COMMISSIONING

Implications of CMA report

The Competition and Markets Authority's interim report into the functioning of the children's social care market offers a clear indication on potential sector reforms **Andrew Rome** analyses what it means for council commissioners and service providers

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In early September, the Competition and Markets Authority (CMA) announced its decision not to move to a full market investigation approach, giving a clear signal that they did not think an interventionist approach on pricing and profitability was the way to go about solving issues in the children's social care sector.

The subsequent publication of the CMA's interim report in late October set out in more detail where the seven-month study has taken their thinking as to the causes of current market dysfunction and inefficiency and the direction they will now be taking to formulate final recommendations as to how to improve the market in children's social care.

At the core of the interim report is the diagnosis by the CMA that impairments of the sector are "fundamentally a symptom of the underlying problem of insufficient supply of appropriate placements and the difficulties faced by local authorities in engaging effectively in this market".

This conclusion sets up significant tensions around the UK and with the Independent Review of Children's Social Care. But whatever the views of different stakeholders about the conclusion and the details of how the CMA arrived at it, looking forward, the direction of travel of the CMA is seen in the remedies they are now considering. This is of course work in progress and the publication of the interim report is in part intended to ask for feedback from the sector on the contents of the lengthy report and appendix.

Local authorities will no doubt be looking at the proposed remedies and thinking about the implications for current placement practices and planning for future strategic commissioning developments. Provider organisations will remain alert to developments that may change the way in which their services are engaged by purchasers.

Three of the major remedies to be further investigated by the CMA are discussed here.

Remedy 1: Larger scale market engagement

The CMA finds that local authorities are not able to utilise the full potential benefits of a range of tools and techniques normally available to engage with supplier markets. These tools include regional or national framework agreements, block contracts and volume discounts. The remedy proposed by the CMA aims to address the perceived weaknesses that arise from each local authority being only responsible for its own purchasing of placements. This results in relatively low volumes of complex purchasing at the individual child and authority level and potential competition between purchasers for scarce placements.

By developing frameworks encompassing larger numbers of placements than any single authority requires, and by looking at greater use of block purchasing and volume discount arrangements for aggregated demand, the CMA believes there will be benefits to looking at a more appropriate scale available at a centralised or regional level.

Our own research over several years has clearly identified deficits in the commercial freedom and nous of individual authorities when, at the same time, the provider sector has transitioned from predominantly small owner-manager operators to now include some larger groups. These groups are led and managed by professional investors that highly value long-term strategic approaches and commercial acumen. It is relatively rare to find local authorities, often driven by the challenges of recent unavailability of placements and severe financial pressures, that have started to consider alternatives to the outdated and ineffective procurement techniques employed in the past. Where they are emerging, these alternative approaches include a blend of relationship-based, larger partnership-based and block contract approaches.

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Local authorities can face challenges in collaboration

However, local authorities will be aware of the challenges of collaboration with other local authorities. Those challenges include providing appropriate support and funding of the resources needed to engage in collaboration. Further challenges are generated by the tension between an individual authority's responsibilities (and budgets) and collaborative arrangements that may result in a relinquishing of control of those responsibilities and budgets to higher level regional or national bodies and systems.

Our experience is that these challenges and tensions can be resolved. This requires strong leadership and long-term commitment of the authorities involved allied to diligent attention to detail and a partnership ethos.

Remedy 2: Market forecasting

The CMA is concerned that local authorities do not effectively forecast future needs and that this impedes suppliers' abilities to plan for additional capacity investments.

The report recognises the necessity of measuring suitably granular details of needs but was disappointing in not going further into a discussion of the prerequisite of consistent assessment tools. It also did not consider the need for longer term research into demonstrating the impact of different types and intensity of services on the progress of the children so assessed.

In maintaining the level of conversation at aggregated levels, as is often the case in the CMA interim report, the imperative to consider each individual child's needs and the appropriateness of services and interventions can be lost.

Some social care professionals also baulk at

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Social care professionals maintain that experience and knowledge must be paramount in placement selection

proposals that appear to head down a route of an increasing codification of needs and services. This is based on the knowledge of the spectrum and complexity of needs encountered, but also on the belief that the role of social work cannot be reduced to data and algorithms, and that the experience and knowledge of professionals must remain paramount in placement selection for vulnerable children with complex needs.

Local authorities may however welcome a more consistent and informed approach to describing needs and services and in demonstrating progress and outcomes. There is logic in the suggestion that this would also support forecasting efforts and therefore this links to the previous point about larger scale approaches as these would require consistency of tools and measures. The CMA argue that a more centralised or regional approach could address the current challenges of forecasting demand.

Remedy 3: Removing barriers to creating extra capacity

In addition to the weaknesses in local authority forecasting, the CMA report highlights three further areas which may be creating difficulties for providers looking to develop the required increases in capacity.

The CMA suggests a need to revisit current regulations to examine if these are restricting flexibility and responsiveness of providers, to examine if there are barriers related to property and local planning matters (for residential-based services), and to examine barriers to recruitment and retention of children's home staff and foster carers.

Local authorities that provide in-house services may also welcome any initiatives that arise from these examinations, although the sector is likely to be unanimous in wanting to ensure that any regulatory changes, in particular, do not undermine the safeguarding of children's interests or the quality of services.

Debt and risk

The CMA's attention has also been drawn to the emergence of provider groups that carry higher levels of debt that previously experienced in the sector. This has been studied over recent years in our work on profit-making and risk in the independent children's social care sector for the Local Government Association.

The CMA is considering potential recommendations including a statutory oversight regime akin to that of the Care Quality Commission for adult social care in England, and the need for enhanced step-in provisions in contract terms between local authorities and providers.

In our interactions with provider groups, we are aware that there are providers with the technical financial and funding model knowledge that have expressed a willingness to engage in the development of tools to assist in the monitoring of debt and risk in children's social care providers. The CMA and local authorities may welcome a proactive approach from providers that wish to demonstrate how debt is managed and how disorderly exits can be signalled and avoided.

What next?

The CMA recognises in this first report the political, regulatory, local governance and private sector finance influences on the sector. Add to these procurement regulation influences that themselves are subject to government changes currently under way, and a careful balance is likely to result. The CMA's interim report carefully weaves its way through these influences, recognising the limitations of its functional market economics view and stating the need for other professionals and policymakers to take the lead on many of the actions arising from the emerging recommendations.

There is potential in the remedies proposed to significantly change the way the sector operates. Increased centralisation of commissioning and procurement to support forecasting and market shaping activities, allied to removal of barriers to service development offer potential synergies. However, the changes will require political will and resources to implement.

For stakeholders, the implications of this work are not finalised. Indeed, there is much distance still to travel, with further work by the CMA looking in increasing detail at all the areas highlighted here. Local authorities and providers are likely to continue to offer their views and experiences to the CMA in response to these suggested remedies.

When the final recommendations from this CMA study are published, they will pass on to others who have the decision-making powers to implement, alter, enact, fund, or to dismiss. It is however clear these recommendations will target better market engagement and not price or profit intervention.