Children's social care market study

Final report

10 March 2022

The Competition and Markets Authority has excluded from this published version of the market study report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

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 this document where appropriate. We also draw together the main conclusions and recommendations for each nation in its own dedicated summary, which will be published on our case page.

Background: the placements market

9. At the date of publication, there are just over 100,000 looked-after children in England, Scotland and Wales. Most are in foster care, with a smaller proportion in residential care settings including children's homes, secure

children's homes, independent or semi-independent living facilities and residential schools. The current annual cost for children's social care services is around £5.7 billion in England, £680 million in Scotland and £350 million in Wales.

10. Children's social care is a devolved policy responsibility, with key policy decisions being made by the Scottish, Welsh and UK governments. Each nation has its own regulator which is responsible for inspecting children's social care provision to ensure it is of the appropriate standard: Ofsted in England, and the respective Care Inspectorates in Scotland and Wales. Both fostering services and children's homes fall within the regulators' remits.

11. Local authorities in England, Scotland and Wales have statutory duties in relation to the children taken into their care. Local authorities 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. In general, local authorities rely more heavily on independent provision for residential placements than they do for fostering placements, and more in England and Wales than in Scotland.

12. Historically, children's social care was largely provided either directly by local authorities using their own in-house provision, or by third-sector organisations working in partnership with the local authority. Over the past few decades, many local authorities and charities have reduced, or even ended, the provision of their own children's homes. This was not due to a deliberate act of central policy, but rather to the independent decisions of hundreds of local authority and third-sector providers. While the reasons for this shift remain debatable, local authorities and advocacy bodies have told us that concerns around reputational risk following a number of scandals, as well as financial concerns, may have played a role in many of the relevant decisions.

13. In recent years, the number of looked-after children 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 14% in England, and 27% in Wales, though it fell by 7% in Scotland. 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, particularly in England and Wales.

Local authorities have placed increasing numbers of children in placements offered by private providers.

14. In children's homes, over three-quarters of places in England and Wales now come from independent providers. In Scotland, this figure is lower but still substantial, with independent providers accounting for around one-third of placements. As well as shifting from local authority or voluntary sector to private provision, the average size of children's homes has fallen. Most children's homes now provide four or fewer places and there has been an increase in the number of single-bed homes.

15. In fostering, local authorities maintain their own in-house fostering agencies, but also use independent provision in the form of Independent Fostering Agencies ('IFAs'). In England and Wales around 36% and 27% of foster placements, respectively, come from IFAs. In Scotland, IFAs provide around 31% of foster placements, but these are all not-for-profit providers, as for-profit provision is unlawful.

16. Finally, recent years have seen a significant increase in the use of "unregulated" placements in England and Wales, where children may be given accommodation and support, but not care, and which are not currently regulated by Ofsted or Care Inspectorate Wales. While local authorities sometimes use these placements by choice, to prepare older children to move towards independence, we understand that they have increasingly been used as a last resort to house children who the local authority wishes to place in a regulated placement but cannot find one.

Problems in the placements market

17. 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, and in England and Wales. 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.

18. 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.

19. First, and most importantly, it is clear that the placements market, particularly in England and Wales, 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.

20. While the amount of provision has been increasing in England and Wales, 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.

21. 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.

22. 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 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%.

23. 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.

24. 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 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.

25. 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.

26. 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 which it is primarily for elected governments to take a view on. 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. 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 governments to run pilots in certain local authorities to test the potential to make savings by bringing more fostering placements in-house. 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.

27. 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

28. 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.

29. 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.

30. However, we have found that local authorities, across all three nations, face serious challenges when trying to do each of the above.

31. 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.

32. 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, Scotland and Wales, 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.

33. 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.

34. While we have seen varying degrees of cooperative activity between different groups of local authorities across the three nations, this has not gone far enough or fast enough. Despite regional collaboration being widely seen as beneficial the extent to which it takes place is patchy. 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

35. We recommend that governments in each nation require 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 specify 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. While in Scotland and Wales it is plausible that this may be at a national level (building on the work of Scotland Excel and the 4Cs), we expect sub-national bodies to be appropriate for England; 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.

36. Each 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, governments 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. Governments 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: national or 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 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.

37. Wherever responsibility for ensuring there is sufficient provision for looked-after children sits, it is essential that these 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

38. We recommend that national governments provide additional support to local authorities and collective bodies for forecasting, market shaping and procurement.

39. With regards to forecasting, in each of England, Scotland and Wales, governments 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 bodies with guidance and support for more local forecasting, including the creation of template sufficiency reports.

40. For market shaping and procurement, each national 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.

41. 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

42. We recommend that governments support 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.

43. 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 have also heard from local authorities who have successfully expanded their in-house foster care offering and have seen positive results.

44. Governments 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

45. 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.

46. Turning first to children's homes, as discussed above, we did not find evidence that providing local authority placements was any less costly to local authorities than purchasing placements from private providers. The central problem facing the market, especially in England and Wales, is the lack of sufficient capacity. At the moment, England and Wales relies on private providers for the majority of their placements. Similarly, most investment in new capacity is 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 to maintain 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.

47. 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 governments support local authorities to explore this option, we do not recommend that governments take 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.

48. While we are not recommending that governments directly limit for-profit provision, we are conscious that the Scottish and Welsh governments have each committed to move away from the model of for-profit provision in children's social care. These decisions are rightly for democratically elected governments to make, and will involve considerations that go beyond our scope as a competition authority. Where governments do take this course of action, however, we recommend that they carefully consider the points we have raised as part of the planning, funding and monitoring involved in the process of directly restricting for-profit provision, to ensure that this is achieved in a way that does not inadvertently result in negative outcomes for children.

Overall recommended approach on commissioning

49. 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). Moving to a less fragmented 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.

50. 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.

51. 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. Similar issues have been raised in Scotland, including around the potential for children's social care to be included within a National Care Service, and in Wales.

52. Each of the governments 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 from this market.

Creating capacity in the market

53. 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

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

55. 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.

56. 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.

57. 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.

58. The UK Government should carry out, or commission, a thorough review of regulation relating to the provision of placements, during which protecting the safety and wellbeing of children must be the overriding aim, but also considering whether specific regulations are unnecessarily restricting the effective provision of placements. In Scotland and Wales, the regulatory system has been amended more recently, but governments should be aware of these considerations as they move through their respective policy processes to reshape the children's social care system.

Recommendation 2.2: Review planning requirements

59. We recommend that the UK and Welsh governments review the impact of the planning system on the ability of providers to open new children's homes.

60. 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 and Wales, 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.

61. The average new children's home 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.

62. In England and Wales, governments 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 governments consider 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.

63. 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

64. We recommend that each 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.

65. 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.

66. In each nation 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 in England. Governments 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.

67. 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. In each nation there should be an assessment of the likely future need for foster carers and national governments should take the lead in implementing an effective strategy to improve recruitment and retention of foster carers.

Resilience of the market

68. 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.

69. 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.

70. 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, in particular in England and Wales. 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.

71. We are therefore recommending that governments take 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 they:

- introduce a market oversight function so that the risk of failure among the most difficult to replace providers is actively monitored; and
- require 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

72. We recommend that governments create 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.

73. This regime could operate along similar lines to the Care Quality Commission's (CQC) 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.

74. 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. Due consideration should also be given to adopting a statutory approach in Scotland and Wales. 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

75. We recommend that governments take steps to ensure that children's interests are adequately protected if a provider gets into financial distress.

76. Governments, via their appointed oversight bodies, 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.

77. 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.

78. 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, governments will however 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.

79. In addition, as reforms to the care system are made (possibly resulting in fewer children being placed in children's homes) 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

80. 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.

81. 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.

82. Major policy processes in relation to children's social care are currently ongoing in England, Scotland and Wales, and we hope that our recommendations will be considered as part of each. We will engage with policymakers, regulators and others to explain our recommendations, strongly encourage them to implement them and, support them in doing so.

1. Background

Purpose of the market study

1.1 In light of concerns around high prices and a lack of appropriate placements for looked-after children, on 12 March 2021 we launched a market study into the supply of children's social care services in England, Scotland and Wales, specifically considering residential services and associated care and support, and fostering services. The purpose of the market study was to examine how well the current system is working across England, Scotland and Wales, and to explore how it could be made to work better, to improve outcomes for some of the most vulnerable people in our society.

Progress of the market study

1.2 Our invitation to comment set out the scope of the market study and the key themes we intended to focus on, namely: the nature of supply, commissioning, the regulatory system and pressures on investment. On 20 May 2021 we published 37 responses to the invitation to comment on our case page.

1.3 On 9 September 2021 we published our decision not to make a market investigation reference.

1.4 We published our interim report on 22 October 2021, setting out our interim findings based on our initial analysis. This set out our concerns that the children's social care sector is failing to consistently deliver the right outcomes for children and society, in that:

(a) the placements market overall is not providing sufficient appropriate places to ensure that children consistently receive placements that fully meet their needs, when and where they require them;

(b) some prices and profits in the sector are above the levels we would expect in a well-functioning market; and

(c) some of the largest providers have very high levels of debt so that there is a potential risk that external events such as a tightening of credit conditions, could lead to unforeseen and significant market exit, significantly increasing the difficulties local authorities face in finding placements for children in their care.

1.5 On 26 January 2022 we published 32 responses to our interim report on our case page, and we have carefully considered the responses we received.

Information gathered

1.6 Over the course of the market study we have gathered information from a wide range of sources to develop our understanding of the issues under consideration and the children's social care sector more broadly, to assess outcomes in the sector in terms of the availability of appropriate places, prices paid by local authorities and the resilience of the sector, and to test our thinking on what recommendations may be appropriate. In addition to analysing the responses to our consultations, our information gathering activities included the following:

- We engaged with, and examined data held by, national governments in England, Scotland and Wales and the regulators in those nations.
- We issued detailed information requests to, and received responses from, the 15 largest independent providers of children's homes and fostering services and received 27 responses to our questionnaire issued to smaller providers.
- We received responses from 41 local authorities to our initial questionnaire. We received responses from a further 4 local authorities when we issued additional questionnaires focussed on specific themes, and a combined response on behalf of Foster Wales and All-Wales Heads of Children's Services.
- We met with a range of parties involved in or with an interest in the sector, including: children's commissioners, local authorities and their representative bodies; commissioning consortia and commissioning bodies; independent providers and their representative bodies; and private equity firms.
- After publishing our interim report, we held four roundtables, focussed on commissioning (from a local authority perspective), commissioning (from an independent providers' perspective), barriers to opening new provision and resilience of the sector.
- We analysed a dataset compiled from the financial accounts of children's social care providers filed with Companies House.
- We visited a number of local authority and independent-owned children's homes, speaking with staff and with children in their care.
- We considered previous reviews and research reports that have examined the children's social care sector.

Structure of the final report

1.7 This final report on the market study sets out our findings and makes recommendations to address the issues we have identified during our market study.

1.8 The remainder of the report is structured as follows:

- Section 2 provides an overview of the children's social care sector.
- Section 3 describes the outcomes we have observed in the market, focussing on quality, supply of appropriate places, prices and resilience.
- Section 4 sets out our findings on commissioning and our recommendations to improve commissioning.
- Section 5 sets out our findings on barriers to creating capacity and our recommendations on how to reduce them.
- Section 6 sets out our findings on resilience of the market and our recommendations on how to reduce the risk of disorderly provider failure having negative effects on children.
- Section 7 provides a summary of our recommendations, describes how they will work together and sets out our approach to supporting their implementation.

1.9 In addition, further detail is provided in two appendices to the report:

- Appendix A sets out in detail the financial analysis we have undertaken.
- Appendix B provides detail of aspects of the legal frameworks in England, Scotland and Wales which are relevant to the issues we have considered in the market study.

2. Overview of the sector

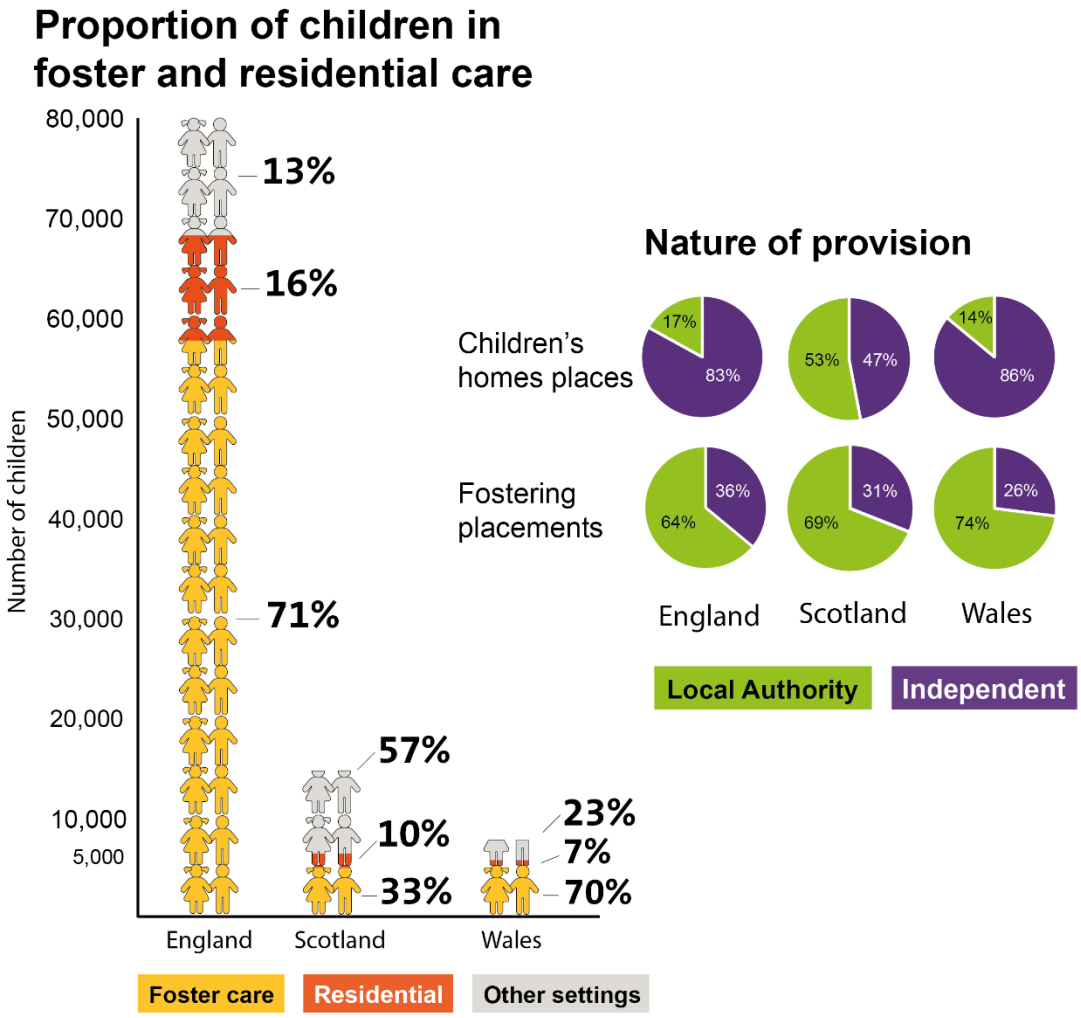
2.1 This section provides an overview of the children's social care sector – which is a devolved policy area – in England, Scotland and Wales and highlights some of the key differences in the policy, legislative and regulatory frameworks in each nation. It also considers how the sector has evolved over time.

Ensuring children live in safe, caring and supportive homes

2.2 All children need a safe, caring and supportive home and the children's social care system exists to ensure that all children have access to one. For many children in the care of a local authority ('looked-after children') in England, Scotland and Wales, this is provided by foster carers and, for a smaller group, by children's homes. In some circumstances, in England and Wales, children may be placed in unregulated accommodation: independent or semi-independent living facilities which provide support but not care. Children are often looked after for a short period of time or there may be a longer-term arrangement, and children may be looked after in different care settings at different times in their lives.

2.3 For these looked-after children – some of the most vulnerable people in our society – the state, through local authorities who act as corporate parents, is responsible for providing their accommodation, care and support. It does this in two main ways: local authorities may use their own in-house foster carers, children's homes and, in some circumstances, unregulated accommodation or they procure these services from independent (private and voluntary) providers. Local authorities tend to use their own services as their first choice where appropriate local authority placements are available.

2.4 The necessity of ensuring that children receive accommodation and care as the need arises creates challenges for local authorities in terms of how they purchase placements. Time pressure can be immense as children may require placements urgently, often in response to a crisis. The requirements can vary considerably from case to case, due to the particular needs and circumstances of the child. The local authority must therefore seek the best option from among those placements that are available, often during a limited time period.



Policy context

England
Independent review of children's social care ongoing.

Scotland
Implementation of The Promise; intention to eliminate for profit provision. Consultation on National Care Service proposals.

Wales
Programme for government 2021 to 2026 commitments; intention to eliminate private profit. Commitment to National Framework for care and support.

Notes: In the chart showing the proportion of children in care, the 57% of children in 'other settings' in Scotland, represents a broader definition of care than is applied in England and Wales. In the pie chart showing foster placements in Scotland, the independent providers are wholly not-for-profit.
Sources: as for tables 1, 5 and 6 below.

Looked-after children

2.5 There are currently just over 100,000 looked-after children in England, Scotland and Wales. Foster care is the most common form of care setting for these children in England and Wales: over two-thirds of looked-after children in England and Wales live in foster care; around a third of looked-after children in Scotland live in foster care.[1] 16% percent of looked-after children live in residential settings in England, 10% in Scotland and 7% in Wales. Such settings include children's homes, secure children's homes, independent or semi-independent living facilities and residential schools. The remainder of looked-after children live in a variety of settings, for example, living with parents, placed for adoption or in other community settings.

Table 1: Children in care in fostering and residential settings in England (2021), Scotland (2020) and Wales (2021)

	England	***Scotland***	***Wales***
Nos. looked-after children			
- Foster care	57,330 (71%)	4,744 (33%)	5,075 (70%)
- Residential settings	12,790 (16%)	1,436 (10%)	535 (7%)
- Other settings	11,850 (13%)	8,278 (57%)	1,655 (23%)
- Total	80,850	14,458	7,265

Notes: For England, the relevant file is 'National - Children looked after at 31 March by characteristics'. Residential settings including secure units, children's homes, semi-independent living accommodation, residential schools and other residential settings. Other settings include other placements, other placements in the community, placed for adoption and placed with parents or other person with parental responsibility.
For Wales other settings include placed for adoption, placed with own parents or other person of parental responsibility, living independently and absent from placement or other.
In Scotland, other settings include at home with parents, with kinship carers, with prospective adopters and in other community.
Sources: England: DfE Children looked after in England including adoptions. Scotland: Scottish Government Children's social work statistics Wales: StatsWales Children looked after at 31 March by local authority and placement type.

2.6 Table 2 below shows disproportionately high rates of children being taken into care among Black and Mixed ethnicity children and disproportionately low rates for Asian and White children in England.

Table 2: Percentage of looked-after children and percentage of under-18 population in England by ethnicity (England)

	Looked-after children	*Under-18 population*
Ethnic group		
- Asian	4%	10%
- Black	7%	5%
- Mixed ethnicity	10%	5%
- Other ethnic groups	4%	1%
- White	74%	79%

Source: DfE, Adopted and looked-after children - GOV.UK Ethnicity facts and figures (ethnicity-facts-figures.service.gov.uk)

[1] A further 30% of children are with Kinship Carers: friends/relatives. In England and Wales foster care with a friend or relative is counted as part of fostering.

2.7 Table 3 below shows a disproportionately high rate of children being taken into care among Mixed ethnicity children and a disproportionately low rate for Asian children in Scotland.

Table 3: Percentage of looked-after children and percentage of all children in Scotland by ethnicity (Scotland)

	Looked-after children	*All children in Scotland*
Ethnic group		
- Asian, Asian Scottish or Asian British	1%	3%
- Black, Black Scottish or Black British	1%	1%
- Mixed ethnicity	2%	1%
- Other ethnic background	1%	0%
- White	84%	95%

Note: For 11% of looked-after children ethnicity is not known.
Source: Children's social work statistics: 2019 to 2020 - gov.scot (www.gov.scot), Table 1.2

2.8 Table 4 below shows a disproportionately high rate of children being taken into care among children from Mixed ethnic groups and a disproportionally low rate among Asian children in Wales.

Table 4: Percentage of looked-after children and percentage of all children in Wales by ethnicity (Wales)

	Looked-after children	*All children in Wales*
Ethnic group		
- Asian/Asian British	2%	3%
- Black/African/Caribbean/Black British	1%	1%
- Mixed/multiple ethnic group	4%	2%
- Other ethnic group	1%	1%
- White	91%	93%

Source: Children looked after at 31 March by local authority and ethnicity (gov.wales) and Data Viewer - Nomis - Official Labour Market Statistics (nomisweb.co.uk)

2.9 Children may become looked after for a number of reasons including as a result of abuse or neglect, family dysfunction, parental illness or disability and absent parenting, as well as where they arrive in the UK as unaccompanied asylum seekers.

2.10 The number of children entering children's social care has increased over time, and we have been told by a number of parties including local authorities and independent providers that the needs of such children have grown and become more complex.[2] There are also increasing numbers of older children being looked after.[3]

2.11 The Institute for Government projected in its 2021 Performance Tracker that demand for children's social care would grow by around 5% between 2019-

[2] See eg Outcomes First Group response to the ITC, para 1.1.2; ADCS response to the ITC; ICHA response to the IR, NAFP response to the IR.
[3] In the Case for Change, the independent review of children's social care highlights an increase of 25% children looked after from 2009/10 to 2019/20 and, over the same period, an increase of 39% of children aged 16+.

20 and 2024-25, driven by increasing demand for foster and residential placements.[4] The Social Market Foundation projected that, in England, 'based on the growth seen in the last five years, we could expect that close to 77,000 children will be in foster care by 2030; an increase of more than 30% from now.'[5] However, we note that while demand for children's social care services is widely expected to grow, there are ongoing efforts to reduce the number of looked-after children, which makes it difficult to predict the level and profile of future demand with a high degree of certainty. For example, in September 2021 the Scottish Government announced as part of its latest Programme for Government a fund to significantly reduce the number of children and young people in care by 2030.[6]

Local authorities

2.12 Local authorities have statutory duties in relation to the children taken into their care. Given this is a devolved policy area, these vary across England, Scotland and Wales, as set out in Appendix B.

2.13 Local authorities are obliged to safeguard and promote the welfare of children in their care, including through the provision of accommodation and care. Where it is in the child's best interests, this should be provided locally in order to ensure continuity in their education, social relationships, health provision and (where possible and appropriate) contact with their family.

2.14 A "sufficiency duty" is placed on local authorities in England, whereby local authorities are required to take steps to secure, so far as reasonably practicable, sufficient accommodation within the local authority's area which meets the needs of the children it looks after. Similar duties apply in Wales. In Scotland, local authorities and the relevant health boards are required to produce strategic plans (Children's Services Plans) every 3 years.[7]

2.15 Each local authority is responsible for providing, either themselves or by purchasing from another provider, the placements they require.

2.16 In terms of how local authorities approach procurement a 2020 Independent Children's Homes Association (ICHA) survey found that a large proportion of children's home placements (51%) are spot-purchased not from a framework. In such cases the terms for each placement are determined on an individual basis. The survey found that in 47% of cases, local authorities purchase placements using framework agreements, which set out the terms

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[4] Performance Tracker 2021 'Assessing the cost of Covid in public services'.
[5] Fostering the future Paper 1, 'Helping local authorities to fulfil their legal duties'.
[6] Keeping families together.
[7] The Children and Young People (Scotland) Act 2014, section 8.

(such as the service offered and the price) under which the provider will supply the relevant service in the specified period. A much smaller number of placements (2%) are block contract placements.[8] A further ICHA survey in November 2020 found a higher level of block arrangements, with such arrangements accounting for almost one in five placements.[9] The National Association of Fostering Providers (NAFP) told us that the majority of foster care placements 'are made with pre-tendered contractually defined relationships albeit with no commitment to make any placements with a particular provider'.[10]

2.17 There are different approaches to commissioning and purchasing in each nation:

- There is no national commissioning body in England. The National Contracts Steering Group (NCSG) – comprising the Local Government Association (LGA), a group of local authority commissioners, independent providers and trade associations – was established over a decade ago, supported by the Commissioning Support Programme. It developed three national contracts for placements in schools, foster care and children's homes. However, the work of the NCSG ended when the Commissioning Support Programme came to an end, as discussed further in Section 4. Of the 152 relevant local authorities in England, some procure individually, while many form regional procurement groups with neighbouring local authorities. These groups vary in their design and purpose.

- Scotland Excel is a public sector organisation operating on behalf of Scotland's 32 local authorities. It undertakes strategic commissioning of services and provides a wide range of national contracts for local authorities in Scotland, including contracts for the provision of fostering services and children's residential care. It is up to individual local authorities whether they secure placements through Scotland Excel, and not all local authorities do so for every placement they require.

- In Wales, all 22 local authorities are members of the Children's Commissioning Consortium Cymru (4Cs). Since 2018 the Framework Agreements for both residential and foster care have been reviewed – the All Wales Residential Framework was launched in 2019 and the All Wales Foster Framework launched in April 2021.[11]

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[8] Independent Children's Homes Association (January 2020), State of the Market survey 6, page 15.
[9] ICHA State of the Sector survey (7 November 2020).
[10] NAFP response to the IR.
[11] 4Cs response to the ITC.

Role of the market and nature of provision

2.18 In addition to local authorities making placements through their own in-house provision (where that is available), the market plays a significant role in the allocation of care placements that can be purchased by local authorities from private and voluntary providers.

2.19 Table 5 below shows that in England and Wales, the largest proportion of children's home places are provided by the private sector – around 78% and 77% respectively. In contrast, in Scotland only around 35% of places are provided by the private sector.

Table 5: Number of children's home places by provider type and nation

	England	*Scotland*	*Wales*
Private provision	7555	362	769
Voluntary provision	501	130	89
Local authority provision	1643	556	144

Sources: England: Main findings: children's social care in England 2021. Scotland: Children's social work statistics: 2019 to 2020. Wales: Invitation to comment response: Care Inspectorate Wales

2.20 The majority of fostering placements are provided by local authority foster carers – 64% in England, 69% in Scotland and 74% in Wales, as illustrated by table 6 below. However, a significant minority are provided by private providers (except in Scotland where for-profit provision is not permitted) and voluntary providers.

Table 6: Number of children in foster care by provider type and nation

	England (2021)	*Scotland (end 2020)*	*Wales (2021)*
Independent provision	20,065	1,436	1,330
Local authority provision	35,925	3,151	3,745

Note: “Independent provision” refers to care which is not provided by local authorities.
Sources: England: Ofsted: Official Statistics Release, Capacity_and_occupancy_2014-21_ tab. Scotland - Care Inspectorate: Fostering and adoption 2020-21 A statistical bulletin, Figure 1.12. Wales - Children looked after in foster placements at 31 March by local authority and placement type

Development of the market for care placements

2.21 While today the majority of children’s homes places in England and Wales and a significant minority of fostering placements are provided by the private sector, this has not always been the case.

2.22 Historically, children’s social care was provided by charitable institutions, until the state took on responsibility in the twentieth century. As well as providing accommodation and care through voluntary providers, local authorities established their own in-house provision. However, the private

sector has become increasingly involved in the provision of care over the years.

2.23 There have been a number of explanations as to why the sector has evolved in the way it has. For example:

- The ICHA told us that, in 1991, when the introduction of the Children's Homes Regulations 1991 was being discussed in Parliament, the Secretary of State said 'It is not part of our policy to see an explosion in the number of private children's homes. We know that the trend is moving away from children's homes of any kind towards fostering and adoption.' The ICHA notes, however, that with the introduction of the 1991 regulations, local authority homes began to close, 'as compliance with the regulations required significant investment, and private provision began to increase.'[12]

- Research carried out on behalf of the Local Government Association in 2021 observes that the current scale of private provision compensates 'for a decline in provision by local authorities and the voluntary sector who have both greatly reduced their residential care home provisions over the past 30 to 40 years (much of which has been repurposed as short break provision).'[13]

- Children England highlighted 'the almost complete withdrawal of charities from their formerly dominant role.'[14] While it has been suggested that fear of reputational damage in light of historical abuse scandals has deterred the return of the voluntary sector at scale,[15] Children England notes a range of reasons for the withdrawal of the voluntary sector from residential care.[16]

2.24 In more recent times there have been shifts in the nature of provision. Looking at these by nation:

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[12] ICHA response to the ITC.
[13] Newgate Research, LGA, Children's Homes Research Final Report, January 2021, page 3.
[14] Children England, Residential Child Care: the 21st Century Challenge – Correcting a history of market failure.
[15] Report of Sir Martin Narey's independent review of children's residential care, Residential Care in England, 2016, page 18.
[16] Children England, Residential Child Care: the 21st Century Challenge – Correcting a history of market failure. Some of the factors it notes are: the growing belief that residential care was outmoded and not good for children; a steady loss of charitable fundraising throughout the 20th century; the embedding of the state's responsibility to provide care for any child in need of it meant many charities felt it was no longer an appropriate continued 'charitable purpose' to become a contracted supplier to the state for their services; challenges in adapting existing premises to more 'family-like', smaller homes; and the increasingly strenuous requirements of inspection and regulation and a 'standardising' effect on what a children's home should be, do and look like, that were (and still can be) inflexible to some of the models and philosophies for care that had been developed within the voluntary sector.

- For England, Ofsted figures show that over the last five years, the private sector has increased its number of children's homes by 26%, while the number of local authority homes has declined by 5%, and that the voluntary sector is very small and in decline.[17]

- Care Inspectorate Scotland (CIS) data shows that in Scotland, the private sector's share of children's homes increased from 33% in 2014/15 to 45% in 2021, the voluntary sector's share decreased marginally from 21% in 2014/15 to 20% in 2021, and local authorities' share reduced from 46% in 2014/15 to 34% in 2021.[18]

- The Care Inspectorate Wales (CIW) provided data showing that in Wales, the private sector's share of children's homes increased very slightly from 78% in 2014 to 81% in 2021, the voluntary sector's share of homes increased from 4% in 2014 to 6% in 2021 and local authorities' share of homes reduced from 18% to 13% over the same period.[19]

2.25 The reasons for these trends are not fully clear and are likely to be the result of a variety of factors. For example, CIS said that 'the reasons for changes in provision over the last decade are nuanced, with a combination of local and national factors, changing needs and interdependencies contributing to a landscape that is not homogenous.'[20]

2.26 In relation to fostering, The Fostering Network, which operates across the UK, told us that it had seen a considerable rise in the number of independent foster providers in its membership over the years, reflecting the expansion of the independent fostering sector in that time.[21]

2.27 Looking at recent trends by nation the picture appears relatively stable:

- In England, since 2016 the total number of approved foster places has increased by 2%. There were 86,195 approved foster places at March 31 2016 of which 63% were local authority places and 37% IFA places. At March 31 2021, there were 88,180 approved places, of which 60% were local authority places and 40% IFA places.[22]

- In Scotland, where it is illegal for commercial for-profit firms to provide foster care, since 2016 the total number of approved foster care

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[17] Ofsted response to the ITC.
[18] Care Inspectorate – A review of care services for children and young people 2014-17 and Care Inspectorate Datastore (as at 31 December 2021).
[19] CIW response to the ITC.
[20] CIS response to the ITC.
[21] The Fostering Network response to the ITC.
[22] Fostering in England 2020 to 2021: main findings.

households has decreased by 11%. There were 3,970 approved foster care households as at 31 December 2016 of which 70% were local authority foster care households and 30% were approved by independent fostering services. As at 31 December 2020, there were 3,540 approved foster care households, of which 69% were local authority foster care households and 31% were approved by independent fostering services.[23]

- In Wales, since 2016 the total number of children looked after in foster placements has increased by 19%. There were 4,250 children looked after in foster placements as at 31 March 2016 of which 74% were with a relative or friend, or with a foster carer provide by a local authority and 26% with a foster carer arranged through an agency. As at 31 March 2020, there were 5,070 children looked after in foster placements with the same proportion with a foster carer arranged through an agency as in 2016.[24]

2.28 More broadly, we observe that there has been a move towards the provision of more kinship care – where children are cared for by wider family and friends - in Scotland and Wales.[25]

2.29 It would therefore appear that the placements market as it operates today is not the result of deliberate policy choices by national governments on how children's social care should be delivered, but rather a reaction by multiple local authorities, voluntary providers and private providers to a range of factors – including regulatory developments, financial constraints and reputational risk – that have played out over time. Children England noted that 'there was not a decisive point in time, nor any clear policy intervention, by which a 'competitive market' for procuring childcare was introduced…Competitive procurement and contracting has simply evolved over time as the predominant mechanism used in meeting children's care needs today.'[26]

2.30 In the next section we describe significant policy developments in England, Scotland and Wales that have the potential to affect how the placements market evolves.

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[23] Fostering and adoption 2019-20: A statistical bulletin.
[24] StatsWales Children looked after in foster placements at 31 March by local authority and placement type.
[25] See CIS response to the ITC and CIW response to the ITC (para 22).
[26] Children England, Residential Child Care: the 21st Century Challenge – Correcting a history of market failure.

Policy context

2.31 Local authority expenditure for looked after children in England in 2020-21 was £5.7 billion.[27] In Scotland, the annual cost in 2019-20 was around £680 million.[28] In Wales, the cost for children looked after services in 2020-21 was around £350 million.[29]

2.32 All three governments are engaged in significant policy processes to consider wider issues relating to children's social care.

- In England, the Independent review of children's social care published its case for change in June 2021. The Review will publish its final recommendations later this year.

- In Scotland, the findings of The Promise – Independent care review are being taken forward by The Promise Scotland. In 2021 it published its Change Programme ONE and Plan 21-24. In August 2021 The Scottish Government launched a consultation on a National Care Service (NCS) in Scotland, following on from the Feeley review of adult social care. Amongst other questions, the Scottish Government sought views on whether the NCS should include both adults and children's social work and care services.

- In Wales, commitments around protecting, re-building and developing services for vulnerable people were made in the Programme for government 2021 to 2026. In October 2021, following consultation on its White Paper on Rebalancing care and support, the Deputy Minister for Social Services said in a Written Statement that she is committed to introduce a strategic National Framework for care and support which would set standards for commissioning practice, reduce complexity and rebalance commissioning to focus on quality and outcomes. A 'National Office' for social care will be established to oversee implementation.

2.33 Both the Scottish Government and Welsh Government have expressed an intention to remove profit-making from the provision of care to looked-after children, as is already the case for fostering agencies in Scotland.

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[27] LA and school expenditure, Financial Year 2020-21 – Explore education statistics.
[28] Net revenue expenditure on a funding basis for children and families 2019-20. Source: Scottish local government finance statistics (SLGFS) 2019-20: workbooks, 2019-20 LFR 03 – Social Work - revised 26 July 2021.
[29] Total children looked after services 2020-21. Social services revenue outturn expenditure by client group (£thousand).

Regulatory environment

2.34 Children's social care provision is highly regulated and each nation has its own statutory framework, regulations and guidance applicable to the sector. Where relevant, we draw out key differences in this report.

2.35 Broadly, as well as statutory duties placed on local authorities with regard to children in their care (as discussed above) the regulatory frameworks in each nation aim to protect and promote the welfare of children and young people. They do this through registration requirements, setting standards and inspection regimes which are intended to ensure children are safe and receive appropriate levels of care.

2.36 England, Scotland and Wales have their own regulators – Ofsted,[30] CIS[31] and CIW[32], respectively. The regulators register and inspect children's social care establishments. We discuss the regulatory framework in more detail in Section 5 and in Appendix B.

Unregulated and unregistered accommodation

2.37 In England, an establishment is a children's home if it provides care and accommodation wholly or mainly for children.[33] Unregulated accommodation is where accommodation is provided, but not care. Independent living (with or without support) and semi-independent living, fall into this category of accommodation. Unregulated accommodation should not be confused with unregistered accommodation which is where care is provided, but the provider is not registered - this is illegal. Placing children under the age of 16 in unregulated accommodation in England became illegal from 9 September 2021.[34] In Wales, some accommodation is not regulated or inspected by the CIW.[35] Unregulated accommodation for children is not permitted in Scotland.

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[30] Ofsted is responsible, under the Care Standards Act 2000, for regulating establishments and agencies that provide children's social care services.
[31] The Public Services Reform (Scotland) Act 2010 created the Social Care and Social Work Improvement Scotland (SCSWIS), known as The Care Inspectorate Scotland.
[32] Children's home services and fostering services are included in the list of regulated services which are regulated by CIW under the Regulation and Inspection of Social Care (Wales) Act 2016.
[33] Care Standards Act 2000, section 1.
[34] By virtue of The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021.
[35] The Social Services and Well-being (Wales) Act 2014, section 81(6)(d). Note paragraph 180 of the Social Services and Well-being (Wales) Act 2014: Part 6 Code of Practice (Looked After and Accommodated Children). which states that "placement in other types of arrangement (provided for in section 81(6)(d) of the Act) will usually only be appropriate for looked-after children who are over the age of 16."

Market oversight

2.38 Unlike for adult social care, in England there is no statutory market oversight scheme for the children's social care sector. In Wales there are statutory market oversight provisions which would cover both adult and children's social care,[36] but these have not yet been commenced. However, the Welsh Government has set out an intention to develop a non-statutory market oversight framework. There is no formal market oversight regime in Scotland. However, in its consultation on a National Care Service the Scottish Government has sought views on the necessity of a market oversight function for the regulator (CIS), its scope and the potential form of any additional powers the regulator should have to ensure this function is effective. Appendix B provides more information on market oversight.

[36] Under the Regulation and Inspection of Social Care (Wales) Act 2016 (sections 59-63). These are a series of provisions aimed at identifying those providers of regulated services that provide a service which, if it were to fail, would have an impact on the care and support market in Wales and would be the trigger point for the local authority duties to be exercised under sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014.

3. Outcomes from the placements market

Outcomes we would expect from a well-functioning placements market

3.1 A large number of children depend on getting good outcomes from the children's social care system to ensure that they are safe, well looked-after and able to flourish. The placements market cannot deliver these outcomes on its own – there are many other important factors, including the effectiveness of edge-of-care services and the range of child protection issues – but its role within the wider system means it makes a significant contribution. Where the market functions poorly, it will undermine the ability of the wider system to deliver the outcomes children need.

3.2 We have identified four key outcomes that a well-functioning market for placements would support:

- first, the supply of placements must be sufficient so that places are available for children that need them, as they need them. These placements must be appropriate to the needs of the child and in the appropriate location;
- second, placements must be of sufficiently high quality, meeting the expectations of regulators;
- third, placements must be available at a reasonable price, taking into account the costs involved, while ensuring the quality of the placements; and
- fourth, the market should have sufficient resilience that it engenders confidence that the three outcomes above will continue to be met into the future.

3.3 Taken together, the market is not supporting these desired outcomes as well as it should. In this chapter, we set out the evidence underlying this conclusion.

Supply of appropriate places

3.4 Overall, there are more approved places than children deemed to be in need of placements. For example, in England at 31 March 2021 there were 88,180 approved fostering places and only 63% were filled (excluding those

where data was not available).[37] Similarly, the 700 children's homes owned by the larger providers from which we collected data had an average occupancy rate of 83%. However, the fact that the number of approved places is higher than the number of children requiring placements, does not mean that there are sufficient appropriate placements for the children who need them.

3.5 First, the overall number of approved places is an overstatement of the number of places that are available at any one time. In March 2021 in England, 20% of approved fostering places were 'not available' (excluding those where data was not available).[38] Approved foster places may not be available for a wide number of reasons including where foster carers are taking a break or are not able to take their maximum approved number of children, for example where this maximum is dependent on the children being siblings. Similarly, approved places in children's homes are sometimes not available, for example, where a current resident's needs mean it is not appropriate to place other children alongside them. The extent to which this is the case will fluctuate over time, and there is no consolidated data on the aggregate position.

3.6 Second, when a local authority considers those placements that are actually available, they may be unable to find a placement that is appropriate to the particular needs of the child they are seeking to place. While comprehensive data about the appropriateness of placement matches for particular children's needs is not available, we have seen evidence indicating that a significant number of children are not gaining access to appropriate placements due to a lack of supply. This may be because of a number of factors, including:

(a) Type of placement: local authorities have consistently told us that they may assess that one type of placement would be most appropriate for a child, but have to place them in a different type of placement due to lack of availability of the preferred option. For instance, this can result in children for whom foster care would be most appropriate being placed in a children's home. As well as being a poor outcome for the child, this is more expensive for the local authority and reduces available capacity in homes.

(b) Location: as of March 2021, in England 37% of children in residential placements[39] and 17% of children in fostering placements were over 20

[37] Fostering in England 2020 to 2021: main findings.
[38] Fostering in England 2020 to 2021: main findings.
[39] Secure units, children's homes and semi-independent living accommodation.

miles away from where the child would call home (excluding those where distance is not known).[40] As at March 2018, in England more than 2,000 looked-after children were over a hundred miles from home.[41] For Wales, as at March 2021, 31% of children looked after were outside the boundary of their home local authority.[42] While there can be legitimate reasons why it would be in a child's best interests to be placed out of area (eg to separate them from negative influences), we have been told that it is often a lack of suitable places available within a reasonable distance that is driving the out-of-area placement of children. There are currently no consolidated figures that would allow us to understand the extent to which these are forced choices. Children moved away from their home area may suffer loneliness and isolation at being separated from their support networks, have their schooling disrupted, and experience difficulty in accessing social services. Stakeholders report particular concerns about children being placed across national borders, especially placements from England into Scotland where children may be very far from home and in a different legal and educational system.

(c) Siblings: local authorities also report difficulties in placing sibling groups together, particularly larger groups. Ofsted figures show that for fostering in England in 2019-20, 1400 siblings were not placed according to their care plan.[43] This represented 13% of all siblings in care. In Scotland, at 31 December 2020, there were 200 sibling groups separated upon placement in foster care, just under one in four of all sibling groups in foster care (though these figures do not distinguish those cases where separating siblings was a deliberate part of their care plans).[44]

(d) Type of care needs: we also heard very consistently from 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. Given the particularity of the needs involved, it is very difficult to quantify the extent to which this is happening in aggregate. However, high levels of placement breakdown may be due, in part, to difficulties with finding placements that are appropriate to the needs of individual children; for example, in England, one in eleven children looked after at 31 March

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[40] National – Children looked after at 31 March by placement provider, placement type and locality.
[41] Pass the parcel: Children posted around the care system, Children's Commissioner report, published December 2019.
[42] StatsWales Children looked after at 31 March by local authority and location of placement.
[43] Capacity and occupancy 2014 to 2020 [1430/10975]
[44] Fostering and adoption 2019-20: A statistical bulletin. We note, however, that the Scottish government has brought into force legislation to create a new duty on local authorities to keep siblings in care together, where appropriate. Part 13 of the Children (Scotland) Act 2020 and the Looked After Children (Scotland) Amendment Regulations 2021 mean local authorities have a duty to ensure siblings are supported to stay together, where appropriate. See also: Keeping brothers and sisters together.

2021 had had three or more placements in the preceding year.[45] In Wales, 7% of children looked after at 31 March 2021 had 3 or more placements during the preceding year.[46]

3.7 One particularly concerning indicator of a lack of supply of appropriate placements is the extent to which children in England and Wales appear to have been placed in unregulated accommodation, not as a positive choice but due to the lack of availability of a suitable regulated placement.[47] For example, between April 2018 and March 2019 there were 660 looked-after children under the age of 16 placed in unregulated accommodation.[48] In response to these concerns in England, a ban on placing under-16s in unregulated accommodation came into force on 9 September 2021. The Government will also be introducing mandatory national standards for this type of accommodation in England, meaning that it will no longer be "unregulated".[49]

3.8 Although this should improve the situation by ensuring that one important category of children who were being inappropriately placed in unregulated accommodation[50] are no longer placed there (under-16s), it will not in itself address the supply constraints in the regulated sector that drove local authorities to place them there to begin with and may indeed make them worse. In England and Wales, we may therefore continue to see children over 16 whose needs would be better met in children's homes or foster care being placed in independent or semi-independent living facilities, due to more suitable placements being unavailable.

3.9 Perhaps most concerningly, some children are being placed in unregistered provision. This is where children are being placed in accommodation where they are receiving care, but that accommodation is not registered as a children's home, nor is it exempt from the requirement to be so registered. This is illegal, but according to a report carried out on behalf of the Department for Education, "[t]he LAs that reported using unregistered

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[45] Children looked after in England including adoptions, Table: LA - Children looked after at 31 March with three or more placements during the year, or aged under 16 at 31 March who had been looked after continuously for at least 2.5 years and who were living in the same placement for at least 2 years.
[46] StatsWales Children looked after by local authority and number of placements during year.
[47] Reforms to unregulated provision for children in care and care leavers: Government consultation response February 2021.
[48] As these placements are typically for a short period, at any one time the number of under-16s in unregulated accommodation will be considerably less, for example there were about 100 at 31 March 2019. Source: Looked after children aged under 16 in unregulated placements.
[49] Introducing national standards for independent and semi-independent provision for looked-after children and care leavers aged 16 and 17.
[50] See section 2, paragraph 2.37.

provision all said that they had done so as a last resort, when no other suitable provision can be found".[51]

3.10 Taken together, this evidence suggests that the market is providing insufficient places to ensure that local authorities can consistently get access to placements for children that meet their needs, in the right locations. This conclusion is supported by the fact that local authorities, particularly those in England, told us that when they are seeking to place children they often have little or no choice of placement, for example finding at most one available placement that fits their basic criteria, which indicates that more finely-grained assessments of quality, fit, cost and location are less likely to determine placement decisions.

3.11 It is important to note that, while this pattern reflects what we are seeing overall, there are important variations, both geographically and between groups of looked-after children with different characteristics and needs.

3.12 In England, concerns about lack of appropriate supply are pervasive among those with experience of the system. For example, Ofsted told us that it does not believe local authorities are able to meet their sufficiency duties as indicated by, among other things: the use of unregistered provision, the number of children waiting for secure places, and the lack of appropriate provision for children with complex needs.

3.13 Some regions have far more places than others. For example, the North West of England has 23% of all places in children's homes and 17% of looked-after children, while London has just 6% of places in children's homes and 11% of looked-after children.[52] However, local authorities told us that this does not necessarily translate into sufficient availability of appropriate places for children in areas of "oversupply", such as the North West, due to children from outside the area being placed there. Also, analysis carried out by Ofsted in 2018 found that there was wide regional variation in how far children's homes were located from where children originally lived. Children placed from local authorities in the South West and London had to travel 54 and 60 miles respectively, compared to an average of 36 miles for England as a whole and 21 miles for children from the North West.[53]

3.14 In Wales, the situation appears to be similar. Stakeholders in Wales report sufficiency problems particularly in fostering and to meet more complex

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[51] Research report template (publishing.service.gov.uk).
[52] Main findings: children's social care in England 2021 and Children looked after in England including adoptions, table: CLA on 31 March by characteristics - LA.
[53] Children's Social Care in England 2019.

needs. CIW told us that "most local authorities are struggling to meet their sufficiency duties and find suitable placements to meet the needs of children and young people. This adversely affects placement choice, permanency and stability and consequently outcomes for children."[54] A lack of available fostering places has led local authorities to seek other residential care instead, even if this is not as conducive to meeting the child's needs. For residential care, stakeholders told us that although there was not a problem with overall capacity, there were problems with the location of the placements and insufficient provision to meet the most complex levels of need. As at 31 March 2020, Welsh local authorities had over 1400 children placed in other local authority areas in Wales and over 200 children outside of Wales.[55] Unregulated accommodation has also been used when local authorities could not find regulated provision with timescales put in place to get the service registered.

3.15 In Scotland, by contrast, stakeholders expressed more limited concerns about the supply of placements. As in parts of England and Wales, however, we were told that there were difficulties finding appropriate placements for some children. We were told there is a general shortage of foster carers and particularly so for children with more complex needs, such as complex disabilities or older children with risk factors, and for family groups. Fewer concerns were raised around the overall capacity of residential care, but shortages were reported for residential care for children with disabilities and for children with mental health issues. As noted above, concerns were raised about children being sent across the border to Scotland because of a lack of suitable placements in England.

3.16 Moving to variations within the cohort of looked-after children, we received widespread feedback from local authorities that certain factors made it harder for them to find appropriate placements for children from the supply available in the placements market. These included:

(a) Care needs: children with more complex needs are harder to place.

(b) Age: for a given level of care need, older children are typically harder to place. This factor also plays into the difficulty of placing unaccompanied asylum-seeking children.

(c) Siblings: as noted above, local authorities can have difficulties placing sibling groups together.

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[54] CIW response to the ITC.
[55] Children looked after in foster care at 31 March by local authority and location of placement.

3.17 Capacity is being added to the system. For England, during 2019-21, there was a net increase of 501 new children's homes, representing an increase of 1,485 places. The vast majority of these were opened by the private sector: 490 homes and a net gain of 1,537 places.[56] The number of homes provided by English local authorities collectively increased by only 15, and actually resulted in a net reduction of 59 in the number of places they offered.[57]

3.18 This additional children's home capacity has risen more as a proportion over this period than the total number of children in care. It is unclear, however, to what extent this is well-targeted at the particular needs of the cohort. Data on location suggests that capacity is being disproportionately added in areas that are already "oversupplied": 30% of new placements were added in the North West but only 4% in London and 4% in the South East.[58]

3.19 In fostering, England has seen a slow increase in the number of places, with a 9% increase from March 2015 to March 2020; this compares with an 11% increase in the number of children in foster care over that period. In the year ending 31 March 2021, the number of newly approved households was higher than the number of deregistered households (5,355 newly approved and 4,870 deregistered). IFAs saw a net increase of 960 carers, compared to 45 for local authorities.[59]

3.20 Taken together, there is compelling evidence that the placements market is failing to provide sufficient supply of the right kind to ensure that local authorities can consistently place children in appropriate placements to meet their needs, particularly in England and Wales. Within this picture, there are particular shortages of supply in relation to particular geographic regions and types of need.

Quality of provision

3.21 The quality of accommodation and care that children receive is of paramount importance to their life experiences. However, as with other social services, pressures to reduce costs can adversely affect quality. As a result of this, and the serious consequences of poor care provision for children, regulation is rightly used to ensure that required standards are being met. This is the

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[56] Between 2019-2021 in England, there were 842 new children's homes opened with 3,000 places and 341 homes were closed with 1,515 places. CMA calculations. Source: Leavers and joiners as at 31 March 2019, Joiners and leavers in the childcare sector.
[57] Between 2019-2021 in England, local authorities opened 80 new children's homes with 287 places and closed 65 homes that had 346 places. CMA calculations. Source: Leavers and joiners as at 31 March 2019, Joiners and leavers in the childcare sector.
[58] CMA calculations. Source: Leavers and joiners as at 31 March 2019, Joiners and leavers in the childcare sector.
[59] All figures in this paragraph from Fostering in England 2020 to 2021: main findings.

most important role that regulation plays and we recognise that others conducting work on children's social care, including the Independent Care Review in England, The Promise implementation team in Scotland and officials serving the Welsh Government, are better placed than us to comment in detail on the approaches to considering quality and the standards set by regulators and legislation.

3.22 Assessing the quality of care is difficult for reasons including: the range of different needs that placements aim to meet; the large number and small scale of residential and foster homes; that children may be vulnerable and not able to clearly articulate their views; and the long-term nature of desired outcomes. This is part of the challenge for regulators in this sector and we have heard concerns about consistency and occasions where stakeholders do not consider that ratings accurately reflect quality.

3.23 Despite these challenges, inspection outcomes are generally seen as an important measure of quality and used by local authorities when deciding where to place children. Findings by the regulators suggest that the quality of care in most cases is high. In England at 31 March 2021, just over 80% of children's homes and 93% of fostering agencies were rated as good or outstanding.[60] In Scotland, in December 2021 CIS reported that "overall, the quality of fostering services was high"[61] and it "evaluates most care homes for children and young people in Scotland as being good or very good."[62] In Wales the CIW, in a 2019 thematic review of care homes for children, found "most children were receiving good quality care and support".[63] However, this still means that regulators consistently find that some provision does not meet the required quality standards and this shortcoming, of course, must be addressed.

3.24 Stakeholders consistently told us that there is a significant impact on independent providers of receiving lower ratings. At the extreme, regulators will close children's homes that do not meet the minimum required standards. Further, providers explained there were multiple other potential impacts on their business of having poor ratings (including "requires improvement to be good" ratings in England, which is above the minimum standard). One provider told us that "local authorities regularly take the position that they will not refer/place young persons into a service rated Inadequate or Requires Improvement" and "a number of local authority

[60] Of those with a full inspection outcome. Source: Main findings: children's social care in England 2021.
[61] At 31 March 2021, 85% of fostering services had evaluations of 'good' or better across all quality themes" Source: Fostering and Adoption 2020-21: A statistical bulletin.
[62] In 2021, 75.5% of local authority children's homes, 81.5% of private children's homes and 88.3% of voluntary or not for profit children's homes were graded good or better. Source: CIS response to the ITC.
[63] Chief Inspector's Annual Report 2019-2020, CIW.

frameworks will also not allow services to be included" if they have received one of these ratings. Another provider highlighted the impact on their ability to recruit foster carers, because local authorities would generally use agencies rated Good or Outstanding instead, and staff, stating that "some social workers did not want to be associated with a [requires improvement] rating." Providers consistently told us that they proactively seek to maintain high quality standards and would always work to improve poor ratings.

3.25 Local authorities placing children rely on a wider range of quality measures than inspection ratings, which include: visits to homes by social workers and independent visitors, such as the monthly visits by an independent person in England[64] and by independent advocacy groups; and experience of past outcomes for other children. The nature of these measures means that we are not able to consider these systematically.

3.26 The situation is different for unregulated accommodation, which is not currently subject to formal inspection by Ofsted. Individual local authorities make their own assessments of whether unregulated accommodation is appropriate for the young person they are placing there, and we have heard concerns around high levels of variability in quality, with some instances of very poor quality. Without an external judgement of quality, it will be more difficult for local authorities' activities in the placement market to encourage providers to improve quality. The Department for Education has announced that it will introduce national minimum standards for unregulated settings in England; while the detail on how these will be implemented is yet to be confirmed, this could improve the ability of local authorities to drive up quality of unregulated placements via the placements market.[65]

3.27 Our view is that the inspection regimes in place for children's homes and fostering agencies, along with their own observations, provide local authorities with an evidence base on which to make judgements on the quality of care provided. These judgements exert a strong influence on their placement purchasing decisions, meaning that there are incentives on suppliers to rapidly improve provision or exit the market. While we are aware of arguments that the standards required by regulators ought to be higher, or inspections ought to be more frequent, we consider that these detailed questions are best considered by policymakers, regulators and their independent advisers.

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[64] The Children's Homes (England) Regulations 2015, Regulation 44.
[65] DfE announced in December 2021 that Ofsted will begin registering providers from April 2023, with the national standards becoming mandatory in Autumn 2023. Ofsted will begin inspections from April 2024.

3.28 The operation of the placements market must support local authorities in assessing the quality of matches between individual placements and the particular children they are seeking to place. As set out in the section above, this role is seriously undermined by the overall lack of appropriate places, which limits the ability of local authorities to take matching factors into account. Beyond this, we must ensure that the local authorities are provided with sufficient accurate information about the placement, including the availability of therapies, facilities etc, as well as providers being provided with accurate information about children, which would support matching decisions.

Prices and profits

3.29 In order to understand pricing and profit levels, we analysed data from the 15 largest private providers of children's social care across all three nations covering the period since financial year (FY) 2016. These 15 providers are collectively responsible for around a fifth of placements in children's homes and slightly over half of fostering placements.

3.30 Splitting our data by type of placement provided across the 15 providers, we found that:

- For children's homes, prices increased steadily across the period, from an average weekly price of £2,977 in 2016 to £3,830 in 2020, an average annual increase of 5.2%, compared to average annual price inflation of 1.7% over that period.
- For fostering placements, prices remained broadly the same over the same period, at an average of £820 per week, representing a real-terms reduction over the period.
- For unregulated provision the underlying trend is affected by some of the large providers in our sample entering this segment around 2018, but since that point the average price has also remained broadly unchanged at £948 per week.

3.31 Changes in prices alone, however, do not in themselves provide an indication of how well or poorly the market is functioning. Price changes can also be due to changes in costs and many providers pointed to cost drivers such as rising National Minimum and Living Wage rates, as well as increasing average levels of need among children entering care. It is therefore important to consider whether cost factors can account for any observed increase in prices.

3.32 In order to account for cost factors for private providers, we have considered the operating profit for our set of the 15 largest providers, over the same period. Operating profit indicates a provider's profitability after deducting its operating (day-to-day running) costs. We obtained operating profitability by subtracting total operating costs from total revenue.[66] From this we have calculated the average operating profit per placement and the operating profit margin (operating profit as a percentage of revenue).

3.33 Applying this to the three broad categories of placement (ie children's homes, fostering agencies and unregulated accommodation), we have found that, within our dataset of the 15 largest providers:

- For children's homes, average operating costs have increased over the 5 year period from 2016 to 2020 in line with increasing prices, resulting in operating profit margins remaining broadly flat, at an average of 22.6%. Average operating profit has increased over the period from £702 to £910 per placement per week.

- For fostering agencies, operating costs have remained flat over the 5 year period, as have prices, resulting in a steady operating profit margin at an average of 19.4%. Average operating profits have also remained broadly flat over the period at £159 per placement per week.

- For unregulated accommodation, prices remained broadly flat in the period from 2018, but operating costs increased resulting in an operating profit margin that decreased from 39.9% to 35.5%. Average operating profit per placement per week decreased from £381 in 2018 to £330 in 2020.

3.34 In addition to operating costs, however, we must also consider the cost of capital for the business. The cost of capital represents the return that equity and debt investors require to invest in a business.[67] Deducting the cost of capital from operating profits provides us with a figure for economic profit. Economic profitability indicates a provider's profitability after meeting its operating costs, its capital expenditure and providing a return to its investors. Significant and persistent economic profit is often an indication that a market may not be working well.

3.35 Unlike the figures for prices/revenues and operating costs, which can be calculated directly from a firm's accounts, to determine economic profit a

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[66] Operating (day-to-day running) costs such as staff, maintenance of assets, supplies, utilities, and head office costs. Operating costs exclude capital expenditure to purchase new assets.
[67] We have included the property related costs within the cost of capital. See Appendix A for the detailed explanation.

firm's cost of capital needs to be estimated. The cost of capital will differ between and within different sectors depending on factors such as risk and rates of return available elsewhere.

3.36 We have made estimates of the return on capital employed (without deducting a cost of capital) for the 13 large providers operating in residential accommodation (children's homes and unregulated accommodation), as an indicator of the level of profitability of these providers:

- 11.1% for children's homes for the period from 2016 to 2020; and
- 16.2% for unregulated accommodation for the period from 2018 to 2020.

3.37 For our analysis to find that economic profits were not being made in this sector, we would need to believe that the true weighted average cost of capital was at approximately this level. In our view, the appropriate weighted average cost of capital for this sector is likely to be in the range of [3-6%], as described more fully in Appendix A, based on our assessment of an appropriate cost of equity and of debt for the sector. We also compared our estimate with previous calculations made by the CMA in similar sectors.

3.38 Some large providers proposed that we should use a higher rate of return (eg that 7-9% would be commensurate with the higher risks in the CSC sector). We disagree with these proposals for the reasons set out in Appendix A but, in any case, our findings on the level of profitability earned in this sector would still hold using this higher rate of return.

3.39 As operating a fostering agency is an asset-light business, approaches that look at return on capital employed in this way can produce more volatile results. We have therefore used an equivalent approach by estimating the additional economic profit earned by these businesses. Using this approach, we analysed economic profitability margins by determining providers' returns after meeting their operating costs, CAPEX and investor returns. On this measure, the average economic profit margin in this group was 18.6%.

3.40 In our interim report, we said that we would seek to understand the financial performance of a wider range of the smaller providers. Taking the approach that we took to the 15 largest firms – using our formal powers to obtain detailed financial breakdowns from them in our specified format – would have placed a disproportionate burden on smaller providers. We therefore sought to use a dataset from Companies House containing audited financial information for 219 large and medium-sized providers and abbreviated data for 627 small companies for 5 years.

3.41 Unfortunately, the level of insight we were able to gain from this information was poor. A major obstacle was a lack of clarity about whether revenue and costs were attributable to activities within our scope (ie the provision of children's homes, fostering services and unregulated accommodation) or other activities carried out by the companies in question. The proportion of providers for which we were able to be confident on this allocation was very small, and we cannot assume that this group was representative. We are therefore unable to take a view on the profitability of firms below the largest 15.

3.42 This limitation does not, however, alter our conclusion that, for the largest firms, which represent a substantial proportion of independent provision, prices and profits are materially higher than we would expect. Nor does it affect our recommendations to address high prices and profits, which we set out later in the report. Regardless of whether these elevated profit levels are in evidence in the rest of the market, we would still expect the fact that high profit levels can be earned by some providers to incentivise those profitable providers to expand, and new providers to enter the market, thereby increasing supply and driving down prices and profits. The fact that this does not appear to be happening to the extent required is a concern that needs to be addressed.

3.43 We considered the profitability of children's homes and fostering in each of England, Scotland and Wales. We found that the profitability of the children's homes in Scotland of the providers in our home level dataset was markedly less than the average across all three nations; from FY 2016 to 2020, the average operating profit per child was £28,000 in Scotland compared to an average of £44,000 across all three nations.[68] This is in line with stakeholders expressing more limited concerns about the supply of placements in Scotland as discussed in paragraph 3.14. We also found that for the fostering services in Scotland of the providers in our agency level dataset the surplus of revenues over costs was similar to the average across all three nations; from FY 2016 to 2020, the average operating surplus per child was £9,100 in Scotland, compared to an average of £8,600 across all three nations.[69] This is despite these services being run on a not-for-profit basis.

[68] From FY 2016 to 2020, the average operating profit per child was £45,000 in England and £59,000 in Wales. The figures for Scotland and Wales should be treated with caution given the relatively small non-random sample; the sample includes 646 children's homes in England, 60 in Scotland and 41 in Wales.
[69] From FY 2016 to 2020, the average operating profit per child was £8,100 in England and £8,700 in Wales. The figures for Scotland and Wales should be treated with caution given the relatively small non-random sample; the sample includes 57 agencies in England, 8 in Scotland and 6 in Wales.

3.44 Comparing types of provision, we found that for children's homes, local authorities' operating costs were in aggregate approximately the same per child as the fees paid to large providers. However, the fees local authorities pay are higher than the operating costs from the private children's homes providers in our dataset, as they also cover capital costs and profit. Based on our sample of 29 local authorities from across England, Scotland and Wales, we found local authority operating costs have been approximately 30% higher, on average between 2016 and 2020, than the equivalent for the 15 large private providers whose accounts we have examined. It therefore appears that the amount paid for a place in the private sector, even allowing for profits, is not higher than that paid by a local authority to provide an in-house place. Our analysis of our dataset indicated that the primary driver of these cost differentials was in higher staffing ratios and costs in local authority provision.

3.45 The situation in fostering appears quite different. We found that local authorities' operating costs per child were approximately half the level of fees paid to large providers. Local authority operating costs have been approximately 26% lower, on average, between 2016 and 2020 than the equivalent for the large private providers. Comparing prices from the IFAs in our dataset, which include the element of profit, we find a difference of 40% between the total cost of an IFA placement compared to an in-house placement for a local authority. Therefore, it appears that even disregarding the element of profit, the amount paid by local authorities for a fostering placement from an independent provider is higher than the cost of providing their own in-house placement. Our analysis of the cost data suggests that the leading factor is higher allowances paid to foster carers; IFAs also reported higher overheads than local authorities.

3.46 However, as emphasised by both providers and local authorities, there are many difficulties in making like-for-like comparisons in the cost of providing both children's homes and foster care, including:

- The different roles played (which are discussed above) mean one would expect private providers to have some higher cost elements than in-house provision. Meeting more complex needs is likely to involve higher costs, for example in terms of greater or more specialised staffing in children's homes or more expensive support of foster carers. Further, as local authorities often prioritise filling their own provision, they are less exposed to the risk of under-utilisation of capacity (particularly in relation to children's homes) and so are likely to face lower costs per child.

- How costs are accounted for differs between in-house and independent placements. While the prices charged by independent providers will

include a share of all costs, the reported 'cost' of internal provision may not fully include all overheads. While this may be the right basis for local authorities to use to compare costs for the purpose of making an individual placement, as these costs are not directly affected by that placement, it does not reflect the overall costs of the different types of provider. Independent providers also report that they often pay for additional services, such as mental health support, rather than relying on public provision.

3.47 Previous comparisons have found different gaps between the cost of care to local authorities of in-house and independent provision. The Personal Social Services Research Unit (PSSRU) found local authorities spent approximately 17% more per child per week on in-house children's homes than on independent sector homes, whereas we found it was roughly the same.[70] These figures are based on PSSRU's analysis of total local authority expenditure on children's homes, including some types of care that are out of scope of our study, such as secure units and residential schools. A 2018 review of foster care in England found in-house fostering cost local authorities around 40% less than independent provision, which is in line with our findings.[71]

3.48 We have also considered whether private equity providers' price and profit levels differ from those of private providers that are not owned by private equity firms. We found that, among the large providers in our dataset, in children's homes, average prices were 3.9% higher for providers that were PE owned than for non-PE owned providers, whereas in fostering they were 5.2% lower. These variations are small compared to the overall range in prices for individual children's home and fostering placements and do not take account of any differences in the average level of acuity in children placed. We therefore do not see these as strong evidence for any systematic difference in pricing levels between non-PE and PE-owned private providers.

Resilience

3.49 For the children's social care market to work well, local authorities must have confidence that it will offer them good options in the future to meet their statutory obligations towards the young people in their care. While it is not possible to directly measure the level of resilience in a sector, in the case of

[70] £4,865 per child per week in-house compared to £4,151 with the independent sector. Both figures include capital costs. Source: Personal Social Services Research Unit publication.
[71] It concluded that "the average weekly cost of a local authority placement was £475 compared with £798 for IFA placements." Source: Foster Care in England: A Review for the Department for Education by Sir Martin Narey and Mark Owers.

children's social care we see very high levels of debt being carried by some large providers; all else being equal, we would expect this to have a negative effect on the overall resilience of the sector. Given the serious impact that placement disruption can have on children, we take risks to resilience in children's social care provision very seriously.

3.50 The underlying context for resilience risks arises from the fact that local authorities have an obligation to provide suitable placements for children, but are, to varying extents, reliant on placements from private providers, which may choose to exit the market at any time, to fulfil this obligation. This creates a potential risk that certain external events may lead to disorderly market exit, leading to damaging disruption for children.

3.51 To some degree, this will be an issue in any market where significant provision comes from the private sector. What is different about this sector is the potential for serious disruption in the lives of children if the operator providing their care were to fail in an unmanaged way. In assessing the extent of this risk we need to consider both the likelihood of unforeseen and significant market exit, and the impact this would have on the wellbeing of children.

3.52 We do have concerns that an unforeseen disruption in the supply of placements could have a particularly negative impact and adverse effects.

- First, the impact of a local authority being unable to find an appropriate placement for a child can be extremely significant in terms of the outcome on that child's life and experiences. While in many markets if there is an interruption in supply due to market disruption a buyer can simply delay or forego a purchase, in children's social care this is not an option as there are real and urgent needs to be met.

- Second, given our concerns about the availability of adequate supply of appropriate placements, it is not clear that local authorities are in a position to deal with a sudden and significant reduction in supply. Any sudden and significant reduction in supply would be likely to impact on local authorities' ability to provide appropriate placements for children in their care when they need them, as they are not facing a market with significant additional supply that is appropriate to absorb such a shock. The consequences of such an event occurring could also be severe for the children affected - potentially disrupting their education, social contacts and therapeutic progress, and seriously damaging their life prospects.

- Third, the creation of new provision takes a significant length of time, in terms of securing property and/or carers, and meeting regulatory requirements. This would suggest that even where there are suppliers looking to enter or expand to replace lost capacity, this would be unlikely to address any shortfall in placements in the extremely short timescale that may be required to avoid negative outcomes for children.

3.53 A range of factors may lead to firms exiting the market, including mismanagement, loss of business, negative regulatory inspections and so on. However, a key factor driving our concerns about resilience in the sector are high debt levels observed among a number of the large providers in our dataset. This is a particular concern regarding those firms that are under private equity ownership, a model that is characterised by high levels of gearing. Among our dataset of the 15 largest providers, we found that:

- The average level of interest coverage (ie profit divided by interest charge) for private equity owned operators of children's homes over the last three years was 1.07 times, compared to 9 times for non-PE owned providers.

- For PE-owned children's homes, cash flow available for debt servicing divided by total debt averaged 5.3% (40% for non-PE providers) over the last 5 years. Again a small downward shock to earnings would mean insufficient cash flows within the business to service the debt; and

- For PE-owned providers in aggregate, net debt exceeded their fixed assets. The opposite is true for non-PE-owned providers.

3.54 As we have noted above, at the moment the providers considered in our analysis are highly profitable, the demand for placements is growing and local authorities are compelled to purchase the services in order to meet their statutory duty to find placements for the children in their care. There is therefore no reason to believe that failure is imminent and we have seen no history of failure in this sector.

3.55 However, some of the largest providers have extremely high leverage levels and this has been increasing. This leverage makes them more vulnerable to changes in the economic climate than they would otherwise be. The largest providers are generally owned by large firms with access to capital, however there is no certainty that this would be provided if the providers stopped generating the necessary returns (for example because changes to the sector meant that the number of children in residential homes reduced). Our concern is that one or more of these providers could exit the market in such

a way that the care of the children in their homes is disrupted by them having to leave their current home and move into a different one.

3.56 The extent of potential adverse effects on local authorities and children in the event of a provider failure will depend on both the scale and nature of the provider and what happens to the business. The failure of a larger provider would generally be likely to have a more significant impact than that of a smaller one, as it would raise the risk of more children needing a new home at once; this would be likely to prove challenging in a supply-constrained market. Similarly, if one or more local authorities is highly dependent on a provider that fails, this could cause particular problems for them.

3.57 In Section 6 Resilience, we set out more fully our concerns over the potential harmful effects of the disorderly exit of a provider for financial or any other reason. We also describe our recommendations to address those risks.

4. Commissioning

4.1 Across all three nations, local authorities face a wide range of challenges when engaging with the placements market. We have found that local authorities struggle to effectively forecast their future needs, engage with the market in order to ensure sufficient appropriate placements to meet those needs and procure placements as efficiently as possible. Increasing the scale at which these activities take place above the local authority level, will help to address some of the factors that inhibit local authorities from doing this themselves. We set out a range of options, with implications beyond the scope of our study to make this happen. There would also be a benefit from more national support for these activities.

4.2 In order for the placements market to work well, the repeated interactions of local authorities and providers must combine to allow local authorities to access consistently good quality and appropriate placements on the best possible terms. For this to happen, several important conditions must hold:

(a) First, commissioners need to be able to operate effectively in the market to ensure they are able to purchase the placements they need, at the right time, for a reasonable price. To ensure they are able to do this, local authorities, directly or indirectly, need to:

(i) effectively forecast their likely future needs (see paragraph 4.15);

(ii) shape the market by providing accurate and credible signals of the likely future needs of children to existing and potential providers and incentivising independent providers to expand capacity to meet these needs, particularly where these needs are being insufficiently addressed by the current provision (see paragraph 4.33);

(iii) efficiently procure placements, from among the provision available to authorities at any given time, accessing those places that most closely match the needs of children at prices that reflect the cost of care (see paragraph 4.48).

(b) Second, existing and potential providers must be able to react effectively to the signals from the public sector, allowing them to bring new supply to the market that more closely matches the needs of children and local authorities. We consider these issues in section 6.

4.3 In this section we first consider the context in which local authorities operate when engaging with the placement market. Then we discuss the importance of how the public sector understands the demand for children's social care placements and of incentivising the provision of these placements to meet

this demand. We then consider the challenges present in the children's social care market which makes forecasting, market shaping and procurement difficult.

Context for commissioning

4.4 Local authorities face a wide range of challenges when looking to find a place for a child currently in their care. First, getting the right match of a child to a place is hugely important but also extremely difficult given the unique needs of each child. Secondly, the options available constantly change, as places are filled, and it can be difficult for local authorities to understand what options are available particularly when looking outside their own area. Further, the options available may be very limited in number, particularly for children with more complex needs. Finally, local authorities must find a placement for each child and often do not have the ability to wait for more suitable options to be available or to seek better prices.

4.5 These factors mean that many placements are made in very difficult circumstances with few, if any, good options available to local authorities. They are also often competing with other local authorities for the types of placement they need. As a result of these factors, amongst others, many stakeholders have suggested local authorities lack bargaining power when dealing with independent providers, as discussed further in paragraph 4.37 .

4.6 One key factor that adds to the weakness of each local authority's position when engaging in the market is the fact that they each purchase a relatively small number of placements each year. The local authorities in our data set each purchased an average of 49 independent children's homes places per year and 126 fostering placements a year. As we have noted above, the needs of children can differ widely, so local authorities purchase very small numbers of placements within some particular sub-categories of provision, such as placements catering to children with physical disabilities, those with severe autism or suffering trauma from prior abuse.

4.7 While to an extent some of these factors are an inherent part of the challenge facing local authorities in this sector, local authorities try to lessen the resultant pressures and improve their bargaining position through their procurement strategies with varying degrees of success, as discussed in paragraph 4.49.

The significance of public sector engagement

4.8 In the children's social care market, there is a clear and broad trend of increasing demand for children's social care placements and increasing

complexity of needs of looked-after children as discussed in paragraph 3.6(d). Within this broad long-term trend of increasing numbers of looked-after children, there is variation in the impact on individual local authorities. For example, the number of unaccompanied asylum-seeking children needing to be taken into local authority care in England increased by 19.9% overall between 2015 and 2020. However, over the same period, in Norfolk, the increase was 1014.3% while in Brent the number fell by 7.6%.[72, 73]

4.9 An understanding of future demand is very important for providers considering investing in new provision because they experience high losses if their capacity goes unused. These losses are high because they face high fixed costs that are still incurred when places are not filled. This is particularly the case for children's homes where fixed costs include the cost of finding and paying for the property and the cost of gaining regulatory approval. Staff costs are also largely fixed and other more flexible costs make up a small proportion of total costs. For fostering, fixed costs appear more limited, but still significant; the main upfront fixed cost is recruiting and registering foster carers, which costs around £10,000 per successful fostering applicant.

4.10 For these reasons a lack of certainty of future demand acts as a deterrent to the creation of new provision by independent providers. Where demand in a particular region is uncertain, this also incentivises providers to create provision in lower-cost areas rather than higher-cost ones. Local authorities in England have a "sufficiency duty" to take steps to secure, so far as reasonably practicable, sufficient accommodation within each local authority's area which meets the needs of the children it looks after. Local authorities in Scotland and Wales have similar duties. These duties ought to operate over time to ensure that local authorities are generally able to place children locally in a setting that is appropriate to their needs. However, the concerns we have around under-supply of appropriate places in the market suggest that this is not consistently happening.

4.11 In many well-functioning markets, the ongoing decisions of purchasers provide signals to suppliers about the current and future purchasing preferences of those buying products and services. This provides the firms with both the information and the incentive they need to adjust the amount and nature of the supply they bring to the market to better meet those

[72] Statistics: looked-after children.
[73] The government recently wrote to all local authorities with children's services across the UK to inform them of the government's intention to temporarily mandate the National Transfer Scheme. This system will disperse unaccompanied asylum-seeking children across local authorities, however, the effects of this system remain to be seen. For further detail see National Transfer Scheme to become mandatory for all local authorities.

preferences as time goes on. In the case of the placements market, however, it is widely recognised that the purchasing decisions made by local authorities today will not necessarily provide current and potential independent providers with good information about their future needs.

4.12 Given the under-supply of appropriate places that we have seen, places are still filled even if they are not in the best location or do not provide the most suitable environment for the children placed in them. As a result, providers do not receive strong signals about how they should adjust their provision to meet children's needs. Nor do they face strong incentives to do so, given their current provision will generally be used anyway, due to a lack of alternatives. Where this "second-best" placement happens, it is not recorded as such, so the exact extent and nature of how much this is happening is very unclear.

4.13 Given this context, in order to be successful in encouraging sufficient supply to meet their needs, local authorities must be able to do two things:

(a) First, they must be able to accurately forecast their future needs, understanding both the overall number of children they are likely to need to place and the mix of different types of provision they are likely to need to meet the particular needs of all the individual children within that group.

(b) Second, they must be able to perform "market shaping" activities, whereby they communicate these expected needs to providers and incentivise them to create and maintain sufficient appropriate provision to meet these needs.

4.14 As a result of the factors described above, we have concerns that local authorities are not in a strong position to effectively predict their future needs(as discussed in the Forecasting concerns section), signal these needs to independent providers (as discussed in the section on Market shaping concerns), nor are they currently efficiently purchasing children's social care placements (as discussed in the Procurement concerns section). In the following sections we describe these issues further and the impact these have on the children's social care market.

Forecasting concerns

4.15 The majority of local authorities and large providers in England we spoke to as part of our investigation 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.

4.16 A key issue behind these difficulties is the relatively small number of placements purchased by local authorities. Where numbers vary over time, variations between years are likely to be greater and more uncertain when attempting to forecast smaller numbers. These issues are particularly severe in relation to placements for children with complex needs because there are very small numbers of these cases and they involve very specific needs which are difficult to predict. Similarly, due to the specific needs of these children, appropriate placements can become very expensive. Therefore, a very small number of placements can take up a large proportion of a local authorities' children's services budget. A lack of scale also limits the capacity of local authorities to develop cost-effective in-house forecasting capacity to overcome these challenges.

4.17 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. Most local authorities in England who responded to our request for information also explained that they do not attempt to undertake complex forecasting analysis beyond that required as part of their sufficiency duties.

4.18 As a result, many large providers explained that they do not consider local authority forecasts of their future needs in England to be accurate and so would not use these to inform their capacity expansion decisions. One large provider of both children's homes and fostering told us that the uncertainty of local authority future demand is a significant constraint on their ability to meet the needs of local authorities. Another large provider told us that where they do not have a good understanding or certainty of future demand, the main impact is to disincentivise them from investing in new areas and/or specialist services. Another provider told us that the local authorities do not have a system that allows for the projection of need and that providers must base projected recruitment, skill set and training of foster carers on their own experience.

4.19 Large providers also told us that many local authorities in England do not currently share their sufficiency statements with providers[74] either directly or

[74] Local authorities are not required as part of their statutory sufficiency duty to publish their statements publicly or to share these directly with providers.

indirectly (by publicly publishing them) which contributes to independent providers' poor understanding of local authority demand. In a report published in March 2022, What Works for Children's Social Care (WWCSC) also found that 44% of local authorities in England do not have a publicly available or up-to-date sufficiency strategy.

4.20 Similarly, large providers explained that local authorities in England approach future demand modelling in different ways and there is a lack of consistency in how local authorities set out their sufficiency plans and future needs in their sufficiency statements. The WWCSC analysis of local authority sufficiency strategies in England also found that the content (including the level of detail and type of information included) and formatting of sufficiency strategies varies widely.

4.21 One large provider explained that if local authorities had a standardised way of providing sufficiency information to independent providers, this would help to paint a much clearer picture of the need for provision across local areas and regions and give providers confidence to increase investment in areas of urgent need.

4.22 Many local authorities and large providers therefore expressed the need for template sufficiency strategies in England with an underlying universal approach to identifying sufficiency gaps and predicting future needs. The LGA have recognised this need and have commissioned work to develop a template sufficiency statement for local authorities to enable the LGA to promote consistency. Similar work is being undertaken by 14 local authorities in the South West of England with the aim of producing a market position statement for the region.[75] ICHA told us that they believe sufficiency planning could be strengthened by introducing a universal method of assessing need and measuring impact. [76]

4.23 Similarly, a large number of local authorities in England explained that access to shared forecasting tools would provide them with a foundation to build on in terms of modelling their future demand and would improve consistency of approach. However, local authorities stressed the importance of being able to reflect very localised trends in their forecasts and therefore a modelling approach that works in one local authority may not be suitable in another. Therefore, local authorities expressed a need for further support from central government in helping authorities to establish effective forecasting methods adapted to their localised needs.

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[75] South West Sufficiency project BETA - South Gloucestershire Council.
[76] ICHA response to the IR.

4.24 Some local authorities in England also suggested that there was data held centrally that could help them forecast more accurately. However, while we have found that data in this sector is relatively limited (see paragraph 4.63), DfE and Ofsted do publish some data and where they do not it often reflects underlying challenges with the data, such as poorly defined types of care. Local authorities and large providers also told us that government could play a greater role in supporting forecasting, for example by sharing the best practice of local authorities who have done this well.

4.25 In Scotland, local authorities explained that they rarely forecast future demand as a result of the difficulties involved, as explained above, and because they did not consider there to be the same under-supply of placements in Scotland as seen in England (as explained in paragraph 3.15). Large providers that operate in Scotland told us that many of the same issues with regards to the accuracy of local authority forecasting, the inconsistency in approach and the lack of information available to independent providers that are common in England also occur in Scotland. One large provider explained that these issues make it difficult for independent providers in Scotland to consider future service offerings and investment in additional capacity for both residential care and fostering.

4.26 Scotland Excel told us that it uses historic placement patterns and changes in policy direction to estimate likely trends for renewal frameworks but does not undertake detailed forecasting on behalf of local authorities. One large provider told us that Scotland Excel used to host forums where independent providers and local authorities could come together to discuss needs but that these have become less frequent over time. The provider also explained that as Scotland Excel already has relationships with local authorities and private providers and holds data on historical trends of usage through quarterly monitoring, that it could take on more of an active role in establishing local authority demand. Local authorities that responded to our request for information also expressed support for further involvement from Scotland Excel in terms of forecasting support.

4.27 CIS told us that it promotes the use of a quality improvement framework for self-evaluation which supports local authorities and strategic partnerships to consider future planning of services for their local communities. CIS also explained that with additional resource, more use could be made of this section of the framework as a tool to promote and support forward planning.

4.28 In Wales, local authorities also expressed concerns about the difficulties associated with forecasting their future demand and told us that they mainly focus resources on providing a reactive service rather than forward planning. Large providers considered that many of the issues associated with having a

clear and accurate understanding of local authority future needs that arise in England and Scotland also occur in Wales.

4.29 CIW told us that it does not have a role in supporting local authorities in Wales in forecasting their future demand for placements.

4.30 However, the 4Cs, the national commissioning body in Wales, told us that part of its role is to ensure that local authorities are supported to comply with their duties of sufficiency, affordability and sustainability by analysing need to identify gaps in the markets and lead developments on a national, regional and local level to respond to unmet needs. The 4Cs also told us that it provides national analysis of trends in data and assists with forecasting future demand based on historic data from Wales, comparable nations and regions, cross referencing multiple sources that project future demographics, current data on emerging trends and where possible factor in anticipated future variables such as policy on refugees. The 4Cs also work with Data Cymru who manage the Children's Commissioning Support Resource (CCSR) to develop easy to access reports that enable Local Authorities to have live data on number of placements, needs of young people and number of care settings.

4.31 The 4Cs have recently launched the Placement Commissioning Strategy (PCS) template which helps local authorities to better understand the needs of the children in their care, desired outcomes, drivers for change in order for the local authority to be able to shape internal services, work in collaboration with providers and increase placement choice. The 4Cs told us that it has received positive feedback from local authorities in terms of how their PCS complements wider corporate strategies and assists as a planning tool internally. Local authorities that responded to our request for information also told us they have found the PCS template a useful tool.

4.32 This evidence shows that although accurate long-term forecasting is inherently challenging, there is scope to improve it through more national support. Improved forecasting would help local authorities to better understand their likely future needs and enable authorities to more accurately communicate their demand to providers. Ultimately, this would increase the ability of both independent and in-house providers to supply appropriate placements to meet this demand. Therefore, we consider more national leadership and support is required from governments to aid local authorities in accurately forecasting their demand for children's social care placements.

Market shaping concerns

4.33 Even where future needs can be anticipated, there are barriers to local authorities converting this understanding into signals that providers will act on. In England, Scotland and Wales we have heard that most local authorities do not attempt to estimate future capacity or actively shape the market by encouraging providers to invest in new provision. Local authorities highlighted the challenges to them doing so, particularly when acting individually. We found that collaboration in all three nations is more focussed on procurement than market shaping, although there are some steps towards the latter in Scotland and Wales.

4.34 Most local authorities explained that they generally try to keep track of current capacity in the market (usually via their contractual relationships with providers) rather than attempt to estimate future capacity. Some other local authorities make use of national data (provided by regulators, trade bodies etc) to keep abreast of the bigger picture.

4.35 The majority of local authorities in England, Scotland and Wales who responded to our request for information told us that they do not attempt to actively encourage capacity expansion externally and instead are increasingly focussing on expanding their in-house provision. However, for children's homes, local authorities are not opening sufficient new provision to replace the homes they are closing and the vast majority of additional provision has come from private providers. For example, between 2019 and 2021, in England, 33 new local authority owned children's homes were opened, however, they closed 65 homes with a net loss of 59 places.[77] Private providers have added a net of 490 children's homes resulting in 1,537 additional places in England over the same period. Similarly in Scotland, between 31 March 2017 and 31 December 2021 the number of local authority homes for children and young people dropped from 119 to 116, while the number of private homes has risen from 107 to 153.[78]

4.36 Sufficiency statements provided by local authorities in England also 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. For example, one local authority sufficiency statement that was shared with us said "[our] ambition is to place 70% of fostered children with in-house

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[77] CMA calculation based on Ofsted joiners data. The newly opened homes are smaller on average than those that were closed. Voluntary providers have added a net of 26 places over the same period. Source: Joiners and leavers in the childcare sector.
[78] The number of voluntary homes increased from 57 to 68 over the same period. Source: Quarterly Statistical Summary Report - Qtr 3 (2021/22) and Quarterly Statistical Summary Report - Qtr 4 (2016/17).

carers" another statement said one of the goals of the local authority was to "review in-house residential provision, with a view to reconfiguration, in line with local needs". 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.

4.37 One of the factors that may inhibit individual local authorities from attempting to shape the market is the challenges they face when attempting to do so. In particular, there are a number of challenges that may not be present if they were purchasing at greater scale:

(a) As highlighted by local authorities and other stakeholders, 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. This limits the ability of local authorities to use tools, such as block contracts, that give providers sufficient certainty that specialised provision would be used.

(b) Individual local authorities are not sufficiently able to take into account the plans of other local authorities when considering their likely future needs. Local authorities are able to make placements in children's homes and with IFAs located in other local authority areas. This makes it difficult for individual local authorities to understand whether there is sufficient provision in a local authority area or region to meet their needs (and those of other local authorities that may rely on that provision). This discourages local authorities from encouraging the supply of placements from providers, because this does not always guarantee the local authority an availability of placements.[79]

(c) From a provider's point of view, there are certain benefits to local authorities collaborating with other local authorities. Where provision will rely on use by multiple local authorities, providers will be able to plan better if they understand all those local authorities' needs rather than just one individual local authority's needs.

4.38 Therefore, the relatively small scale of activity places inherent limitations on the ability of individual local authorities to accurately forecast their future demand and to then incentivise providers to supply the placements needed.

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[79] This depends on the commissioning approach utilised by the local authorities, for example if local authorities have exclusive contracts with providers then other local authorities would not be able to purchase these placements. However, exclusivity can also cause issues, ie inflexibility and financial risk.

4.39 Currently, in England, Scotland and Wales, collaboration between local authorities and between local authorities and large providers is focused on procurement of residential and fostering placements rather than market shaping. In other words, current approaches to collaboration help local authorities to engage with the market as it is rather than to shape future provision of children's home and fostering placements.

4.40 Local authorities in England, Scotland and Wales highlighted several further challenges to collaboration with regards to market shaping. These included: differences in local authority governance limiting their ability to operate jointly and the role of geographical boundaries (with local authorities expected to keep children within their local area wherever possible and appropriate). Local authority funding arrangements also prevent local authorities from collaborating with providers in expanding capacity, the short-term nature and lack of available funding limiting their ability to commit to long-term contracting arrangements (such as block contracts) and make significant investments for the future. Local authorities also suggested that governments could play more of a role in supporting collaboration between local authorities and providing national leadership in terms of encouraging collaboration and providing information about models that work particularly well.

4.41 In Scotland and Wales, local authorities can choose to use national contracts run by national bodies to purchase placements[80] (as described in the section on Procurement concerns). These national bodies take responsibility for signing independent providers up to the national contracts and for contract management. Many local authorities in Scotland and Wales that responded to our request for information explained that they do not attempt to collaborate to shape the market outside of membership of the national bodies as they feel much collaboration already occurs via these national bodies.

4.42 Both the 4Cs and Scotland Excel have taken steps to assist local authorities with shaping the market, although these have largely launched in the last 5 years and are relatively nascent.

4.43 Scotland Excel explained that, in terms of encouraging providers to supply the right type of placements (in terms of needs catered for and geographic location), its role has generally been to identify sufficiency gaps in the market to inform its framework agreements and to maximise participation on frameworks to enable maximum choice. Scotland Excel also told us that it

[80] Although, as discussed in paragraph 4.54, not all local authorities in Scotland and Wales utilise the national contracts for all of their placement purchases.

does not currently have any plans to further expand its role in terms of market shaping.

4.44 Many local authorities in Scotland that responded to our request for information explained that they would like further involvement from Scotland Excel in terms of market shaping support such as identifying gaps in sufficiency and working with providers to encourage them to expand to fill these gaps. Local authorities described how Scotland Excel are well placed to do so as they have a national overview and are able to communicate effectively with both local authorities and independent providers to identify demand and gaps in sufficiency.

4.45 The 4Cs[81] explained that part of its role includes developing and shaping the market to support local authorities' sufficiency duties and develop a diverse range of good quality services for those who require them. In order to do so, the 4Cs provides strategic commissioning support to local authorities to assist them in the development of local and regional Market Position Statements (MPS).[82] An MPS is intended to set out a local authority's requirements to providers for the development of services, including what they want and what they do not want.

4.46 The 4Cs told us that it has received positive feedback from local authorities and independent providers on the MPS, that it is a practical tool from which to have positive, focused commissioning discussions with a sound base of needs analysis and demand. The document supports consistent messaging and trust which makes commitments to develop services more likely. 4Cs also told us that the documents are reported by independent providers as being useful to secure investment decisions whether that be boards of directors or banks. Local authorities that responded to our request for information also described the MPS as a useful tool.

4.47 This evidence shows that more market shaping at a wider scale would help to ensure providers supply the placements local authorities need. However, we have also seen evidence that local authorities can struggle to collaborate successfully due to risk aversion, budgetary constraints, differences in governance, and difficulties aligning priorities and sharing cost. As such, it is not clear how local authorities can sufficiently overcome these barriers even if given further incentive to do so. Therefore, we consider governments need to take action to mandate a more collective approach to market shaping. We also consider that given the relatively limited amount of regional

[81] 4Cs response to the ITC.
[82] Market Position Statements are not specifically a legal requirement although they can assist local authorities to meet their statutory duties.

commissioning currently happening, more national leadership and support is required from government to support this.

Procurement concerns

4.48 Collaborative procurement strategies strengthen local authorities' bargaining position at the point of placement by increasing the visibility of options and prices, agreeing terms of purchase in advance and reducing the risk of local authorities bidding up prices against one another. Such collaboration allows local authorities to take advantage of operating at greater scale. There are different approaches to procurement collaboration across England, Scotland and Wales.

4.49 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. Examples include: joint block booking of provision, the operation of framework agreements[83] with providers and the joint running of placements for very specific or complex care needs. The NAFP estimate that for fostering, there are approximately 30 different primary commissioning arrangements in England. For children's homes, where frameworks are less common (as described in paragraph 2.16), we have been told there are many more different arrangements. We consider that the different approaches to commissioning by local authorities in England exacerbates the varying levels of sufficiency and pricing across the nation (see the sections on Supply of appropriate places and Prices and profits for further detail).

4.50 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. Many local authorities in England also provided us with the details of the procurement groups they are part of and with evidence of how collaboration with other local authorities has enabled them to establish better working relationships with independent providers as providers are able to manage their business based on regional need and so can commit to prices for a set period. Local authorities told us this collaboration often enables them to better meet the needs of the children in their care.

[83] A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement.

4.51 However, many local authorities also highlighted that the design of procurement groups is important. For example, local authorities explained that the size of the collaborative group should reflect the type of care the group is intended to procure. 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. In contrast, for less specialised placements it is often not necessary to collaborate on a wide scale as the number of cases from a few local authorities is sufficient to provide a good bargaining position with independent providers. Similarly, local authorities highlighted that collaboration with local authorities further away from their local area can inadvertently lead to some children unnecessarily being placed further away from home. Local authorities also explained that open communication and trust is important between local authorities that are collaborating, thus smaller scale efforts can often be more effective.

4.52 As we discuss in the section on Market shaping concerns, many local authorities in England that responded to our request for information highlighted that there are barriers to effective regional collaboration and further collaboration occurring on a wider scale. These included concerns that often the contractual terms set out as part of collaborative relationships result in complex care placements falling out of scope of these arrangements, meaning local authorities in England still face the challenge of finding placements for each child with complex needs.[84] Local authorities also told us that differing individual governance procedures and organisational structures can sometimes prevent alignment between local authorities in collaboration. Relatedly, local authorities explained that there is a political element to collaboration which can act as a barrier, for example elected members may not see the advantages of collaborative working where this might involve relinquishing local authority control or have impacts on budgets.

4.53 Similarly, local authorities told us that they thought procurement rules can limit their ability to collaborate effectively. Large providers told us that local authorities perceived the procurement rules[85] to be more inflexible than is in fact the case and that this limits local authority willingness to engage with independent providers. The LGA has published a resource designed to

[84] While the national frameworks set up in Scotland and Wales allow flexibility to meet varying needs with a large variety of providers available to meet a range of care needs.
[85] The Public Contracts Regulations 2015.

promote a better understanding of the powers and restrictions of procurement.[86]

4.54 In contrast, both Scotland and Wales have national approaches available for procurement,[87] with Scotland Excel and the 4Cs helping collaboration between those local authorities and providers that choose to use these national approaches. The role of these national bodies includes managing frameworks between local authorities and providers (together with negotiating prices on behalf of local authorities) and providing resources and other support to help local authorities find appropriate care settings for children. In Wales, all 22 local authorities use the 4C's framework contracts and there are 18 providers on the latest fostering framework and 33 providers on the latest residential framework. In Scotland, as of August 2021, 68% of providers were signed up to Scotland Excel's residential care contract and 74% to the fostering contract. All local authorities in Scotland have purchased placements via the Excel residential care contract since its formation and 30 of 32 local authorities have purchased placements via the Excel fostering contract.

4.55 In Scotland and Wales, some local authorities explained that Scotland Excel and the 4Cs benefit the procurement process by: allowing local authorities to easily compare prices of different providers; negotiating prices on behalf of local authorities (allowing local authorities to save time and providing reassurance that prices are likely to be more reflective of cost of provision); providing information to local authorities on placement availability; and holding details on non-framework providers, enabling local authorities to extend their placement search if an appropriate framework match is not available.

4.56 Large providers that responded to our request for information told us that the benefits of utilising the 4Cs and Scotland Excel national contracts include: standard terms and conditions which govern placements, set pricing and reduced administrative burdens of tendering and negotiation on multiple frameworks.

4.57 However, some stakeholders have also recognised some limitations in the national approaches to procurement in Scotland and Wales. The 4Cs and Scotland Excel explained that not all providers have welcomed intervention from a national body and some have not joined the frameworks. 4Cs said this was for reasons such as struggling with the price transparency or quality

[86] Myths in Procurement.
[87] These are available to be used or joined by all local authorities and providers but not all take part in these frameworks.

requirements set out, and Scotland Excel similarly said this was for reasons such as difficulties meeting the criteria for participation, concerns about price variation processes and requirements around financial transparency. The NAFP[88] also told us that not all local authorities in Wales and Scotland utilise the national contracts set up by the procurement bodies, resulting in fragmentation.

4.58 CIS explained that Scotland Excel contracts focussed on price when first introduced which they believed may have placed a financial strain on independent providers and impacted on quality and innovation. CIW told us that it does not think the availability of placements on 4Cs frameworks have developed to meet the needs of children with more acute or complex needs and that there still remain a lot of spot price placements in Wales.

4.59 England in the past has had national contracts in place for both residential and foster care run by the NCSG. The NCSG told us that their work stopped because of a lack of resource backing, with no administration or financial support, or any direction from central government or at the ADCS level. The NCSG also told us that it faced challenges in setting up national contracts in England, including: obtaining sources of funding, getting national representatives on board from care-experienced people and getting backing from directors of children's services. The NCSG are proposing to re-establish these national contracts currently and are in discussion with local authorities and providers.

4.60 The majority of local authorities in England that responded to our request for information considered that the establishment of national contracts in England would be beneficial. These local authorities told us that the advantages of national contracts in England would include: clear and consistent terms and conditions, improved understanding of placement availability and reduced search costs for local authorities in finding placements due to having a variety of independent provider options set out in one place. However, these local authorities were also clear that a 'one size fits all' approach would not be successful and that a variety of contracts catering to different care needs would be needed. Local authorities also told us that it is important that any national contracts be kept up to date to reflect changes in need and costs of provision.

4.61 Many large providers told us that national contracts in England would support improved efficiency in the market by removing duplication of costs providers currently face when dealing with multiple contracts. Large

[88] NAFP response to the ITC.

providers also stressed the importance of any national contracts being co-produced by both local authorities and independent providers to ensure alignment of objectives.

4.62 While we have seen evidence of a wide range of approaches to procurement – with national approaches in Scotland and Wales, and a patchwork of regional and sub-regional approaches in England – these have not gone far enough or fast enough. Although it is widely recognised that procuring at a wider-than-local scale is beneficial, local authorities can struggle to collaborate successfully. Therefore, we consider that local authorities are unlikely to be able to overcome these barriers even if given further incentive to do so. As such, we consider governments need to take action to mandate a more collective approach to procurement. We also consider that national contracts would help to support local authorities in finding the most appropriate placements for the children in their care.

Data concerns

4.63 A further issue adding to the challenge faced by local authorities when forecasting and market shaping is the data limitations in this sector, particularly on children's needs. We consider that the sector, and ultimately looked-after children, would benefit from better data collection and use.

4.64 We have heard that the way in which local authorities assess children's needs and then communicate them to potential care settings is inconsistent, unreliable and prone to change (see the section on Forecasting concerns for further detail). An underlying challenge is that each child and their needs are unique, and this has to be reflected in the way needs are assessed. However, there will still be commonalities between different children. Further, there will be lessons that can be learnt from what works well for one child that could be applied to other children in the future.

4.65 At the moment, children's needs are set out in referral forms that follow a range of different approaches and can change depending on the preferences of senior local authority officials. Relatively few local authorities use clinical evaluation tools that systematically assess needs against consistent criteria and then assess and demonstrate the outcomes from care. While these tools cannot replace the judgment of social workers in deciding what care is suitable for a child, they have been used by local authorities to inform decisions over whether a child's progress means they would now be suited to a different care setting. For example, one clinical

evaluation tool, Berri,[89] has been used to review local authorities' most complex children and identify changes that improved the outcomes for children and save money that could be used meet children's needs more effectively.

4.66 More systematic assessment of needs would in turn support a more granular understanding of what care needs are being met by different care settings. At the moment there is limited consistent data on the types of needs that children's homes can meet. Children's homes' registrations tend to refer to care for broad categories of children's needs. For example, Ofsted has just seven fairly broad categories and homes can have more than one category of registration.[90] Compounding this is a lack of consistency in how local authorities record children's needs. This makes it harder for local authorities and regional consortia to understand what types of care are provided in the local area.

4.67 Better data on children's needs and the current provision of children's social care would help local authorities forecast more effectively.

4.68 A further, albeit secondary, benefit of better data would be to help national policy makers better understand what is happening in the sector. Better data would allow policy makers to better understand problems in the system and how best to address them. We have found that the data available is generally not at a level of detail sufficient to be able to clearly answer some specific questions, such as whether there is sufficient supply of more specialised provision to meet a particular type of need in a particular location. One particular shortcoming is the lack of consistent data on whether the right type of placement in the right location was available or whether a placement was a second-best option. We understand this information is collected within local authorities' procurement tools but often not in a structured way that would allow analysis. This information would be vital for understanding how well local authorities are meeting their sufficiency duties.

Recommendations

4.69 In light of the issues described above, we believe a new approach is needed in England, Scotland and Wales to improve the way in which forecasting, market shaping, and procurement takes place in children's social care. Without these proposed changes, we expect the market outcomes described in the section on Outcomes from the placements market will continue and

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[89] Berri Improving Outcomes for Children.
[90] Guidance Introduction to children's homes.

worsen, particularly the lack of appropriate children's social care placements in the right places and the high prices of some placements.

4.70 In this section we describe how this new forecasting, market shaping and procurement approach would apply across all three nations as well as how the new approach would need to be adapted to each individual nation, taking into account varying national circumstances.

Forecasting

4.71 As we have also set out in the section on Forecasting concerns, evidence we have seen over the course of this study indicates that increasing the scale at which forecasting activities are carried out would address the challenges which currently inhibit more accurate and comprehensive forecasting. The benefits of doing so would particularly arise for those placements that are more challenging for local authorities to forecast and provide, such as placements for children with the most complex needs.

4.72 We are therefore recommending that the UK, Scottish and Welsh governments 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:

(a) ensuring access to sufficient data on placement demand and sufficiency (including collecting existing data held by local authorities);

(b) carrying out and publishing regional and national analysis, including feeding into a 'State of the Sector' report (see paragraph 60 for further information), regional and national trend analysis and horizon scanning, such as on the potential future impacts of policy developments; and

(c) providing local authorities (and other public bodies) with guidance and support in local forecasting and identifying local gaps in provision – including:

(i) sharing forecasting methodologies, expertise and providing training,

(ii) creating template sufficiency reports for consistent use by all local authorities.

4.73 To support the effectiveness of these functions, we are also recommending that local authority statutory duties be expanded to include a requirement to provide specified data to and cooperate with the body carrying out the forecasting function. Similarly, further duties should be placed on local

authorities to produce and publish sufficiency reports using templates created by and in line with guidance developed by the forecasting body.

4.74 In England we consider that the Department for Education could take responsibility for holding this national forecasting function set out above. This would build on their sector-specific knowledge and experience, as well as their existing data collection requirements.

4.75 In Scotland, we consider that the Scottish Government could take responsibility for holding the forecasting function set out above. However, we also recognise that Scotland Excel may be well placed to do this on the Scottish Government's behalf due to their experience and existing relationships with local authorities and independent providers (as set out in the section on Procurement concerns).

4.76 In Wales, as set out in the section on Forecasting concerns , the 4Cs already provides some forecasting support to local authorities, and have recently begun to perform national trend analysis on behalf of local authorities and to provide forecasting support to local authorities via Placement Commissioning Strategies. We consider that the 4Cs could continue to perform these roles and with support from Welsh Government, could expand their approach to ensure that they are taking on all aspects of the forecasting function described above.

Market shaping and procurement

4.77 We also set out in the section on Market shaping concerns our concerns that local authorities are not currently collaborating to shape future provision of children's homes and fostering placements. Similarly, we have set out in the section on Procurement concerns our concerns that while we have seen varying degrees of collaborative procurement activity between different groups of local authorities across the three nations, this has not gone far enough or fast enough.

4.78 Despite collaboration in terms of market shaping and procurement being widely seen as beneficial, local authorities can struggle to collaborate successfully due to risk aversion, budgetary constraints, differences in governance, and difficulties in aligning priorities and sharing costs. It is not clear how local authorities can sufficiently overcome these barriers even if given further incentives to do so.

4.79 Relatedly, the recommendations of the 2016 Narey review of residential care[91] included that "The Department for Education must require local authorities to come together into large consortia for the purpose of obtaining significant discounts from private and voluntary sector providers".[92] While the Department for Education agreed with this recommendation, it adopted a non-mandatory approach which has not delivered the extent and pace of change we think necessary.

4.80 As such, without action by national governments to mandate the appropriate level of collaboration in terms of market shaping and procurement, we have concerns that local authorities are unlikely to collaborate sufficiently to deliver the outcomes that are needed.

4.81 We therefore recommend that governments in England, Scotland and Wales require a more collective approach to market shaping and procurement. This should include:

(a) 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;

(b) 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. These bodies should cover the entirety of each nation. While in Scotland and Wales it is plausible that this may be at a national level (building on the work of Scotland Excel and the 4Cs), we expect sub-national bodies to be appropriate for England; and

(c) providing an oversight structure to ensure that each body is effectively carrying out its functions to ensure collective market shaping and procurement are occurring to the extent required for local authorities to gain from the benefits of collaboration at a wider scale. This should involve an assessment of the extent to which sufficiency of placements is being achieved within each area.

4.82 Each government should determine how best to implement this recommendation, taking into account key issues that lie beyond the scope of our study, such as concerns around child protection, how this would interact with other health and social care services and other such issues. In

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[91] Report of Sir Martin Narey's independent review of children's residential care, Residential Care in England.
[92] The Social Market Foundation 2021 report on fostering similarly recommended "Adopting regional commissioning – regional bodies that plan and commission strategically could shape and manage the market, with scope to lower prices through collective bargaining power, block contracting (buying a set number of places rather than just agreeing prices) and realising economies of scale".

examining the relative advantages and disadvantages of different options, national governments should consider:

(a) the number of bodies: for any body or set of bodies created there will be a trade-off between gaining market power and efficiencies through larger size, versus difficulties of coordination and management that come with that (for example, the variation of needs increasing within a larger body). Governments should consider these factors in determining the appropriate approach, and the precise geographical area each should cover;

(b) what precise collective market shaping and procurement activities are assigned to the bodies: there are a range of options, from mandating only a small amount of activity to be carried out collectively eg market shaping and procurement only for children with particular types of complex needs, through to mandating all market shaping and procurement activity be carried out by the collective bodies;

(c) the relationship between the new bodies and local authorities: it is important to be clear in each region how the mandated level of collective market shaping and procurement activity is carried out, but it could vary from region to region depending on the level of engagement of participating local authorities. This could be with local authorities collectively reaching agreement or the regional bodies could be given the power to decide. If regional bodies are given the power to decide, they should also have responsibility for ensuring sufficient provision;

(d) the governance of the new 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 by setting out clearly defined responsibilities and procedures so that both the local authorities and the collective bodies can be held to account for their decisions and how they exercise their functions; and

(e) 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 market shaping and procurement action.

4.83 In order to support increased collective market shaping and procurement activity, each national government should also provide further leadership and support. This should include (but not be limited to):

(a) improving understanding of what collective market shaping and procurement models work well. This would include carrying out and sharing regular 'diagnostics' of the various models being used within the market shaping and procurement bodies in order to better understand what is working well, what is not working well and why. This should be published annually as part of a ‘State of the Sector’ report that national governments should be responsible for publishing;

(b) utilising this understanding to make recommendations to market shaping and procurement bodies about where change is needed in terms of approaches to market shaping and procurement; and

(c) funding market shaping and procurement bodies to trial different ways of commissioning, such as:

(i) holding spare capacity for placements suitable for children with complex needs to address the particular lack of appropriate placements of this type as discussed in paragraph 3.6(d);and

(ii) offering targeted funding support for further innovative projects by individual local authorities or wider commissioning groups, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs. This would build on the evidence that local authorities may be able to save money (compared to IFA fees paid per child) by having more foster placements provided in-house), as discussed in paragraph 3.45. Any such projects should be evaluated carefully to provide an evidence base to help shape future policy.

4.84 Wherever responsibility for ensuring there is sufficient provision for looked-after children sits, it is essential that these 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, publicly available information is required to understand how often children are being placed in placements that do not fit their needs, due to a lack of available placements.

4.85 National governments must also actively ensure that both local authorities and the bodies responsible for collective market shaping and procurement activities are carrying out their functions effectively. They must oversee their activities, support them and ultimately hold them to account.

4.86 In England, we consider the UK government should take responsibility for requiring a more collective approach to market shaping and procurement, taking into account the considerations set out in paragraph 4.82 when doing so. The UK Government should also provide the national leadership and support roles set out in paragraph 4.83.

4.87 In Scotland and Wales, while we consider that the Scottish Government and Welsh Government respectively should take ultimate responsibility for implementing the recommendations set out in paragraphs 4.77 to 4.85, these governments should consider utilising Scotland Excel and the 4Cs to deliver these recommendations given the established roles and experience these bodies have in each nation respectively.

4.88 The Scottish Government has been consulting on a National Care Service for Scotland which could potentially include children's social care services. In the consultation the Scottish Government has proposed that the National Care Service will develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procuring of social care services and supports. Amongst other objectives, it is proposed that this will: define the approach to national and local level ethical commissioning and procurement; provide templates to support decision-making and procurement processes; embed standard terms and conditions and identify best practice. It is also proposed that the National Care Service will be responsible for the commissioning, procurement and running (including contract management) of national contracts and framework agreements for complex and specialist services including: care for people whose care needs are particularly complex and specialist and residential care homes. The consultation notes that the National Care Service will establish a national commissioning and procurement team to deliver this role.[93]

4.89 While a decision is yet to be announced on the proposals, including on whether children's services are to be included, the Scottish Government should ensure that, if the proposals are taken forward and children's services are in scope, that these reforms ensure that a minimum level of market shaping and procurement collaboration occurs nationally.

4.90 We also recognise that the Welsh Government White Paper on 'Rebalancing care and support'[94] sets out a proposal for a new National Framework for commissioning care and support for children and adults, and that the Deputy Minister for Social Services has stated that she is committed to introducing

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[93] Scottish Government consultation – A national care service for Scotland, August 2021.
[94] Welsh Government White Paper - Rebalancing care and support, January 2021.

this, noting that it will set standards for commissioning practice, reduce complexity and rebalance commissioning to focus on quality and outcomes.[95] Amongst areas identified for improvement in the White Paper are 'reorientation of commissioning practices – towards managing the market and focussing on outcomes.' Therefore, the Welsh Government should ensure that when the National Framework is established, it ensures a minimum level of market shaping and procurement collaboration occurs nationally.

- *National contracts in England*

4.91 As well as requiring a more collective approach to market shaping and procurement, we also consider that national contracts in England would help to support local authorities in finding the most appropriate placements for the children in their care. There are a number of important elements that would need to be in place in order to make national contracts work well, including:

(a) Standard and consistent Terms and Conditions, as far as possible recognising that some elements, including prices, will have to vary according to local conditions.

(b) A range of contracts catering to different care types and needs.

(c) Co-production of contracts by providers and local authorities with extensive consultation.

(d) Having someone with clear responsibility for maintaining the contracts, and setting out a clear process for keeping them up to date as needs change, eg due to regulatory change, and reflecting feedback from commissioners and providers.

4.92 Once these national contracts are in place, we consider these could potentially be further developed to include central portals detailing providers and placements available, ratings, prices, accompanying services.

4.93 We consider that the Department for Education should take responsibility for reinvigorating national contracts in England with the characteristics set out above. However, the Department should consider using the NCSG to engage with the sector on this issue given their prior experience in relation to this (as set out in the section on Procurement concerns).

[95] Written Statement: Rebalancing Care and Support White Paper- next steps (29 October 2021).

Recommendations we do not intend to take forward

4.94 We also considered a number of other remedies that would involve intervening to shape outcomes, rather than trying to improve the way the market itself operates. While some stakeholders see these measures as a direct way of addressing concerns about the operation of the market, we are not recommending them for the reasons set out below.

Limiting for-profit provision

4.95 One possible solution in a market where there is public and voluntary provision alongside apparently high profits from for-profit providers is to remove for-profit provision and the distortions it implies from the market, necessarily eliminating the issue of high profits being earned.

4.96 This view has gained significant support from some important policy-makers and stakeholders. In Scotland, profit-making is not permitted in the fostering segment and the Scottish Government has plans to eliminate profit-making from the wider children's social care sector by 2030. The Welsh Government has also committed to moving in this direction in the course of this Senedd term. Within England, stakeholders such as the North East Region of the Association of Directors of Children's Services have suggested eliminating profit-making from the system as one possible approach.[96]

4.97 Our view of the role of private and local authority provision in the market is based on an assessment of what is needed to deliver the best outcomes in the market as it currently stands, not on any in principle view as to whether it is appropriate to have services operated by the private sector.

4.98 On this basis, we have not found evidence that limiting for-profit provision would result in better outcomes for children and local authorities in the long term.

4.99 First, it is not clear that more local authority provision of children's homes would necessarily result in significant cost savings for them, because, as set out in the section on Outcomes from the placements market, we have seen that on average the amount paid for a place in the private sector, even allowing for profits, is not obviously higher than that paid by a local authority to provide an in-house place. In the case of fostering, we found local authorities' operating costs to be approximately half the level of fees paid to large providers. However, as set out in the section on Outcomes from the

[96] North East Submission to the Independent Review of Children's Social Care 2021.

placements market, for both children's homes and fostering there are many difficulties in making like-for-like comparisons.

4.100 Second, eliminating for-profit provision would risk reducing supply as local authorities and voluntary providers, who may not have access to capital to create new provision, may not be able to fill the gap left by reducing reliance on for-profit provision within an acceptable timetable.

4.101 We note, however, that the level of these risks will be different depending on the situation facing policymakers within their different jurisdictions. Where local authorities are less reliant on for-profit provision, or where they expect to be so in the future, there will be correspondingly less risk in restricting the role of for-profit provision. Conversely, where there is currently a high-level of reliance on for-profit provision, and this would be expected to continue into the future, this creates a higher level of risk that sufficient appropriate placements will not be available.

4.102 Ultimately, we recognise that decisions around the appropriateness or otherwise of having services operated by the private sector are rightly for elected representatives across the UK to decide.

Direct intervention to limit prices or profits

4.103 A related view that we have heard put forward by some stakeholders is that if prices and profits are higher than they should be, we should therefore intervene directly to limit prices or profits in the sector. Again, however, although this would directly address potential concerns around high prices and profits, we consider it would likely exacerbate some of the problems we see in this sector.

4.104 First, this approach would potentially drive supply from the sector. Our conclusions about outcomes in this market suggest that despite apparently high profits being earned, there is under-supply of appropriate placements in the market. Therefore, without first addressing the drivers of this under-supply, price and profit caps risk reducing incentives to bring new capacity to an already underserved market. This would be a poor outcome for children.

4.105 Second, price caps in particular would be very difficult to design and administer effectively. The level of needs, and the type and cost of supply that is required to meet those needs, varies widely between children. Even for specific children, their true level of needs may not be apparent when they are first placed or may change over time. A price or profit cap that is not well-targeted could, therefore, produce inappropriate incentives for providers to pick and choose the placements that they were willing to provide. For

example, it could result in “cherry-picking” whereby providers avoid offering placements to children with higher needs, because they get the same level of income or profit by caring for children with needs levels that involve less cost and risk.

Funding

4.106 We have also heard concerns from stakeholders that local authority funding in England is under increasing pressure as central government grants have fallen and demand for services has increased, and that such financial challenges have led to the reduced ability of local authorities to invest in new provision.[97]

4.107 It has also been suggested that a lack of spending on early intervention and edge of care services leads to more looked-after children, and therefore higher costs for local authorities. While these non-statutory services are outside the scope of our market study, it seems clear that their effectiveness will have an impact on the functioning of the children’s social care placements market.

4.108 Some local authorities suggested the nature of local authority funding arrangements causes issues. For example, one local authority told us that “funding is short-term and therefore it is difficult for authorities to plan longer-term”. However, we also heard from many local authorities that have successfully invested in opening new homes within the current financing arrangements.

4.109 These concerns may have led some stakeholders to conclude that greater funding, particularly long-term funding, for local authorities as they access the placements market would help them achieve better outcomes for children.

4.110 It seems clear that providing targeted funding to local authorities to create new provision could ease particular constraints caused by under-supply in the market. In some cases, initial investment may allow local authorities to deliver services on an ongoing basis at a lower cost than they can purchase them from independent providers. 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 have heard from local authorities who have

[97] LGA response to the ITC.

successfully expanded their in-house foster care offering and have seen positive results.

4.111 However, funding cannot be considered in isolation and putting more funding into the system without wider reforms – of the type we have been discussing – may only result in prices and profits being bid up without delivering new supply. It is therefore important that funding pressures are considered in the context of wider issues affecting the market.

5. Barriers to creating capacity

5.1 Where local authorities effectively signal to providers their likely future care needs, providers then need to act on these signals and develop their service capacity to meet local authority needs. However, there are currently barriers which prevent providers from developing their service capacity. This contributes to the insufficient supply of appropriate children's social care placements in the right places, as discussed in section 3.

5.2 These barriers will be easier for providers to address the more the challenges considered in the previous section are reduced, ie the more certainty providers have over future needs and the stronger the incentives that are provided. For example, providers stated that they would not open homes in high-cost areas unless there was sufficient support from local authorities or commitment to use the homes, for example through block contracts.

5.3 In this section we consider barriers in the following areas:

(a) Regulation: while effective regulation is essential and in general is not considered overly burdensome, we found that certain aspects of the way regulation is implemented are seen as unduly restrictive. In particular, the ability of providers to open new children's homes is restricted by the registration process and the regulatory system (particularly the inspection process) can reduce providers' incentives to provide complex care.

(b) Property and planning: difficulties finding suitable properties and getting the necessary planning permission are seen by providers as a major challenge to opening new children's homes.

(c) Recruiting and retaining staff: difficulties staffing children's homes can negatively impact on providers' ability to operate existing homes and open new children's homes.

(d) Recruiting and retaining foster carers: this is the main barrier to being able to expand the provision of foster care.

Regulation

5.4 In the children's social care sector, it is vital that quality is regulated and that all providers are vetted and inspected to safeguard the interests of children. We are not in a position to judge or make any assessment of what constitutes suitable quality in this respect, but we have considered how regulation affects the supply of appropriate places to meet children's needs.

5.5 Both local authorities and providers agreed that regulatory standards must be kept high and that the current overall level of regulation is not excessive. However, they also told us that aspects of the current regulatory framework and inspection processes adversely affect the ability of providers to expand their services and their incentives to supply placements for children with complex needs, without necessarily helping to drive better outcomes. These issues were raised consistently with regards to children's homes and to a far lesser degree in relation to foster care.

5.6 In particular, two significant issues were raised by stakeholders:

- That the registration process can make opening new regulated provision slow and costly.
- That the regulatory system, particularly the inspection process, can discourage the independent provision of complex care.

5.7 In the context of these issues, stakeholders also expressed concerns that the current regulatory framework in England has not kept pace with the developments in the children's social care market. We have considered these concerns alongside the two issues set out in paragraph 5.6 above.

The registration process and capacity expansion

5.8 Local authorities and large providers in England told us that registering a new children's home can take up to a year as delays to the process are common. Further, stakeholders told us that the requirement to have the home acquired and a registered manager in place prior to starting the process for registering the children's home with Ofsted results in high costs before being able to take on children.[98] Local authorities told us that this affects their ability to expand their in-house capacity. Large providers also told us that on some occasions this deters capacity expansion. Further, local authorities explained that the cost of the registration process, including those resulting from any delays, are passed onto them once the independent providers' homes are registered as part of the weekly cost of children's care.

5.9 While stakeholders in England consistently raised concerns about the impact of the registration process as regards children's homes, this was not generally considered to be an issue in relation to foster care as IFAs register

[98] We note that in England, the Ofsted registration requirements set out the following conditions be met before the registration process can begin: appointment of a registered manager, a statement of purpose that sets out the overall aims and objectives for the children's home; and, if it is a company, the appointment of a 'responsible individual' who represents the organisation to Ofsted. Register a children's social care service (SC1).

once with Ofsted and can then expand their capacity and recruit more carers without facing the same registration requirements as in children's homes.

5.10 Ofsted emphasised that as the regulator, it must use its powers to maintain standards for children living in children's homes. Further, they told us that where there is a pressing need, new children's homes can be registered in as little as 10 working days, so long as the providers are ready for registration and have everything in place. Ofsted also told us that the average time taken to register a children's home in England is 17 weeks. They explained that this is not unreasonable given that Ofsted must ensure all proper safeguards are in place and due to the importance of making sure a children's home is suitable and safe.

5.11 Ofsted explained that delays in the registration process often occur because of delays in obtaining Disclosure and Barring Service checks and references (which form part of their legal requirements) and checking if those responsible for running the homes are known to local authorities (for safeguarding reasons). Ofsted also told us that one of the most common delays is finding a suitable manager. This is a legal requirement.[99] Ofsted also told us that sometimes applications are incomplete or poor quality and that the required criteria, which are set out in legislation and are on Ofsted's website, are not always followed, resulting in delays to the registration process.

5.12 Ofsted also told us that it has taken steps to ease some of the issues around the registration process. For example, it has recently produced guidance which sets out how providers can register a children's home where the care and accommodation is provided in more than one building via one single registration.[100] Ofsted has also recently published a blog with further guidance and top tips on how to successfully register a children's home.[101]

5.13 As well as concerns about delays in and costs of the registration process, local authorities, independent providers and trade bodies in England also said that the regulatory framework regarding registration has not kept pace with developments in the market. For example, the current framework requires that each children's home must generally have its own dedicated registered manager (regardless of the capacity of the home) although in some cases Ofsted may consider registering a manager to manage two

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[99] Ofsted sets out that where a service has no registered manager "[providers] should take all reasonable steps to appoint a new manager as soon as possible. If there is any delay, you must tell us immediately, setting out the reasons why." For further information, see Changes to children's social care: guidance for registered providers.
[100] Registering a multi-building children's home.
[101] Applying to register a children's home: top tips - Ofsted: social care and early years regulation.

homes.[102,103] Similarly, local authorities and large providers in England explained that the lack of portability of registered manager registrations creates unnecessary time and cost pressures.[104]

5.14 This particularly impacts upon the opening of children's homes for complex needs placements which often, by necessity, are smaller and take on fewer children at any one time. This means that for a given number of placements catering to children with complex needs, a larger number of registered managers may be required than would be needed for the same number of placements for children with less complex needs. This impacts upon the ability of providers to quickly respond to the demand for placements catering to complex needs.

5.15 As such, there have been calls for a comprehensive review of the current regulatory framework in England. For example, ADCS said that it 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".[105] Similarly, ICHA[106] also saw the need for a review and told us that "any review should look at the portability of manager's registrations".

5.16 Ofsted told us that it was aware of local authorities and providers' views with regards to these issues but stressed the importance of registered managers in setting policies, procedures etc which means that managers need to be involved before the opening of a home. They also highlighted that they are looking at what is possible within the current regulations but are bound by the legislation.

5.17 CIS told us that it does not believe the registration process in Scotland is similarly problematic to that in England and it does not receive a significant number of complaints about registration. CIS explained that registering a children's home in Scotland takes, on average, 6 months. Although this is longer than the average time taken to register a children's home in England,

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[102] Ofsted has guidance for children's homes on when they will consider registering a manager for more than one home. Ofsted may also register a manager to manage more than one other type of establishment or agency. When Ofsted receives an application to do so, the manager must demonstrate that they have the appropriate experience, qualifications and skills to meet the requirements of each establishment or agency. Introduction to children's homes.
[103] A provider can register a children's home where the care and accommodation is provided in more than one building via one single registration, therefore only one registered manager is required despite multiple building providing care and accommodation. See Registering a multi-building children's home.
[104] Currently in England, a "manager's registration is personal to them. It is not transferable to another registered provider. New managers must apply for registration and pay a fee for each application. The manager must demonstrate that they have the skills, knowledge and experience to meet the requirements of the relevant establishment or agency." See Changes to children's social care: guidance for registered providers.
[105] ADCS response to the ITC.
[106] ICHA response to the IR.

the registration process in Scotland allows providers to begin the registration process without first having all of the registration requirements in place. For example, CIS told us that in Scotland a provider can begin the registration process without having first appointed a registered manager (although the registered manager will need to be specified later in the process).[107] CIS also told us it published guidance which highlights the flexibility available in appointing registered managers for children's care services, for example the option to employ peripatetic managers who can be registered as the manager of more than one registered care service and can move easily between these services.[108]

5.18 Those local authorities and large providers in Scotland that responded to our request for information also did not consider the registration process for either children's homes or foster care to be problematic. Many stakeholders in Scotland told us that they believed there to be flexibility in the registration process and that they receive help and support from CIS where any issues do arise.

5.19 In Wales, CIW told us that the framework for registration of children's homes and fostering services changed when the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) came into force in 2018. Due to this, registered managers are now registered with Social Care Wales. CIW highlighted that on average the registration process in Wales for both children's homes and IFAs takes 14 weeks and that the 2016 Act has helped to create flexibility and streamlined the registration process. This means that the time and monetary costs faced by providers are reduced. For example, an application for registration can be received by CIW prior to a registered manager being in place (but will not be determined until a registered manager is in place), meaning that the application can be progressed quickly. Similarly, once a provider is registered in relation to one service in Wales, it can apply to vary the conditions of registration and add another service to that registration without having to go through the full registration process again, as would be required in England.

5.20 Those local authorities and large providers in Wales that responded to our request for information also did not raise any problems with regards to the registration process for either children's homes or foster care.

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[107] Guidance for applicants on applying to register a care service.
[108] Guidance on Peripatetic Management Arrangements.

The regulatory system and the provision of complex care

5.21 Both large providers and local authorities in England told us that the fear of receiving negative regulatory ratings disincentivises providers from taking on the most complex cases or incentivises them to end placements early even when a child's needs are being met. Local authorities '…have reported that registered children's homes are increasingly reluctant to accept children with highly complex needs, particularly at short notice or in a crisis situation, for fear of jeopardising their Ofsted rating'.[109] Local authorities and large providers also told us that they have experienced cases where inspectors explicitly highlight risks to a provider's ratings of continuing to provide care for children with complex needs and encourage providers to end these placements. This contributes to the lack of supply of placements for children with complex needs.

5.22 Large providers in England explained that, in some cases, the complexity of the needs of children requiring placements is beyond that which the providers can effectively meet, for example, because of lack of staff trained to look after children with these complex needs. In these cases, they said that it is right that providers do not offer placements for children for whom they are not able to meet their needs. However, several large providers also highlighted that on many occasions in the last few years, the risk to their regulatory ratings were felt to be so significant that they have not offered placements to children with complex needs even where they had the resources and ability to meet the needs of these children. For example, one large provider told us that between November 2020 and October 2021, 29% of children that left its children's homes were children that the provider could not maintain because it considered that if it did so it would face increased risks and potential negative impacts on inspection outcomes.

5.23 Stakeholders in England, both local authorities and providers, suggested ratings often do not fully take into account the degree of challenge some children present. Sometimes due to the complexity of a child's needs, bad outcomes, at least in the short term, may be unavoidable. For example, a child with a propensity to run away or to not attend school is, unfortunately, unlikely to immediately stop doing so even with excellent care. Therefore, stakeholders expressed a desire for Ofsted to be more flexible with regards to the application of the quality standards[110] whilst recognising the complexity of some children and their needs.

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[109] ADCS response to the IR.
[110] The Children's Homes (England) Regulations 2015 contain quality standards as prescribed for the purposes of section 22(1A) of the Care Standards Act.

5.24 Where stakeholders in England raised these issues, they were largely with regard to children's homes and stakeholders told us this risk was lower in foster care as foster care is not inspected on a setting-by-setting basis.

5.25 Ofsted told us that it is aware of concerns about children's homes not taking on children with more complex needs due to the potentially negative impact on their Ofsted ratings. However, it also told us that it has not seen much evidence of these concerns in practice as it is usually raised as a general issue without concrete examples. Despite this, Ofsted have adapted their approach in light of these concerns, focusing on progress made and experience indicators in relation to the child in care, rather than outcomes. Ofsted also pointed out that their role is to establish whether a children's home is catering for the needs of the children in that home, in line with the statement of purpose, and that it is not the inspectors' role to comment on an individual child's placement.

5.26 Although the legislation and guidance in England sets out minimum standards for placements,[111] we have also heard from local authorities and large providers that the current framework is too rigid in terms of what does and does not constitute appropriate care and does not reflect the current demand for children's social care placements. For example, stakeholders told us that legislation sets out what types of residence children may be placed in and rules out others, even though these may be reasonable given the care needs of the child. This hinders local authorities and providers from flexibly offering bespoke placements specifically tailored for complex needs, contributing to the lack of appropriate placements in children's social care.

5.27 Ofsted told us that the current definition of a children's home[112] is not fit for purpose. For example, Ofsted highlighted that "there is no legal window for flexible or emergency provision, with potential workarounds being fraught with complexity for registration and enforcement processes". Ofsted also consider reform is required to better reflect the different types of more 'blended' children's social care services that are now required (for example,

[111] In England, a local authority can place a looked after child in the following ways: with a local authority foster parent (Children Act 1989, Section 22C(6) (a) and (b)); in a children's home (Children Act 1989, Section 22C 6(c)); or in a placement in accordance with other arrangements which comply with any relevant regulations (made for the purposes of section 22C Children Act 1989. Subject to Section 22D of the Children Act 1989). In Wales, a local authority can place a looked after child in the following ways (Social Services and Well-being (Wales) Act 2014, Section 81): with a local authority foster parent; or in a children's home. In Scotland, when a local authority provides accommodation for a child, whether on a voluntary or compulsory basis, the local authority may place the child in a foster family, or in a residential establishment (Children (Scotland) Act 1995, Section 26(1).

[112] Care Standards Act 2000, section 1 states 'an establishment is a children's home… if it provides care and accommodation wholly or mainly for children'.

the close relationship between social care and health services), particularly for children with complex needs.

5.28 CIS told us they did not consider that issues similar to those described above in England were of concern in Scotland regarding the risk of inspection ratings deterring providers from taking on children with more complex needs.

5.29 The majority of local authorities and large providers in Scotland that responded to our request for information also told us that they did not consider the regulatory system in Scotland to negatively impact on the provision of complex care placements. Local authorities and large providers in Scotland also explained that flexibility towards bespoke placements is encouraged by CIS.

5.30 CIW told us that they have not received feedback that indicates that the regulatory system in Wales impacts upon the supply of complex care placements. CIW explained it does not currently use a ratings system and so there are not rating related disincentives in Wales. Also, CIW consider that the regulatory regime has enough flexibility to allow local authorities and independent providers to put together bespoke packages for children with complex needs.

5.31 Those local authorities and large providers in Wales that responded to our request for information also did not believe that the regulatory system in Wales has negative impacts on the supply of complex care placements. Local authorities and large providers in Wales also believe the regulatory regime provides enough flexibility to enable them to create bespoke placements for children with complex needs and that CIW is helpful in providing guidance to support providers in doing so.

Recommendations

England

5.32 As described above, we have heard from local authorities, large providers and other stakeholders in the children's social care market that the current regulatory system in England is having adverse effects on the supply of placements, particularly for children with complex care needs. Similarly, as discussed in paragraph 5.15, there have already been calls for a comprehensive review of the regulatory system in England.[113]

[113] See for example ADCS response to the ITC.

5.33 England could also benefit from considering adopting some of the approaches to regulation adopted in Scotland and Wales. For example, as set out in paragraphs 5.28 to 5.30, we have seen evidence that the regulatory systems in Scotland and Wales allow providers more flexibility to build bespoke care to meet complex care needs. We also understand that the process for registering a new children's social care service is more flexible and streamlined in these nations as set out in paragraphs 5.17 to 5.19. In particular there appear to be real benefits in allowing the registration process to commence before a manager is in place.

5.34 Therefore, we consider that a review of the regulatory system in England is required to address the issues we have seen evidence of. We expect this review will help to ease some of the issues around the lack of supply of appropriate children's social care placements in England.

5.35 Given the essential role of regulation in the sector, it should be first and foremost centred on quality and safeguarding of children's interests - we do not consider any review should compromise the overall level of regulatory protection for children.

5.36 As discussed in paragraphs 5.9 and 5.24 , the issues relating to the regulatory system in England are more of a concern in relation to children's homes than in relation to foster care. Therefore, we consider that the regulatory review should focus on children's homes, but consideration should also be given to whether any learnings from the review could read across to improve the regulatory system for foster care.

5.37 This review should seek to assess and remedy (but not necessarily be limited to) the following identified issues, while ensuring sufficient safeguards remain in place:

(a) The length of and inefficiencies within the registration process (including: the common occurrence of registration delays and the requirement to have a registered manager in place before registration can begin);

(b) Regulation not keeping pace with market developments (such as the lack of portability of registered manager registrations);

(c) The impact of caring for children with more complex needs on regulatory ratings, whether perceived or real, and the resulting effect on the availability of children's social care placements for these children, and;

(d) The need for legislation that permits flexibility, where appropriate, the lack of which currently hinders the ability of providers to build bespoke placements to meet the needs of children with complex needs.

Scotland

5.38 As described above, we have not found evidence of significant issues resulting from the regulatory system in Scotland. As such, we do not consider a review of regulation in Scotland is necessary to address these issues.

5.39 The wider landscape in Scotland is experiencing significant changes, particularly as a result of the implementation of the Promise, the potential for the sector's inclusion in the National Care Service which is under consideration by Scottish Government and the intention to remove profit-making from the provision of children's social care. We consider that as these changes are made, and as any changes are made to the legislative and regulatory framework, the Scottish Government should consider the potential for unintended consequences, and for these landscape changes to impact on the ability and incentive of providers (of any type) to create and maintain provision to meet the care needs of children.

Wales

5.40 As described above, we have not found evidence of significant issues resulting from the regulatory system in Wales. Therefore, we do not consider a review of regulation in Wales is necessary to address these issues.

5.41 In Wales, the wider children's social care system is likely to experience transformation in the coming years including in light of the White Paper on rebalancing care and support, where the Welsh Government has consulted on improving social care arrangements and strengthening partnership working to better support people's well-being,[114] and the Welsh Government's commitment to remove profit-making from the sector. We consider that as these changes are made, and as any changes are made to the legislative and regulatory framework, the Welsh Government should consider the potential for any changes to the children's social care landscape to unintentionally affect the ability and incentives of providers (of any type) to create and maintain provision to meet the care needs of children.

Property and planning

5.42 Finding a suitable property, either to purchase or lease, is a challenging and essential part of being able to open a new children's home. In this section we

[114] Welsh Government White Paper Rebalancing care and support, published 6 April 2021.

first consider the challenges in finding suitable property and then consider issues related to the planning process. We set out the impact of the planning process on opening children's homes, the problems we have identified in the planning process and then our recommendations to remedy the problems.

Finding suitable property

5.43 To operate as a children's home, a property needs to fit certain criteria depending on the type of care being provided. Providers pointed to some of the characteristics properties need to meet, such as being the right size, preferably with en-suite bathrooms, office space, outdoor space and communal space. It must also be in the right area, with security and privacy, near schools and other children's services and away from crime, gangs and the risk of exploitation.

5.44 Providers and local authorities told us that a lack of suitable property and the high price of property can be a barrier to being able to provide children's homes. Although finding suitable property is not always considered a major challenge, large providers generally considered it to be a problem where residential housing is in high demand, particularly London and the South East of England. While some local authorities outside these areas still considered finding properties to be an issue, others did not, particularly where they have access to council housing stock which can be used instead of purchasing or leasing new properties.

The impact of the planning process on children's homes

5.45 In England and Wales, providers and local authorities told us that the planning process was a more significant constraint than finding a suitable property. Changing a property from conventional domestic use to a children's home may require planning permission where there is a material change of use.[115]

5.46 Obtaining planning permission increases costs and uncertainty for providers and can take a long time. Some providers reported having to offer higher

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[115] In England and Wales, depending on the circumstances of each case, a children's home will fall into either a C2 (residential institutions) or C3 (dwelling houses) use classification (as set out in The Town and Country Planning (Use Classes) Order 1987). Planning permission may be required for a 'material change' between these use classifications. In Scotland, houses (which include occupation by a single person, a family or not more than 5 residents living together including a household where care is provided for residents) are a Class 9 establishment. Residential institutions (for the provision of residential accommodation and care to people in need of care other than a use within class 9 (houses); or as a hospital or nursing home; or as a residential school, college or training centre) are a class 8 establishment. Planning permission is likely required for change of use between Class 8 and 9 (Town and Country Planning (Scotland) Act 1997 and The Town and Country Planning (Use Classes) (Scotland) Order 1997/3061.

prices or a non-refundable deposit to secure a home and one provider reported that it adds an additional cost of £20,000 - £30,000 per application. Another provider told us that end-to-end, the time taken to obtain planning permission means the process from starting to look for a suitable site (which typically takes three months) to placing the first child can take over two years to complete. Issues with planning permission typically delay the opening of homes and in some cases providers and local authorities have abandoned plans to open a children's home due to issues with planning permission or apprehension about permission being refused.

5.47 Planning issues can also lead to children's homes being opened in less suitable places. We were told that local and political opposition to children's homes is more likely in areas which are safer and where there are more properties with multiple bedrooms. However, these are often the areas that are most suitable for children's homes. For example, one local authority highlighted that the larger houses needed for children's homes are predominantly in affluent or semi affluent areas where neighbours and the local community can be resistant, and this causes disputes and complaints. As a result, providers told us that for some of their residential services the remoteness of a property is a factor to consider to avoid "neighbour issues" or they avoid opening homes in areas where they expect planning permission to be rejected.

Problems in the planning process

5.48 Providers and local authorities in England and Wales consistently told us that local opposition is the most common cause of difficulty when seeking planning permission. They gave many examples of planning permission being rejected due to local people opposing the home. One provider considered that the planning process isn't a barrier to entry itself but "prejudiced or political views held by residents" is such a barrier.

5.49 The planning process itself can also trigger opposition. One provider told us that the process can help "attract publicity, resulting in comments and language used by the community and media which, in our view, can be very harmful to the children involved".

5.50 A common theme we heard was that opposition is often based on misunderstandings about what a children's home is and about looked-after children. Opposition can arise because of fears that the children living in the home will be disruptive.[116] One provider received objections because of

[116] Children in care homes 'seen as criminals not victims' - BBC News.

concerns that “some of the more elderly will become apprehensive about going about their normal activities” and “property valuations would dip”. Opposition is also expressed by local politicians and MPs for reasons including concerns about the increased likelihood of crime and anti-social behaviour.[117]

5.51 Some local authorities and providers managed to overcome local opposition by engaging with the local community early in the planning process and working with the community to dispel mistaken objections and fears about children’s homes. Examples of this include a local authority setting up a working group with those living near the home to find a way forward and hosting open days for local residents. One provider told us a case where despite significant unrest and involvement from the media and parish council, planning was passed after the provider worked to reassure the community.

5.52 However, many providers told us about the difficulties they experienced in having to go through a lengthy and detailed planning permission process even for smaller homes. For example, one provider reported that despite most of their homes catering for only two or three children, they still had to engage with the planning regime and obtain a “Certificate of lawful development[118] enabling the change of a property from C2 to C3”. One local authority reported that they had to obtain full planning permission for a solo placement as the care of the child was on a shift basis.

5.53 We recognise that local communities want to be involved in decisions affecting them. However, where a small children’s home is comparable in size and number of residents to a standard domestic dwelling house, it is less clear to us that local communities should be able to prevent its establishment through the planning regime.

5.54 A further problem we have identified with the planning regime is a lack of clarity about the rules and a resulting lack of consistency in their application. As noted above, changing a property from conventional domestic use to a children's home may require planning permission where there is a ‘material change of use’. However, we repeatedly heard that what constitutes a ‘material change of use’ in this context is not clear.

5.55 We were also told that there is considerable disparity between local authority interpretations of what constitutes a Class 2 residential institution as

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[117] MP backs protesters over children's home plan' - Lancashire Telegraph.
[118] A lawful development certificate (sometimes referred to as a certificate of lawfulness) is a mechanism to find out if planning permission is required. A local planning authority will grant a lawful development certificate if it is satisfied that a proposed use or development is lawful because it does not require planning permission.

opposed to a Class 3 dwelling house. In particular, interpretations about whether staff are sleeping in the home on shift or on a permanent basis can determine whether planning permission is required.[119]

5.56 Providers expressed frustration that the process and decision making differs from area to area with one provider saying that the requirements "can appear almost random at times". These inconsistencies affect where homes are opened. For example, one provider reported that a local planning authority's decision to decline an application for certificate of lawful development and instead refer to full planning application with public consultation, can impact the decision to open a home in that area.

5.57 We have also heard that there is sometimes a disconnect between parts of the local authority considering planning proposals and those responsible for children's social care. Sometimes the children's services department within a local authority identifies a need for a home but does not communicate this to the planning department. This can be even more of a challenge where these responsibilities are split between different tiers of local government.[120] Further, providers told us of frustrations when planning permission was rejected, despite an identified need for more children's homes in the area. Providers also told us that "some [planning] officers work closely with their children's services colleagues, whilst others operate independently". The latter creates "a challenge for the provider that is asked during the planning process to prove the need for capacity".

Recommendations

5.58 In light of this evidence, we recommend that national governments in England and Wales:

(a) Consider removing any distinction, for the purposes of the planning regime, between small children's homes and domestic dwelling houses. This could include, for example, steps to make it clear that 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.

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[119] North Devon District Council v First Secretary of State [2003] EWHC 157 (Admin). The judge looked at the shift patterns of the carers in deciding whether the proposed use of the property was within class C2 or C3.
[120] Many parts of England have two tiers of local government with county councils responsible for children's social care and district, borough and city councils responsible for planning applications (Understand how your council works). In Scotland (Local government) and Wales (Law Wales), local authorities are single tiered.

(b) Introduce national guidance clarifying when planning permission may be required for larger children's homes and the circumstances in which it is likely to be granted or refused.

5.59 From the perspective of how the market functions to provide appropriate places for looked after children, limitations on properties being used for children's homes have a negative impact by limiting the availability of otherwise suitable properties. It is also not clear to us why from a wider policy perspective if a normal size dwelling house can be used by a family without planning permission, the planning regime should be able to block it from use as a children's home.

5.60 Ofsted already requires location assessments to be submitted by managers of potential new homes in consultation with relevant services in the area where the home is, or will be, located.[121] The additional requirement for approval from a local planning authority appears disproportionate in the case of a small children's home.

5.61 We note that according to figures from Ofsted new children's homes have an average of three places compared with an average of six for recently closed homes.[122] Moreover, some foster carers are registered to look after three, four or even more children but do not need any planning permission to do so in their own home. It is not clear to us why the planning regime should be engaged simply because a building is intended to be used as a children's home, but the total number of residents is the same or less than in a domestic dwelling house (including one where fostering takes place).

5.62 Therefore, we recommend that national governments in England and Wales consider removing any distinction, for the purposes of the planning regime, between small children's homes and domestic dwelling houses.[123] 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 there.

5.63 Where children's homes remain in the planning system (for example because they are larger), we consider that it is important national guidance is introduced for local planning authorities and providers. The guidance

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[121] Children's homes regulations amendments 2014 - Advice for children's homes providers on new duties under amendments to regulations that came into effect in January and April 2021.
[122] The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2020/21, page 58.
[123] Possible ways of doing this include amending The Town and Country Planning (Use Classes) Order 1987 which distinguishes a range of uses of buildings into different classes. All children's homes could, in future, be moved to the C3 classification and be regarded as a 'dwelling house' if the total number of people sleeping at the property at any time does not exceed a specified threshold.

should clarify the circumstances in which it is likely to be granted or refused. It should also clarify when the proposed changes to a property constitute a 'material change of use' and therefore require planning permission.

5.64 Such guidance would increase consistency in the way in which planning applications for new children's homes are treated by different local planning authorities. In turn, this will also reduce the uncertainty which deters and delays planning applications for new children's homes.

5.65 We also encourage greater collaboration between local authorities' children's services departments and those dealing with planning applications; and that providers engage early on with local communities to build trust and support for their proposals. This will, in turn, help looked-after children have a positive and welcome experience in the neighbourhood surrounding their home.

Recruiting and retaining staff

5.66 High quality staff are crucial for continuing provision and for expanding supply. We have heard that the requirement for staff both in terms of numbers and of suitable quality has increased as a result of higher regulatory standards.[124] Whilst some local authorities and providers reported no issues in recruiting staff, many providers and local authorities told us that finding sufficiently skilled staff with appropriate experience is the most significant challenge to expanding provision in children's homes.

5.67 This was highlighted as a difficulty by providers and local authorities across all three nations. Data from Scotland for 2019 showed that 47% of children's homes had vacancies and 70% said recruiting appropriately qualified candidates was an issue.[125] It is particularly significant in some areas. Some providers reported that it is more challenging to recruit staff in the South-East and London, where the average wage is higher and there are more employment opportunities in other fields. Others told us that it is more difficult to recruit in very rural areas where there is a smaller supply pool of labour, for example in the South and North-East of Scotland and Herefordshire. Very local factors can also impact the ability to recruit staff, for example, when a home is close to a supermarket or warehouse, which may be perceived as offering more attractive employment opportunities and rewards.

[124] ICHA response to the ITC.
[125] CIS response to the ITC.

5.68 This section sets out the barriers to recruiting and retaining staff we have identified, the initiatives being taken address this challenge and our recommendations for further remedies.

Barriers to recruitment and retention of staff

5.69 Both local authorities and providers told us that recruiting staff is particularly difficult because there is a shortage of suitable applicants. Providers and local authorities report that they are competing with other similarly paid employment opportunities such as those at Amazon and supermarkets.[126] Brexit has reduced the potential pool of recruits and we have repeatedly heard that the COVID-19 pandemic is significantly impacting providers. It is reported that providers and local authorities are struggling to recruit and retain staff more since the pandemic started.

5.70 The recruitment challenge is particularly acute around registered managers. Registered managers are vital for children's homes. They have an important and challenging role managing the home and having responsibility for the children that live there. Registered managers are required to have a certain level of experience as well as specific qualifications for running a children's home. For example, in England a registered manager must have a minimum of two years' experience and a Level 5 Diploma in Leadership and Management for Residential Childcare.[127] As a result, the pool of potential managers is smaller than for other staff. One provider reported that the challenge to recruit a registered manager is "huge" and another reported that "there was a dearth of applicants which was a concern". One local authority told us "the most significant challenge is recruiting to the registered managers' post, often only receiving 2 applicants when we advertise".

5.71 Retaining staff is also a challenge that both local authorities and providers have consistently emphasised. Despite thinking they have found suitable applicants, local authorities and providers report that a high proportion of staff leave soon after joining. Over 40% of staff leave their job within two years[128] and one provider told us that "70-80% of staff leave within the first 6 months" One provider told us that when opening a new home, they aim to recruit 20% more staff than they require because of the expected turnover. We have been told that "many do not have the resilience to cope while others use it as a stepping stone to other roles within Social Care".

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[126] Plymouth City Council response to the IR.
[127] Children's homes workforce literature review.
[128] Children's homes workforce literature review.

5.72 Retaining staff is difficult because working with children in care requires specialist skills, which not everyone is able to develop, and the willingness to work in the evenings, which is not possible for everyone. Not only does this make it challenging to recruit staff, but these challenges impact turnover and retention rates. We have been told that "the sector is very challenging and intense which can make the sector unattractive to many".[129]

5.73 We have been told by ICHA that the sector does not attract highly qualified staff to its carer roles.[130] We also understand that a registered manager must meet the training requirements within three years of starting employment and other staff in a care role must meet the relevant training requirements within two years of starting work.[131] ICHA said that providers aim to retain staff to recoup training costs, so wages may not rise significantly because of the qualification. The ICHA has highlighted that carers' roles are not professionalised, and notes that other comparable sectors such as teaching, nursing and social work have their own career pathway.[132]

5.74 Low pay for staff impacts recruitment and retainment in the sector. It is reported that 1% of staff are paid below National Minimum Wage and 11% are paid less than the Living Wage Rate.[133] We have been told that "staff deserve good pay for the jobs they do, however constant increase to national minimum / living wage which will be 6.6% on the next increase, puts added pressure onto providers". Providers reported some success in retaining staff when they "reviewed pay structures" along with other initiatives. While, as the preceding paragraphs demonstrate, pay is not the only issue that impacts recruitment and retention, higher pay would likely help with recruitment.

Initiatives to improve recruitment and retention of staff

5.75 There are a range of strategies that individual local authorities and providers have successfully used to improve recruitment and retention. Most of these involve increasing the support for their staff's wellbeing as well as improving training. One provider reported that they reviewed holidays and sickness

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[129] Barnardo's response to the IR.
[130] ICHA response to the ITC.
[131] Regulation 28 of the Children's Homes (England) Regulations 2015 requires a registered manager to obtain the Level 5 Diploma in Leadership and Management for Residential Care or an equivalent qualification. A manager without this qualification must gain the qualification within 3 years of starting to manage the home. Regulation 32 of the Children's Homes (England) Regulations 2015 requires children's home staff to have the appropriate experience, qualifications and skills for the work they will perform. For staff in a care role, the regulation requires them to obtain the Level 3 Diploma for Residential Childcare or an equivalent qualification. Any staff member starting to work in a care role has 2 years to gain the qualification.
[132] ICHA response to the ITC.
[133] Children's homes workforce literature review.

payment as a retention strategy. Another reported that they "operate a sector-leading annual awards programme - the 'Care Awards'- that engages our workforce and through peer nomination allows national recognition of staff" as a way to retain staff.

5.76 There have been some successes in recruiting registered managers when developing and promoting staff internally. One provider reported that they were able to recruit registered managers where they "have succession planning for our Deputies to move up to Home Managers". Similarly, others spoke about "organic growth" and promoting "from within the organisation". Whilst these providers have had success, the shortage of registered managers in general means that initiatives by individual providers can only go so far.

5.77 Alongside the initiatives being taken by individual local authorities and providers, we have been consistently told that what is needed is more national leadership and promotion of the sector.[134] Stakeholders have called for two main actions from national governments. First, national campaigns to recruit staff and generally raise awareness of the sector as an important and attractive employment option; providers and local authorities point to examples of campaigns run for other sectors, such as for health, education and the police.[135] Second, more money for the sector to help providers and local authorities pay more to their staff. We note that where providers make high profits, as we have found larger providers do, they could potentially afford to pay higher salaries.

5.78 Other less frequently raised suggestions include adding the sector to the immigration 'shortage occupation list' to help potential staff qualify for visas; and recognition of a wider range of qualifications and prior experience so that a wider pool of applicants can "enter, succeed and progress in children's residential care".

5.79 The recruitment of registered managers in England could also benefit from considering adopting different approaches to regulation, for example allowing greater portability of managers' registration.

Recommendations

5.80 We strongly agree that further measures to address and improve staff recruitment and retention should be taken in all three nations. However, recruitment and retention of staff is a fundamental problem across all care

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[134] ADCS response to the IR.
[135] ICHA response to the IR.

sectors. Those with experience in the sector are best placed to assess the costs and potential long-term impacts of any measures. This should be an ongoing process building on existing work, including for example on England's independent review of children's social care.

5.81 To ensure this happens, we recommend that national governments conduct an annual assessment of the state of the workforce, with a forward look at potential issues that may impact on the workforce in the next 5 to 10 years. This should be part of a wider 'State of the Sector' review and similar to the CQC's annual State of Care review in England. The assessment should provide a clear overview of staffing pressures and concerns, and recommend measures to address bottlenecks, for example considering whether national measures, such as recruitment campaigns, measures to support professionalisation (such as investment in training and qualifications) and clearer career pathways are required. By recognising these potential problems in advance, it should help to prepare and plan how to recruit and retain more staff to reduce shortages.

Recruiting and retaining foster carers

5.82 Difficulties in recruiting foster carers will limit the number of foster placements and can prevent providers from expanding into new areas. Local authorities and IFAs market the opportunity to become a foster carer online, on social media and through local events, for example with current foster carers. This can be expensive, with providers reporting large and growing recruitment and marketing costs. This section looks at the scale of the current and future challenge with regard to recruitment of foster carers; the barriers to increasing recruitment and retention; the initiatives being tried to address the problem; and finally our recommendations.

The current and future challenge

5.83 Recruitment of new foster carers is a challenge in England, Scotland and Wales. Over recent years, the number of approved foster carers has slightly declined in England and Scotland and risen slightly in Wales.[136] Most new recruitment replaces foster carers that have deregistered. For example, in England in the year ending 31 March 2021 there were 5,355 newly approved households and 4,870 households that deregistered.

5.84 The difficulty in recruiting foster carers is greatest for carers needed to look after children with more challenging needs. We have been told that it is hard

[136] Sources: Ofsted Official Statistics Release; Care Inspectorate, Fostering and Adoption 2019-20 A statistical bulletin; Foster Parents Approved by local authority and measure, Stats Wales.

to find families "who are open to looking after a child/children who have experienced trauma and whose behaviour will have been affected by this" and that have the right skill levels to care for these children. Finding suitable carers for sibling groups is also a particular challenge. For example, CIS report that 60% of fostering agencies in Scotland found recruiting households that will take sibling groups a challenge with the main reason being accommodation constraints.[137] Other placements for which there is a particular challenge to find foster carers include teenagers, children with disabilities and parent and child placements.[138]

5.85 The degree of challenge also varies geographically. The challenge is greater in areas such as London and the South East of England, where there is greater competition with other jobs and housing is more expensive and so there are limited numbers of applicants with spare bedrooms. Rural areas can also present a particular challenge. For example, one provider reported that in rural areas "population spread impacts the success of recruiting – to spread the message across fewer people over a larger area also costs more".

5.86 There is uncertainty around how demand for foster carers will develop in the future and so how many foster carers will need to be recruited. If in the future demand for foster carers continues to grow the challenge will become greater. There are widespread concerns that growing demand will mean that there will not be enough foster carers in the future. A report published in 2021 by the Social Market Foundation projects that based on current trends there will be a deficit in recruitment of around 25,000 foster care families in England over the next five years.[139] However, it is not clear that the current trend of increasing use of fostering will continue (although it has since at least 1994).

5.87 In all three nations there are efforts to reduce the number of children taken into care, including fostering. The terms of reference for the independent review of children's social care in England sets out the requirement to "support and strengthen families in order to prevent children being taken into care unnecessarily."[140] The Promise in Scotland aims for a "fundamental shift of thinking about when a child should be removed from their family with more support for families to stay together."[141] In Wales, the Welsh Government's White Paper 'Rebalancing care and support' reiterates the

[137] CIS, Fostering and Adoption 2020-21 A statistical bulletin.
[138] State of the Nation Report 2021, The Fostering Network.
[139] Fostering the future, Paper 2, - recruiting and retaining more foster carers.
[140] Terms of reference for the independent review of children's social care.
[141] Independent Care Review, the promise, page15.

Welsh Government's vision for social care, which for children and families means being supported to stay together, where this is in the best interests of the child.[142]

5.88 In the shorter term, some stakeholders expect demand for foster carers to increase due to the Covid-19 pandemic and are concerned that the supply of carers will not be able to match it. The Scottish Government has been collecting data to understand the impact of the pandemic and has found there are fewer children in care and on the child protection register than two years ago, but notes this could be because schools have been closed for some of that time meaning that fewer children in need of care have been identified and children are less visible across the system.

Barriers to recruitment of foster carers

5.89 There are a range of reasons why recruiting foster carers is challenging. The main barrier identified by providers to recruiting more foster carers is identifying and encouraging the limited pool of people who are willing and able to be a foster carer. We also considered the impact of the recruitment process and the ability to transfer between agencies but found that they are not undue barriers to recruitment.

5.90 Fostering is a major choice that cannot be taken lightly. We have been told that it is life-changing and incredibly rewarding, but also very challenging. As such, local authorities and providers are trying to engage and attract carers from the same limited pool. Despite increasing budgets for marketing and recruitment, we have been told that the quality of applications does not always increase and budgets are not limitless.

5.91 Furthermore, not everyone who wants to be a foster carer has the resources, including a spare room, financial stability and time, or the personal skills to be eligible. Foster carers may have to give up working or rely on one salary and must "consider the risk of losing income if they do not have children placed in their care". As set out in the next paragraph, foster carers go through a detailed assessment process and it is reported that the skills and attributes required to be a foster carer have increased over the past decade.

5.92 While those interested in becoming foster carers go through a detailed recruitment process, this is not generally considered an undue barrier to recruitment. The process includes a detailed application form, multiple visits from a social worker, background checks, references and a three-day

[142] Welsh Government White Paper 'Rebalancing care and support'.

introductory course before a panel made up of childcare professionals makes a recommendation to the agency decision maker. Very few initial enquiries lead to people becoming approved foster carers.[143] Overall, the process can take over six months and involve around £10,000 of expense, including the cost of marketing and assessment, per carer. Despite this, local authorities and IFAs generally did not raise this process as a major barrier. The process was seen by them as necessary to ensure that only the right applicants became foster carers.

5.93 We have heard concerns from some IFAs that the ability of foster carers to transfer between agencies was detrimental as it could reduce the incentive to recruit new carers. However, this does not seem to have led to a significant impact on recruitment. We have been told that it is relatively easy to transfer from one agency to another and the main cost which this involves relates to the requirement for the foster carer to go through the assessment process again at their new agency. Nevertheless, foster carers appear to move between agencies relatively rarely[144] and difficulties in transferring are likely to impact negatively on overall carer retention where carers may wish to leave a particular agency but remain working in the sector.

Barriers to retention of foster carers

5.94 The number of foster carers that leave the role directly impacts the number of foster carers that need to be recruited. Foster carers chose to deregister for a range of reasons. Local authorities report an aging population of foster carers (for example, more than 50% of one local authority's foster carers are over 55 years old)[145] and a falling average length of service. Polling of former foster carers from the Social Market Foundation found age to be the most common reason for foster carers aged over 55 to deregister, with 61% of this group feeling that they were now too old to foster.[146] One provider reported that “the most recent resignations in the agency have been carers over the age of 50 wishing to slow down”.

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[143] Ofsted estimates that there were 160,635 enquiries from new, prospective fostering households in 2020/21 compared to only 10,145 foster carer applications received and 8,880 households approved for fostering in the year. In Scotland, CIS report that in the first half of 2020 fostering agencies received around 6,300 enquires with 6% leading to applications of which 38% were approved. Overall, the process of recruiting a foster carer typically takes between 6 and 9 months and costs around £10,000 to £20,000 per carer, including the cost of marketing and assessment. Sources: Ofsted, Fostering in England 2020 to 2021: main findings and Care Inspectorate: Fostering and adoption 2020-21 A statistical bulletin.

[144] Most agencies told us they had only a small number of carers who transferred each year, eg less than 5%. Ofsted statistics also suggest it is relatively rare: 705 out of 5,080 carers with information on their fostering experience were “transferring from another fostering agency” and 585 out of 9,045 deregistrations were to facilitate a transfer. Source: Fostering in England 1 April 2020 to 31 March 2021.

[145] In England, 46% of approved foster carers are over 55 years old. Source: Fostering in England 1 April 2020 to 31 March 2021.

[146] Fostering the future, Paper 2, - recruiting and retaining more foster carers.

5.95 Overall, the factors found by the Social Market Foundation to be contributing to giving up fostering were varied with the most common factor, receiving too little training and/or support, being cited by just 21% of all respondents and one in three of those aged between 18 and 54. Other key reasons mentioned were: not receiving enough respite; not being able to afford it; not receiving enough placements; and being unable to meet children's needs.

Initiatives to improve recruitment and retention of foster carers

5.96 Local authorities and IFAs report various ways in which they have overcome these barriers to recruitment and retention. These include improving their marketing of the role, improving support for foster carers and some examples of local authorities collaborating to improve recruitment.

5.97 In terms of marketing the role, IFAs and local authorities try a range of initiatives. Local authorities and IFAs market the opportunity to become a foster carer online, on social media and through local events, for example with current foster carers. This can be expensive, with providers reporting large and growing recruitment and marketing costs. Local authorities and IFAs also try other more innovative strategies. For example, one IFA reported that using a "celebrity voice-over" on their adverts increased leads significantly. Similarly, some local authorities told us of the success they have had working with recruitment consultancies to trial behavioural approaches to recruiting foster carers.

5.98 Other successes have come from improving respite, support and training for foster carers. One example is the Mockingbird programme, which aims to replicate the support available through an extended family network. Among other benefits, foster carers participating in this programme have been found to be less likely to de-register than those who were not participating.[147] Other examples of providing additional support include one local authority which introduced an out of hours telephone support service, a new induction programme and membership of the Fostering Network. Another local authority reported success after introducing a "comprehensive training offer" for all foster carers. Others have pointed to providing leisure centre passes, free days out and social events as examples of things they have done to try to retain foster carers.

5.99 There are examples of local authorities working together to recruit and retain foster carers. The clearest example of local authorities working together comes from Wales where Foster Wales combines 22 local authorities to

[147] Mockingbird Fostering Network Evaluation.

collectively coordinate marketing initiatives, improve retention initiatives and promote best practice standards and is partially funded by the Welsh Government. There are more limited examples elsewhere, for example, in England, Foster4 is a collaborative approach to recruiting foster carers in Cheshire West and Chester, Halton and Warrington.[148]

Recommendations

5.100 There are a range of proposals for national action to improve recruitment and retention of foster carers. However, there are mixed views on the impacts of these potential initiatives, for example:

(a) Providing greater recognition for foster carers: foster carers can feel "devalued and not regarded as a profession" and some report feeling excluded from children's care plans and not as valued as other members of children's care team. Providing professional status, for example through a qualification, is seen as a way of enhancing the status of foster carers and therefore making it more attractive. However, some stakeholders report that professionalisation could put potential foster carers off by moving away from a perceived public service ethos.

(b) Increasing allowances: the financial pressures of being a foster carer are evident and increasing allowances would ease some of these pressures. Paying foster carers retainer payments when they do not have a child in their care could also help in particular by reducing the variability in foster carers income; at the moment only 15% of foster carers report receiving such payments.[149] However, foster carers and providers have repeatedly told us that the challenge of recruiting foster carers goes beyond money.

(c) Changing employment status: foster carers are currently self-employed and some foster carers and trade unions are calling for foster carers to become employees and benefit from more employment rights. Others argue that foster carers would be worse off in this situation as they will lose current tax benefits.

(d) Creating a National register of foster carers: a national register could inform providers and ensure that matching is "informed by up to date information about carer's experience, skills and availability".[150] Further, the Foster Care Workers Union (a branch of IGWB) argue that the creation of a national central regulatory body would make foster carer

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[148] Foster4 – Foster carer recruitment service.
[149] A further 15% did not know whether they got paid retainer payments. Source: State of the Nation Report 2021, The Fostering Network.
[150] Foster Care in England: Review.

registrations portable and would mean you would only have to go through the assessment process once but could work for any nearby LA or move to a different part of the country and continue fostering without having to be reassessed.[151] However, other stakeholders have suggested that as fostering placements are sought locally, a national register would not be beneficial.

(e) Running a national awareness campaign: some providers suggest that a national campaign to "raise the awareness of fostering and attract more people into the field would be advantageous". Whilst this has many potential benefits and the ability to reach a wide pool of people, other providers report that recruitment is most successful at local level via word of mouth. It is not clear whether a national campaign would be the best way to use resources.

5.101 The potential proposals above are illustrative of the range of options and there is a lack of consensus amongst stakeholders on the best approach. In our study, we have not seen evidence which makes clear to us which approach would be most successful at solving problems with recruitment and retention or whether a combination of these options would be the most effective way forward. However, it is clear that there are problems with recruitment and retention of foster carers, which cannot be solved at local authority or IFA level, if governments intend to continue to rely on foster care to provide for looked after children. We note that previous reviews, such as the Narey Review,[152] have recommended solutions which have not been implemented. In Wales, the national government has supported clear national action to address the problem by introducing Foster Wales. What appears to be lacking in England and Scotland is a common understanding of the problem and national leadership to take forward appropriate solutions.

5.102 We recommend that national governments, working with the new national forecasting bodies (see Forecasting recommendations), conduct an annual assessment of the likely future need for foster carers and publish this as part of the wider 'State of the Sector' review. Then, national governments should take the lead in implementing an effective strategy to improve recruitment and retention of foster carers where there is a need for more foster carers.

[151] Making Change - Foster Care Workers Union (fosteriwgb.co.uk).
[152] Foster Care in England: A Review for the Department for Education by Sir Martin Narey and Mark Owers.

6. Resilience

6.1 In section 3 we described the high levels of debt held by the largest providers and our concerns that an unforeseen disruption in the supply of placements could have a particularly negative impact and adverse effects on children. In the scenario where placements close in a sudden and unplanned manner, local authorities may be faced with having to find placements for a significant number of young people at very short notice. Given the ongoing lack of appropriate supply in the sector, and the time and expense involved in creating new provision, this would carry a real risk of children having to move to placements that were a poor fit for their needs, on top of the inevitable disruption caused by the placement move itself.

6.2 The impact of any firm failure on the children in care will depend on what happens to the placements that firm had been providing. If provision was able to continue smoothly without disruption to the lives of children, this would be much less concerning than if the provision were to cease operation, creating upheaval for children, for instance if the business is able to:

- maintain its operational viability by the provider's owners or lenders putting more funding into the business; or
- be bought as a going concern by another operator, with provision for children continuing with minimal disruption.

6.3 Where the underlying business is profitable, existing or new owners and their lenders will have incentives to do each of these things. Nonetheless, the business may not be profitable in the short term, or these actors may be unable to act swiftly in accordance with these incentives. We must therefore take seriously the risk of company failure with negative effects on children.

6.4 These risks are less likely to be realised in the case of a fostering agency provider, as the foster carers themselves would not necessarily cease to provide foster care simply because their agency withdrew from the market. The main issue would be transferring the foster carers to another agency; if carried out smoothly, this should not directly affect the experience of children.

6.5 We examined this issue in a workshop we held with a range of stakeholders, including representatives from local authorities and private providers. The consensus view of attendees was that it would be relatively straightforward to transfer foster carers en masse, if necessary, in the case of an IFA leaving the market, without disruption to children. One industry association noted

that we had seen some small IFAs become insolvent and leave the market, with transitions for foster carers and children being managed smoothly.

6.6 Firm failure is potentially more concerning, however, in the case of residential children's homes. In theory, where these properties, staff and other company assets are generating profits, they could be sold to another owner who wishes to use them in this way (either en masse as a trade sale or to multiple buyers); theoretically, this could result in a relatively seamless transition for local authorities and children through the change of ownership.

6.7 However, this may not play out smoothly. Given the nature of the children's social care market, there may be a small pool of potential buyers in this sector, especially if external events are putting pressure on multiple providers at the same time. Changes in rental values and costs may make it less attractive for a new purchaser to continue to operate children's homes, as opposed to finding other potential uses of the properties. Additionally, the process of restructuring could be protracted and disruptive, reducing focus on outcomes for children.

6.8 As is usual in the case of markets with private providers, any provider can potentially leave the market voluntarily (subject to their current contractual commitments). We are not recommending measures to force providers to maintain provision in the market if it is not profitable for them to do so. In that situation, the underlying problem would be the local authorities' willingness or ability to pay the rate required to secure needed provision, and if this was leading to needed capacity leaving the system then the cause of this would need to be tackled directly, for instance by financial support for the local authority function.

6.9 This type of scenario may arise if we see declining demand for placements and so providers choose to leave the market because they no longer see sufficient occupancy in their homes to make them profitable. Reduced demand for placements may be due to temporary factors, in which case provision may be lost in the short term, only to be needed again shortly after. Alternatively, reduced demand may be due to a structural decline in the number of children being placed in children's homes, as appears to have been the case in Scotland (and may, in the future, occur in England and Wales). In these scenarios, while closure of children's homes may be the best outcome, if these closures are unplanned and sudden they may lead to short term difficulties for local authorities in placing children in particular areas or types of care. It is important that local authorities work together, including through collective bodies and fora, to mitigate the risk of these scenarios.

6.10 A particular case of this risk arises in the context of proposed policy changes in Scotland and Wales to move away from for-profit provision in children's social care. Implementing such a policy will take time and it is inevitable that there will be continued reliance on private provision to provide needed capacity for an extended period. During this period, a sudden loss of private capacity from the market could place local authorities in a difficult position, with negative impacts on children This risk is more significant in regard to Wales where, in contrast to Scotland, (a) overall demand for children's home places has been rising and (b) private provision currently makes up a large majority of total children's homes placements.

6.11 Beyond this however, there is a further category of situations where:

(a) there is sufficient demand for the capacity held by the provider (and so the homes are profitable as a going concern) and there are buyers available for the homes; but,

(b) due to financial distress, firms get into difficulties very suddenly and the homes or groups of homes cannot be rescued or sold as a going concern, thereby disrupting the care of the children in them.

6.12 At the moment, any provider is able to leave the market voluntarily (subject to their current contractual commitments). In this situation, the underlying problem is the local authorities' willingness/ability to pay the rate required to secure needed provision, and this cannot be addressed by the options under consideration.

6.13 We were also not concerned with scenarios in which there is reduced demand for placements and so providers choose to leave the market because the homes are no longer needed and there is no willing buyer. Reduced demand from placements can arise in different scenarios, including demographic changes or the relative success of earlier interventions to prevent situations where a child needs to be in care. In this situation, which we are now seeing in Scotland, it is important that local authorities engage with providers to ensure sufficient supply.

6.14 In our workshop with stakeholders, while noting that we had not seen a large children's homes provider go under in recent years, some participants argued that the impact of this happening on children could be substantial. This stems from the difficulties local authorities could face in finding suitable alternative accommodation for young people in the event that a large provider became insolvent and a significant number of placements exited the market, as well as the impact and disruption the children would face from moving and building new relationships.

6.15 Taking all of these considerations together, we conclude that high debt levels among providers pose risks to the resilience of the sector, which in turn create risks of negative outcomes for children, particularly in the case of children's homes provision.

Recommendations

6.16 In order to address the concerns set out above, we consider that measures need to be taken both to provide local authorities with an early warning of potential provider failure and to reduce the risk of negative impacts on children if failure should occur. We are therefore making recommendations to each government to create an appropriate regime for market oversight and transition planning. For both of these recommendations, we are proposing that they are applied to providers of children's homes, as this is where we see a significant risk of negative impacts on children arising from sudden and disorderly failure of providers. We note, however, that a number of large children's homes providers also operate IFAs, unregulated provision and/or care facilities outside the scope of this study, such as residential schools. Governments should consider whether and how to account for these types of provision within the implementation of these recommendations.

Market oversight

6.17 We recommend that an oversight regime is created in each nation for children's social care based on the CQC model which currently operates in adult social care, in which an independent body would:

(a) carry out market and financial oversight of large/difficult to replace children's home providers; and

(b) ensure the LAs are aware of the potential cessation of services at an appropriate time.[153]

6.18 The regulator would periodically gather information from all difficult-to-replace providers, hold discussions with stakeholders and assess the likelihood of provider failure and cessation of trading.

[153] Section 56(1) and (2) of the Care Act 2014 require that where the CQC is satisfied that a registered provider that is subject to the Market Oversight Scheme is likely to become unable to carry on a regulated activity because of likely business failure, it must notify the relevant local authority. CQC will need to be satisfied that both conditions are 'likely', ie there is a real possibility of business failure and a real possibility that the provider will become unable to carry on the regulated activity as a result.

6.19 The regulator would need the powers to gather information from providers on a periodic and ad-hoc basis in a similar way to the CQC's information gathering powers.[154] We understand that the CQC is currently able to effectively gather and assess information to form a view on the financial position of providers on the basis of the information it receives and its general understanding of the financial position of the firms in the market.

6.20 The benefits of giving the regulator these powers and duties are that it:

(a) gives local authorities advance notice of potential failure to enable them to take action to avoid disruption to care;

(b) may encourage businesses to take action to address issues as they arise or even to take a more conservative approach.

(c) allows for a flexible model which is not a 'one size fits all' approach and is able to respond quickly. Each provider may have particular risks and the length and detail of the discussions with each provider in the CQC model will reflect the risk of each provider.[155]

6.21 The costs of this function to the firms would be low - providers prepare much of the same (quarterly and annual) information for their internal accounting, board and external lenders.

6.22 The cost to the regulator would also be relatively low for a regulator that already conducts financial and market oversight. The CQC currently oversees 63 adult social care providers including two companies who are also children's social care providers and has the necessary processes and expertise to implement this function effectively.

6.23 The risks to the continuity of care of children apply to private providers equally in all nations of the UK and the principles behind our recommendations also apply equally. However, we recognise each nation is currently in a different position both in terms of the nature of their market and their proposed policy direction in terms of the role of private provision. In

[154] CQC has far reaching information gathering powers. For example, it can obtain information from other legal entities that have common ownership with the registered provider and are relevant to assessing the financial sustainability of a registered provider.
[155] CQC may use powers under s.55 Care Act 2014 to assess the risk to sustainability and any potential impact on the carrying on of the regulated activity. This may include requesting a Risk Mitigation Plan from the provider or appointing persons with appropriate professional expertise to carry out an independent review of the business.

both Scotland and Wales, we note that a market oversight regime is already under consideration.[156]

6.24 Putting this regime on a statutory basis would provide formal information-gathering powers and may allow for a clearer delineation of roles and responsibilities. We are therefore recommending that in England the regime is placed on a statutory basis. In Scotland and Wales, however, while we recommend that governments also create an effective market oversight regime, they should consider whether this will be best created on a statutory or non-statutory footing, having regard to their wider policy direction.

6.25 In Scotland and Wales, the Care Inspectorates would appear the most obvious bodies to carry out these functions. In England, the Government should give consideration for which body would be best placed to do this; while giving these responsibilities to Ofsted would maintain the link with the wider regulation of children's social care, there may also be merit in building on the experience of the CQC in performing this function in relation to adult social care.

6.26 In any event it will be essential for the different nations to be able to share information, particularly where, for example a provider operates in more than one nation. The efficacy of the market oversight function will also depend on this sharing of information to enable all nations to benefit from risks identified by one.

Contingency planning

6.27 We also recommend that each of the three governments put in place a requirement for the most significant providers to prepare contingency plans to reduce the disruption to children in the event of their failure. This responsibility for identifying which firms should be required to created contingency plans, and to assess those plans, could be combined with the market oversight function.

6.28 The oversight body should require the provider to have plans to avoid a sudden and disorderly withdrawal from the market, in the event that it faced financial stress. These plans would set out the risks that would increase the possibility of disorderly exit, and the mitigations that the provider is taking to

[156] As discussed in Section 2 and Appendix B the Welsh Government intends to develop a non-statutory market oversight framework. In relation to Scotland, in its consultation on a National Care Service the Scottish Government has sought views on the necessity of a market oversight function for the regulator (CIS), its scope and the potential form of any additional powers the regulator should have to ensure this function is effective. It is not clear, at this stage, whether children's services will be in scope of any National Care Service, although the Scottish Government has sought views on this as part of the consultation.

reduce these. The regulator would scrutinise these plans, identify good practice or potential risks and ensure these are reflected in the plans of all providers.

6.29 While we do not wish to be prescriptive, we would expect that these plans may include:

(a) standstill provisions with lenders to avoid firms being wound up at very short notice;

(b) providing that firms will maintain a sufficient level of reserves to allow them to continue operating for an appropriate period in the event of financial distress caused by, for example, temporary reductions in demand;

(c) ensuring the minimisation of factors that would prevent homes being sold as going concerns in the event of failure, eg by holding homes in separate legal entities capable of sale free of restrictions that might prevent sale, or by separating the homes from the debt held by other parts of the group; and

(d) ensuring that there are no barriers to transition of children or staff, eg for regulatory or contractual reasons, in the event of failure.

6.30 As part of this work, the regulator could also require that providers carry out stress tests and scenario analyses that test their business plans to failure (such as the Financial Conduct Authority's "reverse stress-testing") and the steps that they have taken to minimise those risks.

6.31 We recognise that it is impossible to envisage all the situations we might want to protect against, and for this reason we consider it is important that the regulator is able to flex the requirements on providers.

6.32 An additional measure that the regulator may wish to include in the regime is to require that providers include a "standstill" provision in their lending contracts. The purpose of these would be that in the event of an administration or insolvency, the provider and administrator are given a short period of time to find a purchaser of the children's homes as going concerns.

6.33 The benefit of this remedy would be to increase the likelihood of an orderly transition in the event of failure and reduce the disruption for vulnerable children. It will not prevent or even reduce the likelihood of the providers failing in the first place, ie it will only address the potential harmful effects of failure.

Resilience recommendations we do not propose to take forward

6.34 We have also considered recommendations that would go further than this, giving the public sector more direct influence over the factors that could contribute to children suffering harm as a result of disorderly firm failure. Considering the greater impact that these would be likely to have on incentives for private providers to invest, at a time when private providers are the primary source of investment in necessary new provision, we are not recommending that governments take these options forward at this time.

6.35 Looking to the future, however, one key aim of our wider recommendations is to reduce the persistent undersupply of appropriate placements in this sector. At the same time, governments may take measures that lead to fewer children needing to be placed in children's homes. In such a situation, the cost-benefit ratio may tip in favour of these measures. They should therefore remain on the table as a potential tool for governments to consider in the future.

Special administration regime

6.36 A further addition to the CQC regime would be to create a special administration regime (SAR) for children's social care. Such a regime could give an administrator a duty to protect the interests of children in care placements operated by the company, to be balanced against their duty towards creditors. It could also give powers to the government to prevent the enforcement of certain rights by creditors and to provide funding to maintain the operation of the provider.

6.37 SAR regimes exist in other sectors such as further education and social housing (but not adult social care) and these regimes range in depth from adding an additional element for the administrator to consider in the event of an insolvency to more wide-ranging powers such as in social housing where the Secretary of State has powers to prevent housing being sold out of the social sector, and can lend public money to the administrator to keep the company going while a rescue is sought.

6.38 While a SAR regime would give governments a high level of control over placements in the event a provider got into financial difficulties, it would also place significant restrictions on the ability of lenders to enforce their rights, for an indefinite period. This in turn would be likely to reduce their willingness to lend into this sector. We have therefore concluded that our aims can be achieved more effectively and proportionately currently by the two measures we are recommending.

Debt moderation

6.39 A further option that we have considered would be to give a regulator direct powers to control the level of debt that a provider is permitted to carry within a company operation children's homes provision. This would allow a regulator to directly reduce the indebtedness of firms, with the aim of making their failure less likely.

6.40 While this approach would have the benefit of tackling the root cause of concerns around over-indebtedness, we consider that it would be extremely hard to implement effectively. The application of simple rules on levels of indebtedness would be insufficient to capture the true risks being taken by individual firms. To do this, would require a well-staffed, experienced and intrusive regulator, with deep skills and knowledge in this area. There are large risks of getting the assessment wrong, and thereby negatively impacting on incentives to invest in this sector; this is a particular concern given that one of the key problems we have identified in the market is insufficient investment in creating appropriate capacity. We have therefore concluded that our aims can currently be achieved more effectively and proportionately by adopting the recommendations we set out above.

7. Recommendations

7.1 We have concluded that there are significant problems in how the placements market is functioning, particularly in England and Wales. We have found that:

- a lack of placements of the right kind, in the right places, mean 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 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.

7.2 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. These 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.

7.3 We consider that this package of measures will effectively and proportionately address the concerns we have identified. Without these measures, we expect the poor market outcomes we have found will continue and worsen.

Summary of recommendations

7.4 In this section we summarise our recommendations as they relate to each nation. Full details of the recommendations are set out in Section 4 (recommendations to improve commissioning), Section 5 (recommendations to reduce barriers to providers creating and maintaining provision) and Section 6 (recommendations to reduce the risk of a lack of financial resilience in the sector having negative effects on children).

Summary of recommendations - England

Commissioning

Recommendation 1.1: Larger scale market engagement

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 that there is set of bodies to carry out these collective market shaping and procurement activities, with each local authority required to participate in one of them. We expect sub-national bodies to be appropriate for England.
- 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.

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 factors set out in paragraph 4.82.

In addition:

- Sufficiency duties should be enhanced to allow more transparent understanding of the extent to which sufficiency of placements is being achieved in 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.

Recommendation 1.2: National support for purchaser engagement with the market

We recommend that the UK Government provides additional support to local authorities and collective bodies for forecasting, market shaping and procurement.

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 regional and national analysis and providing local authorities and collective bodies with guidance and support for more local forecasting, including the creation of template sufficiency reports.

To support the effectiveness of this function:

- Local authorities' statutory duties should be expanded to include a requirement to provide specified data to and to co-operate with the body carrying out the forecasting function.
- Duties should be placed on local authorities to produce and publish sufficiency reports using templates created by the national function, in line with guidance issued by it.

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.

National contracts

The Department for Education should support the reintroduction of national procurement contracts covering terms and conditions that do not need to reflect local conditions.

Recommendation 1.3: Support for increasing local authority foster care

We recommend that the UK Government offers 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 be evaluated carefully to provide an evidence base to help shape future policy.

Creating capacity in the market

Recommendation 2.1: Review of regulation

We recommend that the UK Government should carry out, or commission, a thorough review of regulation relating to the provision of placements, during which protecting the safety and wellbeing of children must be the overriding aim, but also considering whether specific regulations are unnecessarily restricting the effective provision of placements.

Recommendation 2.2: Review planning requirements

We recommend that the UK Government considers removing any distinction, for the purposes of the planning regime, between small children's homes and domestic dwelling houses. This could include, for example, steps to make it clear that 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.

We recommend that where children's homes remain in the planning system (for example because they are larger) the UK Government introduces national guidance clarifying when planning permission may be required and the circumstances in which it is likely to be granted or refused.

Recommendation 2.3: Regular state of the sector review

We recommend to the UK Government that there should be an annual assessment of the state of the workforce 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 in England.

The UK Government should also give attention to whether national measures, such as recruitment campaigns, measures to support professionalisation and career pathways are required.

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

Resilience of the market

Recommendation 3.1: Monitor and warn of risks of provider failure

We recommend that the UK Government creates an appropriate statutory oversight regime that is capable of assessing the financial health of the most difficult to replace providers of children's homes and warning placing authorities if a failure is likely.

Recommendation 3.2: Contingency planning

We recommend that the UK Government via its appointed oversight body should require the most difficult to replace children's home providers to maintain a

“contingency plan” setting out how they are organising their affairs to mitigate the risk of 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 owner 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.

Summary of recommendations - Scotland

Commissioning

Recommendation 1.1: Larger scale market engagement

We recommend that the Scottish Government takes action to require 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 that 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. It is plausible, in Scotland, that this may be at a national level, building on the work of Scotland Excel.
- 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.

The Scottish 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 Scottish Government should consider the factors set out in paragraph 4.82.

In addition:

- Existing duties should be enhanced to allow more transparent understanding of the extent to which sufficiency of placements is being achieved in 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.

Recommendation 1.2: National support for purchaser engagement with the market

The Scottish Government should provide additional support to local authorities and collective bodies for forecasting, market shaping and procurement.

Forecasting

The Scottish Government should establish functions at a national level supporting the forecasting of demand for and supply of children's social care placements. We recognise that Scotland Excel may be well placed to do this on the Scottish Government's behalf.

These functions should include carrying out and publishing national and regional analysis and providing local authorities and collective bodies with guidance and support for more local forecasting, including the creation of template sufficiency reports.

To support the effectiveness of this function:

- Local authorities' statutory duties should be expanded to include a requirement to provide specified data to and to co-operate with the body carrying out the forecasting function.

- Duties should be placed on local authorities to produce and publish sufficiency reports using templates created by the national function, in line with guidance issued by it.

Market shaping and procurement

The Scottish Government should increase its support for wider-than-local activity by funding collective bodies to trial different market shaping and procurement techniques, potentially building on the work of Scotland Excel, and improving understanding of what market shaping and procurement models work well.

While the Scottish Government should take ultimate responsibility for implementing the above recommendations, it should consider where it would be appropriate to use Scotland Excel to deliver any of them, given its established role and experience.

Recommendation 1.3: Support for increasing local authority foster care

We recommend that the Scottish government offers 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 be evaluated carefully to provide an evidence base to help shape future policy.

Creating capacity in the market

Recommendation 2.1: Regulatory considerations for wider policy reforms

The Scottish Government is implementing wide policy reforms in the sector. As these changes are made, and as any changes are made to the legislative and regulatory framework, the Scottish Government should consider the potential for unintended consequences, and for these changes to impact on the ability and incentive of providers (of any type) to create and maintain provision to meet the care needs of children.

Recommendation 2.2: Review planning requirements

Not applicable to Scotland.

Recommendation 2.3: Regular state of the sector review

We recommend to the Scottish Government that there should be an annual assessment of the state of the workforce 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 in England.

The Scottish Government should also give attention to whether national measures, such as recruitment campaigns, measures to support professionalisation and career pathways are required.

We recommend to the Scottish Government that there should be an assessment of the likely future need for foster carers and that the Scottish Government should take the lead in implementing an effective strategy to improve recruitment and retention of foster carers.

Resilience of the market

Recommendation 3.1: Monitor and warn of risks of provider failure

We recommend that the Scottish 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 warning placing authorities if a failure is likely.

Due consideration should be given to placing this regime on a statutory footing.

Recommendation 3.2: Contingency planning

We recommend that the Scottish Government via its appointed oversight body requires the most difficult to replace children's home providers to maintain a "contingency plan" setting out how they are organising their affairs to mitigate the risk of 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 owner 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.

Summary of recommendations - Wales

Commissioning

Recommendation 1.1: Larger scale market engagement

We recommend that the Welsh Government takes action to require 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 that 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. It is plausible in Wales that this may be at a national level, building on the work of the 4Cs.
- 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.

The Welsh 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 Welsh Government should consider the factors set out in paragraph 4.82.

In addition:

- Sufficiency duties should be enhanced to allow more transparent understanding of the extent to which sufficiency of placements is being achieved in 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.

Recommendation 1.2: National support for purchaser engagement with the market

The Welsh Government should provide additional support to local authorities and collective bodies for forecasting, market shaping and procurement.

Forecasting

The Welsh Government should establish functions at a national level supporting the forecasting of demand for and supply of children's social care placements.

In Wales the 4Cs already provides some forecasting support to local authorities, having recently begun to perform national and regional trend analysis on behalf of local authorities and to provide forecasting support to local authorities via Placement Commissioning Strategies. 4Cs could continue to perform these roles and with support from Welsh Government, could expand its approach to ensure that is are taking on all aspects of the forecasting function as described in paragraph 4.72.

These functions should include carrying out (potentially via the 4Cs) and publishing national and regional analysis and provide local authorities with guidance and support for more local forecasting, including the creation of template sufficiency reports.

To support the effectiveness of this function:

- Local authorities' statutory duties should be expanded to include a requirement to provide specified data to and to co-operate with the body carrying out the forecasting function.

- Duties should be placed on local authorities to produce and publish sufficiency reports using templates created by the national function, in line with guidance issued by it.

Market shaping and procurement

The Welsh Government should increase its support for wider-than-local activity by funding collective bodies to trial different market shaping and procurement techniques, potentially building on the work of 4Cs, and improving understanding of what market shaping and procurement models work well.

Recommendation 1.3: Support for increasing local authority foster care

We recommend that the Welsh Government offers targeted funding support for further innovative projects by individual local authorities, or Foster Wales, targeted at recruiting and retaining more foster carers to reduce their reliance on IFAs. Any such projects should be evaluated carefully to provide an evidence base to help shape future policy.

Creating capacity in the market

Recommendation 2.1: Regulatory considerations for wider policy reforms

The Welsh Government is implementing wide policy reforms in the sector. As these changes are made, and as any changes are made to the legislative and regulatory

framework, the Welsh Government should consider the potential for unintended consequences, and for these changes to impact on the ability and incentive of providers (of any type) to create and maintain provision to meet the care needs of children.

Recommendation 2.2: Review planning requirements

We recommend that the Welsh Government considers removing any distinction, for the purposes of the planning regime, between small children's homes and domestic dwelling houses. This could include, for example, steps to make it clear that 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.

We recommend that where children's homes remain in the planning system (for example because they are larger) the UK and Welsh governments introduce national guidance clarifying when planning permission may be required and the circumstances in which it is likely to be granted or refused.

Recommendation 2.3: Regular state of the sector review

We recommend to the Welsh Government that there should be an annual assessment of the state of the workforce 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 in England.

The Welsh Government should also give attention to whether national measures, such as recruitment campaigns, measures to support professionalisation and career pathways are required.

We recommend to the Welsh Government that there should be an assessment of the likely future need for foster carers and that the Welsh Government takes the lead in implementing an effective strategy, building on the introduction of Foster Wales, to improve recruitment and retention of foster carers.

Resilience of the market

Recommendation 3.1: Monitor and warn of risks of provider failure

We recommend that the Welsh 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 warning placing authorities if a failure is likely.

Due consideration should be given to placing this regime on a statutory footing.

Recommendation 3.2: Contingency planning

We recommend that the Welsh Government via its appointed oversight body requires the most difficult to replace providers to maintain a "contingency plan"

setting out how they are organising their affairs to mitigate the risk of 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 owner 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.

How our recommendations work together

7.5 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 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.

7.6 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.

Implementation of our recommendations

7.7 Major policy processes in relation to children's social care are currently ongoing in England, Scotland and Wales, and we hope that our recommendations will be considered as part of each.

7.8 We will engage with policymakers, regulators and others to explain our recommendations, strongly encourage them to implement them and, support them in doing so.