

## **Children’s social care market study final report England summary 10 March 2022**

1. The CMA launched a market study into children’s social care in England, Scotland and Wales on 12 March 2021, in response to two major concerns that had been raised with us about how the placements market was operating. First, that local authorities were too often unable to access appropriate placements to meet the needs of children in their care. Second, that the prices paid by local authorities were high and this, combined with growing numbers of looked-after children, was placing significant strain on local authority budgets, limiting their scope to fund other important activities in children’s services and beyond.
2. We considered that the case for a market study in this area was particularly strong due to the profound impact that any problems would have on the lives of children in care. While we have approached this study as a competition authority, assessing how the interactions of providers and local authority purchasers shape outcomes, we have been acutely aware of the unique characteristics of this market, and in particular the deep impact that outcomes in this market can have on the lives of children.
3. Our market study is also timely. Each of the three nations in scope has significant policy processes underway which are aiming to fundamentally reform children’s social care. For one vital element of this – the operation of the placements market – our study provides a factual and analytical background, as well as recommendations for reform. We intend that these will prove useful for governments as they develop their wider policy programmes for children’s social care.
4. Overall, our view is that there are significant problems in how the placements market is functioning, particularly in England and Wales. We found that:
  - a lack of placements of the right kind, in the right places, means that children are not consistently getting access to care and accommodation that meets their needs;
  - the largest private providers of placements are making materially higher profits, and charging materially higher prices, than we would expect if this market were functioning effectively; and

- some of the largest private providers are carrying very high levels of debt, creating a risk that disorderly failure of highly-leveraged firms could disrupt the placements of children in care.
5. It is clear to us that this market is not working well and that it will not improve without focused policy reform. Governments in all three nations have recognised the need to review the sector and have launched large-scale policy programmes. A key part of these programmes should be to improve the functioning of the placements market, via a robust, well-evidenced reform programme which will deliver better outcomes in the future. This will require careful policymaking and a determination to see this process through over several years.
  6. We are therefore making recommendations to all three national governments to address these problems. Our recommendations set out the broad types of reform that are necessary to make the market work effectively. The detail of how to implement these will be for individual governments to determine, taking into account their broader aspirations for the care system and building on positive approaches that are already in evidence.
  7. Our recommendations fall into three categories:
    - recommendations to improve commissioning, by having some functions performed via collaborative bodies, providing additional national support and supporting local authority initiatives to provide more in-house foster care;
    - recommendations to reduce barriers to providers creating and maintaining provision, by reviewing regulatory and planning requirements, and supporting the recruitment and retention of care staff and foster carers; and
    - recommendations to reduce the risk of children experiencing negative effects from children's home providers exiting the market in a disorderly way, by creating an effective regime of market oversight and contingency planning.
  8. In recognition of the different contexts in each of England, Scotland and Wales, we differentiate between these in the text of the main report where appropriate. We have also drawn together the main conclusions and recommendations for each nation in its own dedicated summary. This summary sets out our main conclusions and recommendations for England, and where appropriate compares our findings for England with those for Scotland and Wales.

## **Background: the placements market**

9. There are 80,850 looked-after children in England, out of a total of just over 100,000 looked-after children in England, Scotland and Wales. Over two-thirds of looked-after children in England live in foster care, which is similar to the proportion of children living in foster care in Wales, and 16% live in residential settings, compared to 10% in Scotland and 7% in Wales. 13% of children in England live in other settings for example living with parents, placed for adoption or in community settings.
10. The current annual cost for children's social care services is around £5.7 billion in England.
11. Children's social care is a devolved policy responsibility, with key policy decisions in England being made by the UK Government. There are significant policy processes underway in the children's social care sector in England with the ongoing independent review of children's social care expected to report later this year.
12. The Office for Standards in Education, Children's Services and Skills (Ofsted) is the independent regulator of services that care for children. Unlike the Care Inspectorates in Scotland and Wales, Ofsted does not regulate adult social care. Ofsted is responsible for inspecting children's social care provision to ensure it is of the appropriate standard. Both fostering services and children's homes fall within Ofsted's remit.
13. Local authorities in England have statutory duties in relation to the children taken into their care. They are obliged to safeguard and promote children's welfare, including through the provision of accommodation and care. In discharging their duties, local authorities provide some care and accommodation themselves, and they purchase the remainder from independent providers, some of which are profit-making.
14. In England, local authorities use a significant amount of private provision for children's homes, with around 78% of places being provided by the private sector, which is similar to the position in Wales. In contrast local authorities in Scotland rely more heavily on local authority provision of children's homes places. Over the last five years, the private sector's share of children's homes in England has risen by 26%; while the number of local authority homes has declined by 5%. The voluntary sector is very small and in decline.
15. As well as shifting from local authority or voluntary sector to private provision in general across England, Scotland and Wales the average size of children's

homes has fallen. Most children's homes in England now provide four or fewer places.

16. In fostering, local authorities maintain their own in-house fostering agencies, but also use independent provision in the form of Independent Fostering Agencies ('IFAs'). However, the majority of fostering placements are provided by local authority foster carers in each of England, Scotland and Wales. In England, local authorities provide 64% of foster placements. In Scotland and Wales, around 69% and 74% of foster placements, respectively, come from local authorities.
17. In recent years, the number of looked-after children in England has increased steadily, both in absolute terms and as a proportion of the population. Between 2016 and 2020 the number of looked-after children rose by 14% in England. Needs were also shifting, with placements needed for a greater number of older children and unaccompanied asylum-seeking children, as well as those with more complex needs. These shifts have also increased demand for residential care and specialist fostering placements. We have seen an increasing gap between the number of children requiring placements and the number of local authority and third-sector placements available.

## **Problems in the placements market**

18. The placements market – the arrangements by which local authorities source and purchase placements for children – plays an important role in the provision of residential and fostering placements for children. As noted above, a significant proportion of placements are provided by private providers, particularly in children's homes. Regulators assess most residential placements and fostering services as being of good quality, and there is no clear difference, on average, between their assessments of the quality of private provision, as compared with local authority provision. In England at 31 March 2021, just over 80% of children's homes and 93% of fostering agencies were rated as good or outstanding.
19. Our study found problems in the way the placements market is operating. Children are not consistently gaining access to placements that appropriately meet their needs and are in the appropriate locations. Local authorities are sometimes paying too much for placements.
20. First, and most importantly, it is clear that the placements market in England is failing to provide sufficient supply of the right type so that looked-after children can consistently access placements that properly meet their needs, when and where they require them. This means that some children are being

placed in settings that are not appropriate for their own circumstances, for instance where they are:

- far from where they would call 'home' without a clear child protection reason for this, thereby separated from positive friend and family networks: 37% of children in England in residential placements are placed at least 20 miles from their home base;
- separated from siblings, where their care plan calls for them to be placed together: 13% of all siblings in care in England were placed separately, contrary to their care plan;
- unable to access care, therapies or facilities that they need: we were told consistently by local authorities in England, Scotland and Wales that it is especially difficult to find placements for children with more complex needs and for older children. We were also told that some children are placed in an unregulated setting due to the lack of an appropriate children's home place, and so cannot legally be given the care they need. We also understand that in some cases children are being placed in unregistered settings, notwithstanding the fact that this is illegal.

21. While the amount of provision has been increasing in England, primarily driven by private providers, this has not been effective in reducing difficulties local authorities face in finding appropriate placements, in the right locations, for children as they need them. That means, in tangible terms, children being placed far from their established communities, siblings being separated or placements failing to meet the needs of children, to a greater extent than should be the case.
22. Given the vital importance of good placement matches for successful outcomes for children, and particularly the negative impact of repeated placement breakdown, these outcomes should not be accepted. It is a fundamental failure in the way the market is currently performing.
23. Second, the prices and profits of the largest providers in the sector are materially higher than we would expect them to be if this market were working well. The evidence from our core data set, covering fifteen large providers, shows that these providers have been earning significant profits over a sustained period. For the children's homes providers in our cross-GB data set we have seen steady operating profit margins averaging 22.6% from 2016-20, with average prices increasing from £2,977 to £3,830 per week over the period, an average annual increase of 3.5%, after accounting for inflation. In fostering, prices have been steady at an average of £820 per week, and

indeed have therefore declined in real terms, but profit margins of the largest IFAs appear consistently high at an average of 19.4%.

24. If this market were functioning well, we would expect to see existing profitable providers investing and expanding in the market and new providers entering. This would drive down prices as local authorities would have more choice of placements, meaning that less efficient providers would have to become more efficient or exit the market, and the profits of the largest providers would be reduced. Eventually, profits and prices should remain at a lower level as providers would know that if they raised their prices they would be unable to attract placements in the face of competition. The high profits of the largest providers therefore shows that competition is not working as well as it should be.
25. Third, we have concerns around the resilience of the market. Our concerns are not about businesses failing *per se*, but about the impact that failure can have on the children in their care. Were a private provider to exit this market in a disorderly manner – for instance by getting into financial trouble and closing its facilities – children in that provider’s care could suffer harm from the disruption, especially if local authorities were unable to find alternative appropriate placements for them. Given the impact of these potential negative effects on children’s lives, the current level of risk needs to be actively managed. This is less of a concern in the case of fostering, as foster carers should be able to transfer to a new agency with minimal impact on children. It is a greater concern in the case of children’s homes, where placements may be lost altogether.
26. We have seen very high levels of debt being carried by some of the largest private providers, with private equity-owned providers of children’s homes in our dataset having particularly high levels. This level of indebtedness, all else being equal, is likely to increase the risk of disorderly exit of firms from the market.
27. In addition to the above concerns about the market, some respondents have argued that the presence of for-profit operators is inappropriate in itself. We regard the issue of the legitimacy of having private provision in the social care system as one on which it is primarily for elected governments to take a view. Nonetheless we are well placed to consider the outcomes that private providers produce, as compared to local authority provision. While there are instances of high and low quality provision from all types of providers, the evidence from regulatory inspections gives us no reason to believe that private provision is of lower quality, on average, than local authority provision.

28. Turning to price, our evidence suggests that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, despite their profit levels. By contrast, in fostering, there is indicative evidence that local authorities could provide some placements more cheaply than by purchasing them from IFAs. We have, therefore, made recommendations to the Government to run pilots in certain local authorities to test the potential to make savings by bringing more fostering placements in-house.
29. Finally, as noted above, we have seen that some private providers, particularly those owned by private equity investors, are carrying very high levels of debt. As local authorities need the capacity from private providers, but these providers can exit the market at any time, these debt levels raise concerns about the resilience of the market. We have, therefore, made recommendations to enable these risks to be actively monitored so that there is minimal disruption to children in care.
30. Given the importance of the functioning of the placements market for looked-after children, the problems we have found must be addressed. In the following three sections, we set out our findings on the main drivers of these problems, and the recommendations we are making to address them.

## **Commissioning**

31. A key factor in determining how well any market functions is the ability of the behaviour of purchasers to drive the provision of sufficient supply at an acceptable price. The current shortfall in capacity in the placements' market therefore represents a fundamental failing in market functioning. In particular, we have found that there are severe limitations on the ability of the 206 local authorities in England, Scotland and Wales, who purchase placements, to engage effectively with the market to achieve the right outcomes.
32. In order to engage effectively with the market, local authorities, directly or indirectly, need to be able to:
  - forecast their likely future needs effectively, gaining a fine-grained understanding of both the overall numbers of children that will be in their care, and the types of need those children will have;
  - shape the market by providing accurate and credible signals of the likely future needs of children to existing and potential providers, and incentivising providers to expand capacity to meet these needs; and

- procure placements efficiently, purchasing those places that most closely match the needs of children, in the most appropriate locations, at prices that most closely reflect the cost of care.
33. However, we have found that local authorities, including those in England, face serious challenges when trying to do each of the above.
  34. Individual local authorities face an inherently difficult task when trying to develop accurate forecasting. They each buy relatively few placements, and they experience significant variation in both the number of children requiring care and their specific needs. The absence of reliable forecasts means that there is greater uncertainty in the market than there needs to be. This acts as a barrier to investment in new capacity needed to meet future demand.
  35. The majority of local authorities and large providers we spoke to in England highlighted that accurate forecasting of future demand is challenging. The most common reasons given were: that demand is inherently uncertain (for example, the needs of individual children change over time as well as the trends in need of children in care overall) and external pressures (such as local events, budget/service cuts, changes in staff, change in practices) which are hard to account for let alone predict. Other reasons included: a lack of forecasting tools and resources for local authorities to use and the accuracy of data recorded with regards to unplanned/emergency placements.
  36. Local authorities and large providers in England told us that their forecasts of future demand are usually based on previous trends and current care needs rather than substantial predictions of likely future needs. Many large providers explained that they do not consider local authority forecasts of their future needs to be accurate and so would not use these to inform their capacity expansion decisions.
  37. Even where future needs can be anticipated, local authorities struggle to convert this understanding into signals that providers will act on. Local authorities must often take whatever placement is available, even when it is not fully appropriate for the needs of the child. This blunts the ability of local authority purchasing decisions to shape the market to provide for their true needs. In England, most local authorities told us that they do not attempt to actively shape the market by encouraging providers to invest in new provision. Local authorities acting alone face particular challenges in attempting to shape the market. For example, often the demand of an individual local authority for certain types of specialist provision is too low to justify contracting a whole service to meet these needs.

38. Sufficiency statements provided by local authorities in England demonstrated that many local authorities focus their future sufficiency plans on further developing their in-house offering of children's homes and foster carers, rather than seeking to influence the expansion plans of providers. Nevertheless, opening a new children's home is a major financial commitment and especially so for local authorities with reduced budgets and multiple competing demands for resources. Many local authorities told us this was one of the major challenges when considering whether to open a new children's home.
39. We have seen considerable evidence that working together can make local authorities more effective. Collaborative procurement strategies can strengthen the bargaining position of local authorities, and groups of local authorities can more effectively engage with private providers to support the case for investment in new capacity, which provides the right type of care in the right locations.
40. Currently in England, there is a variety of commissioning cultures and approaches, with some local authorities procuring individually while many form regional procurement groups with neighbouring local authorities. These groups vary in their design and purpose. All local authorities that responded to our request for information in England explained that regional procurement groups are beneficial as they allow for sharing of information and best practice between local authorities, the pooling of demand, and for local authorities to negotiate better terms with providers. However, many local authorities also highlighted that the design of procurement groups is important. Local authorities told us that for placements catering to complex care needs, collaborating with a large number of local authorities can be very effective due to the smaller number of cases requiring these kinds of placements.
41. While we have seen varying degrees of cooperative activity between different groups of local authorities in England, this has not gone far enough or fast enough. Despite regional collaboration being widely seen as beneficial, local authorities can struggle to collaborate successfully due to risk aversion, budgetary constraints, differences in governance, and difficulties aligning priorities and sharing costs. It is not clear how local authorities can sufficiently overcome these barriers even if given further incentive to do so. As such, without action by national governments to ensure the appropriate level of collaboration, local authorities are unlikely to be able to collaborate sufficiently to deliver the outcomes that are needed.

## **Recommendation 1.1: Larger scale market engagement**

42. We recommend that the UK Government requires a more collective approach to engagement with the placements market. This should include:
- setting out what minimum level of activity must be carried out collectively. This should include an appropriate degree of activity in each of the key areas of forecasting, market shaping and procurement;
  - ensuring there is a set of bodies to carry out these collective market shaping and procurement activities, with each local authority required to participate in one of them; and
  - providing an oversight structure to ensure that each body is carrying out its functions to the appropriate level. This should involve an assessment of the extent to which sufficiency of placements is being achieved within each area.
43. The UK Government should determine how best to implement this recommendation taking into account key issues that lie beyond the scope of our study. In examining the relative advantages and disadvantages of different options, the UK Government should consider:
- the number of bodies: for any body or set of bodies created there will be a trade-off between gaining buyer power and efficiencies through larger size, versus difficulties of coordination and management that come with that. The UK Government should consider these factors in determining the appropriate approach;
  - what precise collective market shaping and procurement activities are assigned to the bodies: there is a range of options, from mandating only a small amount of supportive activity to be carried out collectively eg forecasting, market shaping and procurement only for children with particular types of complex needs, through to mandating all of this activity to be carried out by the collective bodies;
  - the relationship between the new bodies and local authorities: the regional bodies will decide on how the mandated level of collective activity is carried out. This could be with local authorities collectively reaching agreement or the regional bodies could be given the power to decide;
  - the governance of the body or bodies: on the presumption that corporate parenting responsibilities (and therefore the ultimate decision of whether to place a particular child in a particular placement) will remain with local

authorities, there may be a tension between the roles of the local authorities and the collective bodies that will need to be resolved via the governance structure; and

- how to best take advantage of what is already in place. There are benefits of building on existing initiatives in terms of avoiding transition costs and benefiting from organic learning about what works well in different contexts. For example, consideration should be given to using existing agreements, organisations and staff as the basis for future mandated collective action.
44. Wherever responsibility for ensuring there is sufficient provision for looked-after children sits, it is essential that this body or bodies are appropriately held to account. As such, we are also recommending that local authority duties should be enhanced to allow more transparent understanding of the extent to which sufficiency of placements is being achieved within each area. In order to do this, better information is required to understand how often children are being placed in placements that do not fit their needs, due to a lack of appropriate placements in the right locations. This will also help ensure that moving to a wider geographical focus helps support the aim of placing more children closer to home, unless there is a good reason not to do so.

### **Recommendation 1.2: National support for purchaser engagement with the market**

45. We recommend that the UK Government provides additional support to local authorities and collective bodies for forecasting, market shaping and procurement.
46. With regards to forecasting, the UK Government should establish functions at a national level supporting the forecasting of demand for, and supply of, children's social care placements. These functions should include carrying out and publishing national and regional analysis and providing local authorities and collective body or bodies with guidance and support for more local forecasting, including the creation of template sufficiency reports.
47. For market shaping and procurement, the UK Government should support the increase in wider-than-local activity by funding collective bodies to trial different market shaping and procurement techniques and improving understanding of what market shaping and procurement models work well.
48. In England, the Department for Education should support the reintroduction of national procurement contracts covering those terms and conditions that do not need to reflect local conditions.

### **Recommendation 1.3: Support for increasing local authority foster care provision**

49. We recommend that the UK Government supports innovative projects by individual local authorities, or groups of local authorities, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs.
50. While precise like-for-like comparisons are difficult to make, our analysis suggests that there are likely to be some cases where local authorities could provide foster placements more cost-effectively in-house rather than via IFAs, if they are able to recruit and retain the necessary carers. We also have heard from local authorities who have successfully expanded their in-house foster care offering and have seen positive results.
51. The UK Government should offer targeted funding support for innovative projects by individual local authorities, or groups of local authorities, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs. Any such projects should then be evaluated carefully to provide an evidence base to help shape future policy.

### **Recommendations we are not taking forward: banning for profit care; capping prices or profits**

52. Some respondents have argued that we should directly address the problem of high profits and prices in the placements market by recommending that local authorities stop using private provision altogether, or that caps should be imposed on their prices or profits.
53. Turning first to children's homes, as discussed above, the central problem facing the market is the lack of sufficient capacity. At the moment, England relies on private providers for the majority of its placements. Similarly, most investment in new capacity is currently coming from private providers. Banning private provision, or taking measures that directly limit prices and profits would further reduce the incentives of private providers to invest in creating new capacity (or even in maintaining some current capacity) and therefore risk increasing the capacity shortfall. While this shortfall could be made up by increased local authority or not-for-profit provision, it would take significant political intervention to ensure that this was achieved at the speed and scale necessary to replace private provision, requiring very significant capital investment.
54. In the case of foster care, by contrast, we do see indicative evidence that using IFA carers may be more expensive for local authorities than using their own in-house carers in some cases. Compared to children's homes, the

capital expenditure required to in-source significant numbers of foster placements would also be lower. While we are recommending that the UK Government supports local authorities to explore this option, we do not recommend that the Government takes direct action to limit or ban profit-making in foster care. From the evidence we have seen is not clear that local authorities would be able to recruit the required number of foster carers themselves, nor that they would be able to provide the same quality of care at a similar price, across the full range of care needs and in every area.

### **Overall recommended approach on commissioning**

55. In our view, the best way to address the high levels of profit in the sector together with the capacity shortfall is to address the common causes of both problems, in particular the weak position of local authority commissioners when purchasing placements and removing unnecessary barriers to the creation of new provision (as discussed in the next section). Improving the approach to purchasing, will provide local authorities with greater purchasing power and put them in a better position to forecast future demand and manage capacity requirements accordingly. Removing barriers to investment in new provision will help providers respond more effectively to the needs of children.
56. Over time, we believe that these measures would be successful in drawing more appropriate supply to the market and driving down prices for local authorities, without acting as a drag on required ongoing and new investment in provision. In doing so they would move the market to a position where providers are forced to be more responsive to the actual needs of children, by providing places which fully meet their needs, in locations which are in the best interests of those children. Such placements ought also to offer better value to commissioners who are purchasing them, by being priced more in line with the underlying cost of provision.
57. We are aware that there have been calls in the past for greater aggregation in commissioning. In England, reviews for the Department for Education in 2016 and 2018 recommended that local authorities be required to come together in large consortia to purchase children's homes and fostering placements, and that larger local authorities or consortia attempt to become self-sufficient using in-house foster carers.
58. The UK Government will rightly wish to consider our recommendations, and the appropriate way to implement them in the round, taking into account broader issues that are beyond our remit. Nonetheless, we are clear that excessive fragmentation in the processes of forecasting, market shaping and

procurement are key drivers of poor outcomes in this market, and must therefore be addressed if we are to see significant improvement in the outcomes.

## **Creating capacity in the market**

59. We have also identified barriers that are reducing the ability of suppliers to bring new supply to the market to meet emerging needs. These barriers are in the areas of:

- Regulation;
- property and planning; and,
- recruitment and retention.

By creating additional costs and time delays for providers, these factors may act as a deterrent to new investment, leading to provision being added more slowly, or even deterred completely. Unless addressed, over time, these will contribute to the ongoing undersupply of appropriate placements in the market.

### **Recommendation 2.1: Review of regulation**

60. We recommend that the UK Government carries out or commissions a review of regulation impacting on the placements market in England.

61. Regulation is a vital tool to protect safety and high standards, and where it is well-designed to protect the interests, safety and wellbeing of children, it must not be eroded. We have seen evidence that in England there are areas where regulation is a poor fit for the reality of the placements market as we see it today. Despite the huge changes in the nature of the care system over the past twenty years, the regulatory system in England has remained broadly the same over this period.

62. For example, in England it is a legal requirement for a children's home to have a manager. It is also a legal requirement for a manager to be registered and failure to do so is an offence. On that basis, Ofsted policy is that an application to register a home will be accompanied by an application to register a manager. This means that the manager usually has to be in place for some time before children will be cared for. Similarly, in England a manager's registration is not transferable, so each time a manager wishes to move home they must re-register with Ofsted. We have heard from providers

that these processes are costly, time-consuming and hinder the rapid redeployment of staff to a location where they are needed.

63. These are examples of the sort of areas where regulation as currently drafted may be preventing the market from working as well as it should, without providing meaningful protections for children. As a result, the net effect of these areas of regulation on children's wellbeing may be negative. We have seen less evidence of these sort of problems in Wales and Scotland, where regulation appears to be more flexible, while still providing strong protections for children in care.
64. The UK Government should carry out, or commission, a thorough review of regulation relating to the provision of placements, during which protecting the wellbeing of children must be the overriding aim, but also considering whether regulations are unnecessarily restricting the effective provision of placements.

### **Recommendation 2.2: Review planning requirements**

65. We recommend that the UK Government reviews the impact of the planning system on the ability of providers to open new children's homes.
66. Access to suitable property is another barrier to the creation of new children's homes. While this is partly down to competition for scarce housing stock, one particular area of concern is in negotiating the planning system. We have repeatedly heard concerns that in England obtaining planning permission is a significant barrier to provision because of local opposition, much of which appears to be based on outmoded or inaccurate assumptions about children's homes and looked-after children. Similarly, we have heard that the planning rules are applied inconsistently in relation to potential new children's homes.
67. The average new children's home in England provides placements for only three children. As a result, the type of properties that are suitable to serve as children's homes will also tend to be attractive to families in general. Where providers face delays imposed by the planning process, even where they are successful in getting planning permission, this can lead to them losing the property to a rival bidder for whom planning is not a consideration. It is therefore clear to us that market functioning would be improved by a more streamlined and consistent approach to planning issues.
68. In England, the UK Government should review the planning requirements in relation to children's homes to assess whether they are content that the correct balance is currently being struck. In particular, in order to make the planning process more efficient for children's homes, we recommend that the UK Government considers whether any distinction, for the purposes of the

planning regime, between small children's homes and domestic dwelling houses should be removed. This could include, for example, steps to make clear that small children's homes which can accommodate less than a specified number of residents at any one time are removed from the requirement to go through the planning system notwithstanding that the carers there work on a shift pattern. Doing this will increase the prospect of enough children's homes being opened and operated in locations where they are needed to provide the level of care that children need.

69. We also recommend that where children's homes remain in the planning system (for example because they are larger) national guidance is introduced for local planning authorities and providers. The guidance should clarify the circumstances in which permission is likely to be granted or refused.

### **Recommendation 2.3: Regular state of the sector review**

70. We recommend that the UK Government commissions an annual state of the sector review, which would consider the extent and causes of any shortfalls in children's home staff or foster carers.
71. Recruiting and retaining staff for children's homes is a significant barrier to the creation of new capacity. This is a fundamental problem across all the care sectors. Given the high levels of profit among the large providers it is perhaps surprising that wages have not risen to ease recruitment pressure and that greater investment is not made in recruiting, training and supporting staff. We note, however, that there are many other factors aside from wages that impact on the attractiveness of roles within children's social care, some of which are outside the control of providers. While there is no easy route to addressing this, more attention needs to be paid to this question at a national level. This should be an ongoing process building on existing work.
72. In England, there should be an annual assessment of the state of the sector, including workforce issues, to provide a clear overview of staffing pressures and concerns, and to recommend measures to address bottlenecks. This would be similar in scope to the CQC's annual State of Care review. The UK Government should also give attention to whether national measures, such as recruitment campaigns, measures to support professionalisation (such as investment in training and qualifications) and clearer career pathways are required.
73. Recruitment and retention of foster carers is a barrier to creating more foster places. While many local authorities and IFAs are adopting positive approaches to addressing this, again more can be done at the national level.

There should be an assessment of the likely future need for foster carers and the UK Government should take the lead in implementing an effective strategy to improve recruitment and retention of foster carers.

## **Resilience of the market**

74. We have found that some providers in the market, particularly those owned by private equity firms, are carrying very high levels of debt. These high debt levels increase the risk of disorderly firm failure, with children's homes shutting their doors abruptly. Were this to occur, this would harm children who may have to leave their current homes. Local authorities may then have problems finding appropriate alternative provision to transfer them into.
75. In principle, a successful children's home should be expected to be attractive to a new proprietor. There is, however, no guarantee that it will be sold as a going concern in every case. In particular, the expected move away from the ultra-low interest rate environment of recent times would place new pressure on highly-leveraged companies to meet their debt servicing obligations, increasing the risk of disorderly failure. Our assessment is that the current level of risk of disruption to children's accommodation and care as a result of a provider's financial failure is unacceptable, and measures must be taken to mitigate this.
76. In considering our recommendations in this area, we have taken into account the ongoing need for investment in the creation of appropriate placements, and the current level of reliance on private providers to make this investment. We have sought to balance the need to take urgent steps to reduce the level of risk to children against the need to avoid a sudden worsening of the investment environment faced by providers, which may exacerbate the problem of lack of appropriate supply in this market.
77. We are therefore recommending that the UK Government takes steps to actively increase the level of resilience in this market, in order to reduce the risk of negative outcomes for children. In particular, we recommend that it:
  - introduces a market oversight function so that the risk of failure among the most difficult to replace providers is actively monitored; and
  - requires all providers to have measures in place that will ensure that children in their care will not have their care disrupted in the event of business failure.

### **Recommendation 3.1: Monitor and warn of risks of provider failure**

78. We recommend that the UK Government creates an appropriate oversight regime that is capable of assessing the financial health of the most difficult to replace providers of children's homes and of warning placing authorities if a failure is likely.
79. This regime could operate along similar lines to the Care Quality Commission's current market oversight role in relation to adult social care providers in England – a system that already exists for a similar purpose. Adopting this recommendation would provide policymakers and placing authorities with early warning of a potential provider failure.
80. Creating this function on a statutory basis would provide benefits such as giving the oversight body formal information-gathering powers, and a firmer footing on which to share information with local authorities. We recommend that in England, where the CQC already operates a statutory regime for adult social care, the statutory approach should be adopted. Given the cross-border nature of many of the most significant providers, oversight bodies in the three nations need to be able to share relevant information in a timely and effective way.

### **Recommendation 3.2: Contingency planning**

81. We recommend that the UK Government takes steps to ensure that children's interests are adequately protected if a provider gets into financial distress.
82. The UK Government, via its appointed oversight body, should require the most difficult to replace providers to maintain a "contingency plan" setting out how they are organising their affairs to mitigate the risk of their provision having to close in a sudden and disorderly way in the event that they get into financial difficulties or insolvency. One important element will be to ensure that appropriate arrangements are in place to ensure that providers have the necessary time and financial resources to enable an orderly transition where the provision can be operated on a sustainable basis, either by its existing owners or any alternative owners. Contingency plans should seek to address these risks, for instance through ensuring that:
  - appropriate standstill provisions are in place with lenders;
  - companies are structured appropriately to remove unnecessary barriers to selling the provision to another operator as a going concern; and

- providers maintain sufficient levels of reserves to continue to operate for an appropriate length of time in a stressed situation.
83. These contingency plans should be subjected to stress testing by the Government's oversight body, to ensure that they are sufficiently robust to reduce the risk of negative impacts on children in potential stress scenarios. Where the oversight body considers that plans are not sufficiently robust, it should have the power to require providers to amend and improve them.
84. Taken together, we believe that these measures strike the right balance between minimising the risks of negative impacts on children and maintaining an environment that supports needed investment in the future, based on the current state of the market. As the measures that we are recommending take effect and capacity grows in the market, the Government will want to reflect on the appropriate balance between public and private provision. In particular, as well as the resilience risks associated with the high levels of debt inherent in the business models of some providers, there is a risk that excessive reliance on highly leveraged providers will leave local authorities more susceptible to having to pay higher prices for services if the costs of financing debt increase.
85. In addition, as reforms to the care system are made in England (possibly resulting in fewer children being placed in children's homes – the terms of reference for the independent review of children's social care in England notes it should consider "the capacity and capability of the system to support and strengthen families in order to prevent children being taken into care unnecessarily") the basis of this calculation may shift, meaning that imposing tougher measures, such as a special administration regime or steps to directly limit or reduce the levels of debt held by individual operators, may at that point be appropriate.

## **Next steps**

86. If implemented, we expect that our recommendations should improve or mitigate the poor outcomes that we see in the placement market.
- Our recommendations in relation to commissioning placements in the market will put purchasers in a stronger position to understand their future needs, to ensure that provision is available to meet them and to purchase that provision in an effective way.

- Our recommendations to address barriers to creating capacity in the market will reduce the time and cost of creating new provision to meet identified needs.
  - Our recommendations around resilience will reduce the risk of children experiencing negative effects from children's home providers exiting the market in a disorderly way.
87. Taken together, we expect these measures to lead to a children's social care placements market where:
- the availability of placements better matches the needs of children and is in appropriate locations;
  - the cost to local authorities of these placements is reduced; and
  - the risk of disruption to children from disorderly exit of children's homes provision is reduced.
88. Major policy processes in relation to children's social care are currently ongoing in England, through the independent care review, and we hope that our recommendations will be considered as part of this. We will engage with the UK Government, Ofsted and others to explain our recommendations, strongly encourage them to implement them and, support them in doing so.