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EVIDENCE REVIEW

Reimagining residential children's homes

Commissioning children's homes: Potential improvements and reforms

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Contents

Commissioning children's homes: Potential improvements and reforms

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Introduction

This paper discusses options for improvement and reform in the commissioning and financing of the nation's residential children's care homes, all of which are commissioned and procured by local authorities. It considers the commissioning and funding ecosystem within which all children's homes – public, charitable and private sector – currently operate. It does not pretend to speak to the details and realities of local practice, or the everyday dilemmas faced by children and practitioners, nor to address the important questions about what constitutes good, evidence-informed practice with, and for, children who live in children's homes; these questions are, or will be, addressed in accompanying papers.

The paper does, however, include discussion of some practical changes that local authorities can choose to make in how they plan for, procure and place in children's care. It also examines potential system reform measures that would require action by national government (such as legislative measures). On some of the big ideas and issues that reach beyond the scope of local discretion and powers, readers are encouraged to consider their potential role as reform advocates – and in so doing, to look beyond their role as local leaders responsible for delivery of local practice.

The children's homes marketplace – what is the problem?

The most recent comprehensive gathering of evidence and expert opinion about the issues facing the children's homes marketplace (as it is commonly described) is to be found among the wealth of written and oral evidence submitted to a parliamentary inquiry into the funding of local authority children's services.[1] Over the course of their five-month inquiry, MPs on the Housing, Communities and Local Government Committee (HCLGC) identified rare sector agreement – across statutory and voluntary organisation representatives, academics, the Children's Commissioner and Ofsted – that the care provider marketplace, including children's homes, is unsustainable in its current form and requires serious action.

> *...many of the witnesses considered that the market for the provision of care for looked after children was not working well.'*
>
> (HCLGC, 2019, para. 102)

> *By December 2019, the Government should take the lead in conducting a review of the whole commissioning and procurement system and assess the merits of the various improvements that have been suggested to us in the course of our inquiry.*
>
> (HCLGC, 2019, para. 115)

Such sector-wide (and cross-party) agreement that the market is not working might suggest there would be a degree of unanimity about what reforms are needed to improve the system. As yet there is no such consensus, however. Finding solutions to any problem requires agreement not only that there *is* a problem, but also a shared diagnosis of the *nature* of that problem. But while different stakeholders and care sector experts may all see the marketplace as dysfunctional, they differ significantly in their analyses of *why* there is a problem.

1 See: **https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/inquiries/parliament-2017/inquiry12/**

At the risk of glossing over important matters of detail and nuance, those different views can broadly be generalised into one of three 'diagnostic' positions about the fundamental nature of the problem.

1. **The existing system is essentially sound, but reforms are needed.**
   Commissioning care from a mixed market of providers is a perfectly reasonable, indeed essential, way for councils to plan and cater for children's diverse care needs; however, distinct problems currently prevent care commissioning and procurement from being as effective as they could be. These problems include (but are not restricted to):

   (i) The significant reductions in local authority spending power over the past decade have constrained the capacity for strategic commissioning, and become a driving force for costly and chaotic individual placement chasing.

   (ii) Providers' rising fees have contributed to 'overspending' on children's services budgets.

   (iii) The total nationwide capacity and availability of care, particularly children's homes, is geographically incoherent and now insufficient to meet the rise in levels of demand over recent years.

2. **Profit making is distorting the system and should be removed.**
   The whole system is increasingly damaged and distorted by private equity investors' financial interests, and financially drained by private care companies' business imperative to extract shareholder profit; without the profit motive at play in the system, councils would be free to make better, less expensive and more child-focused choices.

3. **There needs to be whole system reform.**
   The concept and structure of a competitive marketplace *is itself* the problem, no matter what types of organisation provide the care; the serious dysfunctions (and more) cited in positions (1) and (2) above are all design features in competitive marketplace approaches, not minor flaws in their otherwise healthy functioning.

This paper does not seek to endorse or contradict any of these three diagnostic positions, nor to suggest they are mutually exclusive. Rather, it sets out to consider what potential reforms might follow from each position, and what those reforms might mean in practice for children's homes and the wider care system.

1 Reforms within the existing system architecture

When approached through the first diagnostic lens, consideration of how things need to change will tend to focus on specific and incremental financial or practical changes, without radically altering the existing architecture of systems, laws and regulations. With the exception of national funding, the merit of such measures is that councils would generally be able to enact them without the need of approval from national government, and be able to build evidence of their impact before implementing them more widely.

National public spending and council finance

No analysis of systemic problems in the care system, or potential solutions, can overlook the significance of recent reductions in central government funding for councils. The steep reductions in government grant funding for councils over the last decade have had huge systemic impact on the whole community services ecosystem (Davies & Evans, 2012; Calver & Wainwright, 2018; Local Government Association, 2018). As the cross-party select committee agreed, the case for major renewed public investment (an increase of at least £3.1 billion in non-ringfenced core grant funding until 2025) in all councils' children's services is now urgent and compelling.

> *It is clear that current funding levels are unsustainable; local authorities are responding to increasing demand and decreasing spending power by prioritising child protection work and reducing spending on non-statutory children's services. Despite these efforts, most local authorities are still overspending their budgets on children's social care. Financial restraint combined with seemingly ever increasing demands on the sector is leading to what has been described as 'a perfect storm'.* (HCLGC, 2019, p. 4)

Reinvestment in the whole breadth of services available in communities would offer great potential improvements in the quality and range of support to achieve better outcomes for families and all children in care, including those cared for in children's homes. So the need for significant public reinvestment has to feature at the top of any priority list of reforms, even though increased public spending is not, strictly speaking, a commissioning reform.

Changing commissioning and procurement practices

In relation to local commissioning and procurement practices a wide range of potential improvements could be undertaken within the existing system architecture, as advocated by different leaders and stakeholders. All are worth serious consideration by councils and practice leaders:

(i) Create significantly more children's homes

The steady increase in the number of children entering care over recent years (Family Rights Group, 2018) has not been matched by an increase in the number of registered children's homes. This has led to a shortfall in capacity nationwide, which has in turn fuelled a rise in out-of-authority placements and growing alarm at the emergency use of unregistered and unregulated settings for children (Titheradge & Thomas, 2019). This shortfall, and the ensuing competitive scramble among local authorities to secure for their children what places are available, are also factors in the rising fees that can be charged by some providers in the placement marketplace.

Some councils are now investing in new children's homes (built and bought), including in some areas a growth in local authority-run homes (Jackson, 2019; see also Bradbury, 2018). This will be important in increasing locally situated homes and reducing out-of-authority placements, as well as contributing to an increase in the sector's overall capacity nationwide. While council revenue budgets currently inhibit major new high-cost service commissioning, councils do have relatively more room for manoeuvre in their capital budgets, which have been freed up to enable them to invest significantly in new housing; this can include investing in new children homes.

(ii) 'Regional' collaborative commissioning clusters

(comparable to the Regional Adoption Agencies)

In 2015, Sir Martin Narey was commissioned by the Prime Minister and the Education Secretary to undertake an independent review of children's residential care. His report urged greater regional collaboration in the commissioning of children's homes, in order to achieve potential cost efficiencies through pooled spending power and shared supply relationships with care home providers (Narey, 2016).

In his role as Chair of the Residential Care Leadership Board, which was set up following the Narey Review, Sir Alan Wood (2018) has also urged consideration of a shift towards regional commissioning structures for care homes. In practice, most councils already participate (at sub-regional level) in some form of consortium commissioning and procurement, and several Children's Social Care Innovation Programme[2] projects are trialling cluster commissioning through new stand-alone entities.

2 See: **https://innovationcsc.co.uk/innovation-programme/**

It will be important to keep an eye on the learning to emerge from these innovation projects in collaborative commissioning. And it may also prove salutary to reflect on learning from the ongoing programme to establish Regional Adoption Agencies (Blades et al., 2018, 2019) before seeing them as the model for structural evolution in children's home commissioning partnerships.

(iii) **Stop spot purchasing, and examine the use of 'soft block contracts'**
Spot purchasing individual placements at individual fee rates is the market equivalent of buying care retail. Of course, individualised decisions about what is the right care placement are necessary for each child. However, that does not have to equate to a procurement system that pays only for one bed at a time, one child at a time. When the state (i.e. all councils) is, in effect, the only paying customer for all children's care provision, it could spend its money more efficiently by purchasing wholesale rather than retail.

In a discussion paper for the Nationwide Association of Fostering Providers, Andrew Rome (2019) has put forward a procurement proposal he calls 'soft block contracting'. A block contract is the market equivalent of a wholesale approach, in which a council and a care provider agree in advance on meeting the full costs of operating a home for a year or more, instead of paying them through multiple smaller sales transactions throughout the year (and paying nothing for any beds in a home that are vacant for any period). The 'soft block' contracting idea would be based on agreeing block contracts with whole groups of care providers, and on ensuring collaboration between them and the councils that commission them about collectively managing referrals, capacity and vacancies, underpinned by an assumption that no child will be forced into, or removed from a placement on commercial grounds. The system is characterised by a closer working relationship between purchasers and providers, and occupancy risk would be shared between all the parties, rather than sitting with each provider separately. This retains the freedom and flexibility of spot purchasing to make individualised placement arrangements that are right for each child, while offering the greater financial stability and cost-efficiency of block contracting.

(iv) **Improving assessments, referrals and placement making**
Improve the stability and accessibility of finding and funding 'the right place first time' for each child by improving *assessment, referral and placement-making practices*. The following paper in this series, by Marie Tucker, discusses evidence in relation to this issue, and the potential to deliver significant improvements for children and services by changing this area of practice.

None of these pragmatic ideas for improvement should be discounted or discouraged, and each certainly has potential to address well-established problems within the system in ways that could improve children's experiences of care, as well as cost-efficiency in how public funds are spent on care.

2 Reforms to remove profit making from the marketplace

Advocates of the second diagnosis are likely to see the dominance of private profit-making companies in the provision of children's homes as a deep-rooted problem, either as a matter of ethical principle or in its practical effects on the whole system (or both). There is not space here for a full analysis of the history, growth, nature and effects of profit making within the care sector. However, a discussion paper published by Children England (2014) – *Correcting a history of market failure* – offers some insights into the history and dynamics of the residential care sector before and after the emergence of private sector provision in the 1980s; and a forthcoming analysis by the Local Government Association (anticipated in early 2020) is expected to provide a detailed financial assessment of the levels, patterns and realities of profit making by companies in the current care 'market'.

It is a common, and seemingly reasonable, assumption that private care companies make their profits by charging a premium (profit margin) every time they take a fee from a council. This is an oversimplification of how private sector finances work, however. In most private care firms, profits are derived from many other aspects of how they conduct their business (including the deployment of private equity finance and company/share valuation, VAT recovery, mergers and acquisitions, and growing market share).

The idea that profit is made directly from each placement fee can lead to an assumption that if profit-making was no longer allowed, the costs of care would automatically drop and spiralling council bills on care placements would start to reverse. There is little evidence to support the view that fees (or costs) would simply drop in the absence of profit-making companies; however, that is not, and certainly should not be, the only basis for considering reform in this area.

Advocates of the removal of profit making from the care sector are generally seeking one of two slightly different policy solutions to achieve it:

(i) The introduction of a 'profit ban' on any care provider receiving public money.

(ii) A policy of bringing all care provision under public sector management – commonly referred to as 'in housing'.

Both options attract significant support, and each warrants examination. It should be emphasised, however, that both options would require legislative change, national investment and transition planning. Therefore, they are not discussed here as changes that local leaders, commissioners and practitioners could enact by themselves, but as ones they may wish to support, reject or advocate for. And as they are radical reforms that have not yet happened (and so without parallels to learn from), anticipation of their practical implications is offered as informed speculation on the part of the author, rather than being extensively evidenced.

(i) A regulatory profit ban

A profit ban already operates in relation to adoption agencies. The *Adoption Act 1976* sought to end the phenomenon of informal private adoptions by making sure that all adoptions (and practices around adoption) were regulated by councils. The only other organisations legally permitted to conduct adoptions on behalf of councils were those approved and registered as Voluntary Adoption Agencies. Section 95 [Prohibition of certain payments] of the *Adoption and Children Act 2002* significantly strengthened the previous regulatory ban by making any payments (including payments offered, asked for, made or received) for any role or involvement in the course of *any* child adoption a criminal offence punishable by fine or up to six months imprisonment. Section 96 then makes provision for the only permitted exception from the S95 prohibition of all payments, namely the fees agreed between councils and registered voluntary adoption agencies, who must, by law (under S2 of the same Act), be run on a not-for-profit basis.

A second profit ban was put in place through secondary legislation more recently. In 2014, the government was forced to amend proposed regulations to allow local authorities the freedom to delegate most children's social care functions to third-party providers. The amendment prohibited the 'outsourcing' of core functions, including child protection, to profit-making organisations (Butler, 2014). This U-turn and ban followed a campaign run on the overt premise that the precedent of the profit-ban in adoption should apply equally to child protection functions.[3]

So there is strong precedent in domestic public policy for creating profit bans in children's services. Many advocates argue that continuing to allow profit making by fostering agencies and children's homes is inconsistent with existing bans, and just as ethically objectionable as profiting from adoption or child protection.

In pragmatic terms, however, the two existing profit bans were introduced *before* any involvement of private companies had become a reality. They were what might be called preventative bans, rather than prohibitive bans. The effect of introducing a profit ban in the children's home market today, when 75 per cent of all homes are owned and run by private companies, would require very careful logistical and political assessment of how private care home providers might respond, and what that would mean for the children currently in their care.

3 See: **https://you.38degrees.org.uk/petitions/keep-profit-out-of-child-protection-1**

Advocates imagine that some private providers, given notice and support, might seek to become registered as community interest companies[4], with restrictions on their shareholder dividend payments, and 'asset locks' to designate the public purpose of their assets in the event of company sale or closure. However, even for those companies that might be willing to do so, that transition alone would require years of notice and due diligence. Nor could it be assumed that *all* current private providers would make such a transition away from profit making; providers may instead prefer to sell or wind up their business and get out of a market in which their company would have no profitable (or legal) future.

It could reliably be assumed, however, that an announcement of a planned profit ban would trigger a rapid 'flight of loan capital' by private equity investors in a significant minority of care companies. The sudden wholesale demand for repayment of investment and withdrawal of funds could push many existing private providers into administration. Some advocates may celebrate a rapid departure of private equity and companies from the market by any means, however sudden, as achieving the recalibration they seek. But given that it takes considerably longer to open a new children's home than to close down an insolvent company, there must be serious concern for the children living in private children's homes – for the stability of their lives and relationships, and what could happen to them, and the overall capacity of the sector, following any declaration of government intentions to ban profit-making.

(ii) Taking independent care homes 'in-house' to public sector management
An 'in-housing' strategy to bring all independent care provision under public management would not rely on a profit ban at all – it relies on the fact that as public authorities hold all of the duties and all of the budgets for children in care, they are fully entitled to make different decisions about how all care is provided. This solution essentially rests on the freedom of politicians and public officials to decide to make children's homes public again. However, it is important to note, for the historical record at least, that there has never been a time in this country when all care homes were owned and run exclusively by the public sector; even before the advent of private care providers, charitable organisations had a significant role in the provision of residential care. A wholesale 'nationalisation' of all care homes would represent an unprecedented change in the British care system wherein no charity would continue to operate children's homes either.

4 See: **https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies**

The practical barrier to an 'in-housing' strategy being enacted simply by making different commissioning decisions, however, is the fact the state is not free to commandeer the private properties currently entrusted to charities and owned by private companies for use as children's homes. Either the government would have to embark on a breath-taking attempt at voluntary or compulsory purchase of the nearly 80 per cent of children's homes it does not currently own, in order to bring them under public sector control; or the state would need to invest in a huge expansion of new public sector care homes in new locations, the increasing availability of which would enable commissioners to progressively stop buying care from private providers.

These anticipated challenges to implementing either a profit ban or an in-housing strategy, do not necessarily discount the value to policy-makers of considering them as long-term reform programmes, especially when many advocate such changes on important ethical (rather than purely financial) grounds. Nevertheless, they do serve to underline that, far from making immediate savings on public spending in the care marketplace, getting rid of the profit motive from the care sector would cost the taxpayer significantly more than is currently being spent, probably for a decade at least. Any such policies would also require intensive planning, and carry significant risks of major upheaval to children's care experiences in the course of implementation.

3 Reforming the whole system architecture

Relatively few children's sector leaders or expert bodies have yet publicly advocated a fundamental 'whole system' change from the model of government bodies commissioning and procuring public services such as children's homes; even fewer have offered a vision of what an alternative model or system might look like. Three recent reports are particularly relevant here, and these are summarised below. The first two address the broad dominant 'model' by which all public bodies make and manage commissioning decisions; the third is directly framed as a redesign for children's care commissioning. These brief summaries give a flavour of the nature of reform and practical changes proposed.

(i) **After Carillion: Public sector outsourcing and contracting** (PACAC, 2018)
This is a report of the House of Commons Public Administration and Constitutional Affairs Committee's (PACAC) inquiry that followed the collapse of public service outsourcing giant, Carillion. The committee's report offers an expert-evidenced challenge to some of the assumptions and practice dominant in public commissioning and procurement. While not discussing children's social care directly, the committee's findings have profound implications for the sector, and suggest a need to move away from the competitive marketplace approach entirely. In particular, MPs challenged all commissioners of public 'monopsonies' (i.e. markets where the *only* paying customer is the state itself) to take full responsibility for the entirety of the service provision on which they rely to meet their duties; this should include ensuring that 'markets' are stable.

The report challenges procurement officials' obsession with driving providers down on price, noting that the government's 'failure to assess the quality of services as well as their cost is lamentable' (PACAC, 2018, para. 71; see also Evans, 2018). It highlights that public officials' routine acceptance of lowest-price tenders was one of the factors that drove a huge company like Carillion to collapse. If a company with such huge capital, research and development capacity was still driven to financial collapse by its cheap pricing strategy to win bids, we must reflect on what a similar relentless focus on cheapest price may do to smaller organisations in other public commissioning markets. Perhaps most importantly, the committee challenged all public authorities to abandon all 'transactional' approaches to contractors (including things such as payment by results, and risk transfer stipulations), urging them instead to approach all public commissioning with non-statutory organisations as ongoing long-term relationships.

(ii) Human, Learning, Systems: Commissioning for complexity
(Lowe & Plimmer, 2019)
The Human, Learning, Systems approach to public commissioning has been identified and described by two partners – Collaborate CIC and Newcastle University Business School. Based on in-depth interviews with public sector commissioners and charitable organisations, the two partners have described emerging 'complexity friendly' ways of commissioning that seek to make this work more 'human' and 'systemic'. Their most recent report (Lowe & Plimmer, 2019) identifies that in order to create positive social outcomes in a complex world, commissioners, managers and practitioners are learning to embrace that complexity and work in a way 'that is human, prioritises learning, and takes a systemic approach'.

An earlier report in the series (Knight et al., 2017) includes a deconstruction of the damaging effects of 'New Public Management', which over four decades has created an oversimplified transactional public service system that is dominated by the 'three Ms' – markets, management and measurement.

Lowe and Plimmer (2019) describe the key characteristics of a **Human, Learning, Systems** approach:

> **Being *Human* to one another**
For those working on the ground, this means recognising the variety of human need and experience, using strengths-based approaches, building empathy to enable effective relationships, and intentionally working to create trust. Managers talk about 'liberating' workers from attempts to proceduralise what happens in good relationships; instead, the focus is on supporting workers to provide bespoke support. For commissioners, being human means creating trust with and between the organisations they fund, and letting go of the idea that they must be in control of the support provided with their resources.

> **Using *Learning* to enable improvement**
Those working in this way talk about learning and adaptation; their work is not about delivering a standardised service, but a continuous process of learning that allows them to adapt to the changing strengths and needs of each person they work with. For commissioners, this means using their resources to enable organisations to learn and improve. They are not purchasing services with particular specifications; rather, they are funding the capacity to learn and adapt to continuously improve outcomes in different contexts.

- **Looking after the health of the *Systems*:**
  Social outcomes are produced by whole systems rather than individuals, organisations or programmes. This means everyone working to create and maintain 'healthy' systems that enable people to coordinate and collaborate more effectively. The behaviour of commissioners is crucial to how relationships in the system are understood. Commissioners enable a collective and systemic response by reframing their relationships with providers: no longer do they see a purchaser/provider split, but a collective responsibility for creating the conditions for people to achieve better outcomes. They are stewards of a system of care and support.

A practical example of the Human, Learning, Systems approach to public commissioning is Plymouth Council's Alliance Contract for community services for adults with multiple and complex needs (Lowe & Plimmer, 2019, pp. 74-77). While this evolving commissioning model does not translate directly to children's care homes, it does powerfully illustrate that it is both possible and beneficial to suspend competition entirely in a previously competitive environment, while co-producing a new collaborative approach with all former competitors (public, charitable and private). The Alliance contract:

- Creates collective contractual promises between all parts of the system to collaborate and share risk with each other – all organisations are jointly liable for the performance of the contract.

- Creates shared open book accounting commitments that avoid all suspicions or miscalculations of over- or under-pricing, and allow no room for profit extraction.

- Offers certainty and stability of their role for providers of services. Providers know they will have a relationship with each other and with their funders for ten years. This means they can, in turn, offer to build stable relationships with those who use their services, without being required to meet performance indicators or the anxiety and disruption of re-tendering for new contracts every few years.

(iii) ***Children in Charge: Imagining systemic reform and redesign in care commissioning for children***
(Evans, 2016a)
This discussion paper from Children England builds upon their historical and market analyses of public service contracting and the residential child care sector (Children England, 2014; Evans, 2016b) to propose a radical rethinking of the funding and commissioning architecture for all forms of care for children, incorporating kinship, foster residential care and adoption together in one redesigned nationwide system.

The key features of the Children in Charge proposals are:

> The creation of a new national statutory body (the Care Bank) with a statutory duty towards every individual child in England who is subject to a care order, to pay for whatever care they need throughout their time in care, and into adulthood if they are a care leaver.

> A national dynamic purchasing system (with requirements for all providers to share open-book accounts) that would have the power, expertise and scale to scrutinise the finances and business practices of all providers of care in England, however small or large their operation, and irrespective of whether they are public, charitable or private in legal form. The Care Bank would have the oversight and expertise needed to make the most appropriate funding arrangements with each care provider – and a public duty to ensure they are getting best value for money in each deal (which is not the same as being the cheapest).

> The freeing up of local authority social workers and placement officers to assess, find and agree the 'right place, first time' for each child in their care, without being constrained by needing to know, negotiate or to justify, the price of the right option. They would do so safe in the knowledge that the Care Bank will deal with funding and ensure best value for money for any desired care option and provider.

> Greater power for children and young people themselves to expect their views to matter, and to assert their own preferences about where and with whom they most want to live. This would be backed by the Care Bank, who will ensure the money to pay for their care follows them where they want to go (this will include consistent financial support for kinship and foster carers, and special guardians).

> A vast improvement in national data, and therefore in the potential for learning from it; having a live source of intelligence about children's real pathways through care and beyond would include the potential to build authentic outcomes data for each child.

In the report of its inquiry into the funding of local authority children's services, the HCLG Select Committee called on the Department for Education to give close consideration to ideas for system reform, including those in this discussion paper, as part of an urgent analysis of the whole commissioning and procurement system (HCLGC, 2019, paras. 114-115).

Conclusion

Only a relatively small but highly vulnerable minority of children need residential care, yet children's homes remain one of the most misunderstood and poorly commissioned of all public services. In 2020, children's homes are the subject of widespread concerns, ranging from their insufficiency to meet rising care needs, to the fees and business models on which they operate. After a decade of cuts to the councils who procure them, the localised marketplace approach to commissioning children's homes has left many homes financially precarious, and important policy questions about their long-term role in the care system largely unanswered.

If there is any consensus about the national picture, it is that things simply cannot stay as they are. Everyone who cares about the quality, diversity and sustainability of good care for children now has a vital role to play in reflecting on, and advocating for, the reforms that will make a decisive impact on the care homes in our country. It is hoped this paper will contribute to informing that discussion.

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Reimagining residential children's homes

Commissioning children's homes: Potential improvements and reforms

Research in Practice aims to support the children's sector to use research in the design and delivery of services, to help secure better outcomes for children and families. We make reliable research more accessible – summarised and interpreted with the particular needs of those working with children and families in mind.

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This think piece on *Commissioning children's homes: Potential improvements and reforms* sets out why the children's homes market place (as it is commonly referred to) is unsustainable in its current form. Different explanations for this problem are presented along with various solutions and options for reform to promote debate in this area.

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