

Howard League for Penal Reform response to Competition and Markets Authority invitation to comment on children's social care

14 April 2021

1. About the Howard League for Penal Reform

1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has over 12,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

1.3 Since 2016 the Howard League has been working on a programme to end the unnecessary criminalisation of children in residential care. We have conducted extensive qualitative research on the subject which has given us a wide-ranging understanding of the children's residential care sector and the issues affecting the children living within in. Amongst the several hundred people we have spoken to are police, directors of children's services and other local authority staff, youth offending teams, the owners and staff of private, voluntary and local authority run homes, magistrates, youth justice lawyers, politicians, academics, other third sector organisations and children and young people who are, or who have recently, lived in children's homes.

1.4 This submission draws on this programme of work and provides brief comment on two of the four themes set out in the Competition and Market Authority's (CMA) invitation to comment. Links are provided to relevant Howard League publications and the CMA is encouraged to read those briefings in full. All of the Howard League's publications on the criminalisation of children in residential care can be found on [the programme's web page](#).

2. Nature of supply

2.1 When the Howard League first published [Criminal Care: children's homes and criminalising children](#) in 2016, the charity expressed concerns about the large private companies who control the children's residential care sector. The briefing exposed the huge profits some of these companies were making and the lack of transparency and accountability

that were allowing bad practices to remain hidden and damaging children. In particular, it reported on concerns that police forces related to the charity about private providers of children's homes using police cells as 'respite' to cover staff shortages and because staff were not trained and competent to deal with children's behaviour. Similar concerns have been expressed since about unregulated provision.

2.2 During the course of the Howard League's programme of work the proportions of children in residential care who have been criminalised each year have fallen from 15 percent in the year ending 31 March 2014 to seven per cent in the year ending 31 March 2019. There is still much to be done to understand and tackle the factors causing high levels of criminalisation and to ensure children living in residential provision, both regulated and unregulated, are protected from unnecessary criminalisation. It remains the case, as the charity found in 2016, that police forces continue to report picking up the pieces of a 'social care deficit', with children being pushed into the criminal justice process rather than receiving the support they needed from local authorities and children's homes.

2.3 There is a fundamental question about whether society should welcome companies – some of which are large and based overseas – making profits from the care of the most vulnerable children in our society. This essentially moral question was raised by a number of stakeholders in the Communities and Local Government select committee inquiry into the [Funding of local authorities' children's services](#) (2019). The Association of Directors of Children's Services was quoted in the inquiry report as questioning whether 'the government and indeed wider society remains comfortable with the extraction of ever larger profit margins from the care of children and providers of vital care services being bought and sold on the open market' (para. 105). It advocated for 'a review of the ability of organisations and individuals to generate significant profits from the care of some of the most vulnerable children and young people in the country, particularly when set against a decade of year-on-year reductions for local authorities' (para. 107).

2.4 As the CMA acknowledges in its invitation to comment, practical problems with the market in children's social care have been raised extensively. A report from the Public Accounts Committee on [Transforming children's services](#) (2019), reported a lack of capacity in the residential care sector that was resulting in 'bidding wars' between local authorities for places. This competition was driving price increases which could have 'extreme financial consequences in individual cases where there is an urgent need to find a placement for a child'. The National Audit Office report [Pressures on children's social care](#) (2019), reported that the demand for residential care was growing but that costs were rising even more precipitously. The Local Government Association has since published (2020) [Profit making and Risk in Independent Children's Social Care Placement Providers](#), which reinforces concerns the Howard League stated back in 2016.

3. Regulatory system

3.1 The Howard League has since published two briefings as part of its programme of work which address regulatory issues in children's residential care.

3.2 ['Victims not Criminals: Protecting children living in residential care from criminal exploitation'](#) (2020) found that the current residential children's homes structure is contributing to the growth and geographical spread of child criminal exploitation (CCE). A primary focus on profits means that children's homes are often situated in less expensive parts of the country and frequently in disadvantaged areas. Too often children are placed wherever a bed can be found. The lack of places for children in care has led to what one police officer described as

children being 'dumped' in emergency placements, sometimes into environments where people who are already exploiting children are operating.

3.3 The report reiterated concerns that the Howard League stated in a previous briefing, ['Hearts and Heads: Good practice in children's homes'](#) (2018), which quoted a Director of Children's Services who described a 'Wild West' market in residential care. The report highlighted poor training for staff and little support given to management in some homes run by some larger private providers. The report also pointed to regulatory failings when it came to controlling the market forces that drive the problems described in the paragraph above. While Ofsted regulates standards of service provision, there is no national lead or direction on how the sector develops or operates as a whole and there is a worrying lack of oversight and transparency. Market regulation, in the way that the Bank of England regulates the economy, is not taking place and the Department for Education has shown little interest in preventing perverse outcomes which ironically, as with CCE, impact negatively on other parts of central government.

3.4 It is for this reason that the Howard League welcomes the CMA market study and the scope of inquiry as outlined in the invitation of comment. The criminalisation of children in residential care is one sign that the current market is failing and that urgent action must be taken to reform the provision of residential care in England and Wales.

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