arrangements between councils and providers.

National Safeguarding Practice Review Panel review into safeguarding children with disabilities in residential settings

18) While not strictly in the terms of reference for this working group, working group members will wish to be aware of the ongoing National Panel [review into safeguarding children with disabilities in residential settings](#). This review is examining allegations of abuse and neglect towards children living in three private residential settings located in Doncaster and operated by the Hesley Group. These were specialist, independent settings located alongside schools and attended by children with Education, Health and Care Plans (EHCPs), who functioned significantly below their chronological age and exhibited behaviour that challenges. Many had profound difficulties with receptive and expressive communication.

19) The first phase of the report uncovered “a catalogue of abuse and serious harm of some of the most vulnerable children in our society”. The Panel’s findings are summarised below:

- a) The voices of the children and young adults in the setting were not heard.
- b) Placement far from home increased the children’s vulnerability.
- c) Some children were placed at the settings inappropriately.
- d) Leadership and management in the settings were inadequate and failed to meet statutory requirements, resulting in a culture of poor practice and misconduct by care staff.
- e) High rates of staff turnover and vacancies, along with poor quality training, support and supervision, were significant factors affecting children’s quality of care.
- f) Inaccurate and inconsistent record keeping and statutory reporting by the settings meant that Ofsted and placing authorities often had a false picture of the care, safety and progress of children.
- g) Quality assurance processes by placing councils were inconsistent and did not enable them to have a full picture of the children’s progress, welfare and safety.
- h) There were major failings in the LADO (Local Authority Designated Officer) function. Allegations about the conduct of staff in the settings were not satisfactorily investigated.
- i) National regulatory arrangements had a limited impact on identifying and responding to the many concerns about children’s safety and wellbeing.
- j) There are key challenges in current provision for children with disabilities and complex health needs that limit their access to the right support at the right time.

20) Phase Two of the review, due to be published in Spring 2023 will cover three further lines of enquiry:

- a) What needs to happen to ensure the voices of children with complex health needs and disabilities are listened to and heard, and their rights are respected and upheld?

- b) What are the respective roles of different professionals in keeping children with the most complex needs safe? What changes, if any, are required to improve their effectiveness?
- c) What are the conditions for efficient and effective commissioning so that children with complex health can access the very best support to meet their needs in a timely way?

Wider context

21) There is a range of wider factors that has led to an increasing need for children's social care placements:

- a) [Southwark judgement](#) – this was a judgement made in May 2009 which obliges children's services to provide accommodation and support to homeless 16- and 17- year olds.
- b) Decline in inpatient CAMHS beds – the number of inpatient mental healthcare beds for teenagers [fell by 20 per cent](#) between 2017 and 2022, a reduction of 325 beds, despite increasing need for treatment.
- c) Decline in youth custody population – the number of children in youth custody has [declined by nearly three quarters](#) in the last ten years, from an average of 2,040 children at any one time to 560 in March 2021.
- d) Unaccompanied asylum-seeking children – the [number of unaccompanied asylum-seeking children](#) in the care of councils has increased from 2,230 in 2012 to 5,570 in 2022.

22) The Department for Education is [investing £259 million](#) in expanding capacity in children's homes. This includes £12 million to expand secure children's homes provision, including work to create new units in London and the West Midlands where there is currently no provision. Councils across the country have also been able to bid into the Children's Homes Capital Fund for match funding to develop new provision or refurbish existing provision, with a particular focus on developing step-down provision or homes for children with more complex needs.

23) 22 open children's homes projects were funded in the first wave of funding (these projects will complete next year), and another 48 projects in the second wave. These projects are anticipated to deliver around 350 additional beds by 2025. The secure children's homes funding will deliver around 50 additional spaces.

Appendix A

Competition and Markets Authority – Children’s social care market study final report

March 2022

Introduction

1. The Competition and Markets Authority launched a market study into children’s social care in England, Scotland and Wales in March 2021 in response to concerns about how the placements market² was operating.
2. The review considered two key issues: the availability of placements to meet children’s needs, and the prices paid by councils for those placements.
3. The Local Government Association submitted [evidence to the initial Invitation to Comment](#) in April 2021 covering issues including sufficiency, private equity, commissioning, the regulatory system and the provision of homes for children with the most complex or challenging needs.
4. The CMA published an [interim report](#) in October 2021 which outlined significant concerns around the availability of placements and the level of profit being made by some private providers. The report outlined potential remedies to the challenges found, including supporting councils to engage more effectively with the market, achieving an ‘appropriate’ scale of operations and making it easier for providers to create appropriate capacity.
5. In the LGA’s [response to the interim report](#), the LGA recognised many of the findings within the report, but called on the CMA to consider good practice already taking place within and between councils and the role of health services in the provision of placements for children in care. The LGA also raised concerns that improved engagement by councils with providers would not on its own improve sufficiency and emphasised the importance of locally-led solutions, as well as the role of private providers in supporting improvement in the operation of the market.
6. This briefing outlines the key findings of the [CMA’s final report](#) in relation to England as children’s social care is a devolved issue (though findings and recommendations were broadly similar in Wales) and offers initial LGA views on these. These views are subject to discussion with councillors and should not be considered LGA policy.

Key findings

Placements market

7. The final report came to the view that “there are significant problems in how the placements market is functioning, particularly in England and Wales.” The review cited a lack of placements of the right kind and in the right places, higher prices and higher levels of profit

² This briefing uses the same terminology as the CMA review for consistency, however it should be noted that the use of the term “market” in relation to the provision of homes for children in care carries its own challenges and is one the LGA uses reluctantly. The LGA also prefers to use “home” rather than “placement”.

than would be expected in a well-functioning market, and concerns about the levels of debt being carried by the largest providers.

8. In relation to placements, the CMA was particularly concerned about the proportion of children being placed far from home without a clear child protection reason for this, and the proportion separated from their siblings. The CMA also raised concerns about the challenges in finding suitable placements for children with more complex needs and older children.
9. The review reported that for the largest children's homes providers, there were steady operating profit margins averaging 22.6 per cent from 2016-2020, with average prices increasing by 3.5 per cent each year after accounting for inflation. The price of fostering placements with independent fostering agencies (IFAs) had held steady over the same period and therefore declined in real terms, however IFA profit margins still averaged 19.4 per cent.
10. The CMA also noted that private equity-backed providers held particularly high levels of debt which increased the risk of disorderly exit of firms from the market.
11. The CMA concluded that the market would not improve without focussed policy reform.
12. Despite some calls for the review to recommend capping prices or profits, or eliminating the use of profit-making provision altogether, the CMA has decided not to do so. This is in part as the review did not find that local authority children's homes were cheaper than profit-making provision, and there was concern that reducing or eliminating private provision would further reduce investment in new capacity.

Commissioning

13. The report identifies "severe limitations" on the ability of councils to engage effectively with the market. It notes that councils need to be able to forecast their likely future needs effectively, shape the market through the provision of accurate forecasting and incentivising providers to expand capacity appropriately, and procure placements efficiently.
14. The CMA found that due to the relatively few placements bought by each council, it was difficult to accurately forecast need. With regard to specialist provision, the demand for this provision from individual councils was generally too low to justify contracting a whole service to meet those needs.
15. The CMA found evidence of councils working together to tackle some of these challenges, however there were difficulties in making this work successfully due to risk aversion, budgetary constraints, differences in governance and difficulties aligning priorities and sharing costs. The report suggests that these barriers are unlikely to be overcome without action by national governments to ensure the appropriate level of collaboration.

Creating capacity in the market

16. The review finds that barriers to creating capacity in the market exist in relation to regulation, property and planning, and recruitment and retention.
17. The regulatory system in place for the care system has remained largely unchanged in England for twenty years, creating costly and time-consuming processes that do little to improve children's wellbeing and safety. In Scotland and Wales, recent amendments to the system mean that these challenges were less pronounced in those countries.
18. The review also found that access to suitable properties was a barrier to the creation of children's homes. This was both due to competition for scarce housing stock, and

difficulties negotiating the planning system including the issue of local opposition to children's homes as a result of outmoded or inaccurate assumptions about them.

19. The review expressed surprise that children's homes workers had not seen their wages rise despite high levels of profit making and that greater investment was not seen in recruiting, training and supporting staff to aid recruitment and retention challenges.
20. The review also found that more could be done at a national level to address recruitment and retention of both children's homes workers and foster carers.

Recommendations and initial LGA views

Commissioning

21. The review recommends that the Government requires a more collective approach to engaging with the placements market, including:
 - a. Setting out the minimum level of activity to be carried out collectively including in forecasting, market shaping and procurement
 - b. Requiring each local authority to participate in a sub-national (England) body to carry out these collective activities
 - c. Providing an oversight structure to ensure each body carries out its functions and achieves sufficiency in its area
 - d. Improved information on how often children are placed in placements that do not meet their needs due to a lack of appropriate placements
22. Furthermore, the review recommends that the Government provides additional support to local authorities and collective bodies for forecasting, market shaping and procurement, including:
 - a. National-level functions to support forecasting of demand and supply, including carrying out and publishing regional and national analysis, with a statutory duty on councils to provide specified data
 - b. Trialling market shaping and procurement techniques and sharing what works
 - c. Reintroducing national procurement contracts covering terms and conditions that do not need to reflect local conditions
23. The CMA also recommends that the Government offers targeted funding support for innovative approaches by councils or groups of councils to recruit and retain foster carers to reduce reliance on IFAs.

24. LGA VIEW

- a. In our submissions to the review, we recognised the value in more collective work on forecasting and market shaping activity, along with commissioning of specialist placements.
- b. However we also emphasised the value of local autonomy, and the importance of councils as corporate parents having strong relationships with foster carers and children's homes. We would therefore suggest that when considering the level of activity to be carried out by collective bodies, the focus should be on strategy and specialist placements rather than all homes for children in care.
- c. It would also be important that any new arrangements built on existing good practice and structures, rather than duplicating arrangements or undoing work that has already taken place.

- d. With regard to collection and reporting of data, we recognise the need to improve our understanding of the needs of children. Any data collection must be designed in consultation with councils to ensure that this is proportionate and that systems are in place to allow data to be collected efficiently. Additional support may need to be provided to councils or collective arrangements to ensure staff capacity.
- e. The LGA is already working with councils on national contracts for some types of provision and the need for these contracts is recognised. We support the recommendation that this work is expanded.
- f. We also welcome the recommendation that councils be supported to trial innovative approaches to recruitment and retention of foster carers, and suggest this is carried out as part of a broader plan alongside the later recommendation around a national strategy. The LGA has previously called for a national recruitment campaign for foster carers to harness the knowledge and scale of the Department for Education.

Creating capacity in the market

- 25. The review recommends a review of regulations related to the provision of placements to ensure that regulations protect children's safety and wellbeing without unnecessarily restricting the effective provision of placements.
- 26. With regard to planning, it is recommended that for the purposes of the planning regime, the Government considers removing the distinction between small children's homes and domestic dwelling houses.
- 27. Where children's homes remain in the planning system (for example, larger homes), it is recommended that guidance is introduced clarifying when planning permission may be required and the circumstances in which it is likely to be granted or refused.
- 28. The CMA also recommends an annual assessment of the workforce, similar in scope to the CQC's annual State of Care review in England, to provide a clear overview of staffing pressures and concerns. The Government is recommended to consider whether national measures such as recruitment campaigns, supporting professionalisation and career pathways are required.
- 29. The report also recommends that the Government undertakes an assessment of future need for foster carers and leads on a strategy to improve recruitment and retention of foster carers.

30. LGA VIEW

- a. We have supported calls by the Association of Directors of Children's Services to review regulations related to placements, so welcome this recommendation.
- b. We are in discussion with the Planning and Housing policy team about the implications of the recommendations on planning. It is important to consider how the police are consulted on the locations of children's homes, given the additional risks to children in care of exploitation.
- c. An annual workforce assessment may also be helpful in ensuring we can effectively plan for recruitment and retention; we will seek further views on this recommendation from the sector and workforce colleagues.

Resilience of the market

31. The review recommends that the Government creates a statutory oversight regime to assess the financial health of the most difficult to replace providers of children's homes and warning placing authorities if failure is likely.

32. This oversight body should also require the most difficult to replace children's home providers to maintain contingency plans setting out how they are organising their affairs to mitigate the risk of provision having to close in a sudden or disorderly way in the event of financial difficulties or insolvency.

33. LGA VIEW

- a. The LGA has been calling for oversight of the largest providers of children's placements and highlighting the risks of high levels of debt in those organisations since 2020; we therefore welcome these recommendations.