

Children first

The power of choice in children's services



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Foreword

The quality of our public services is one of 21st century Britain's key performance indicators.

Good services are so often the foundation of our national success and failing services the source of too many problems.

That is never more true than when we consider the services society provides for our children. A well educated, healthy and cared-for child is not guaranteed to be the business leader, the leading surgeon or the chief police officer of tomorrow. But it is certainly the case that the child with poor basic skills, or chronic and untreated health problems or forced to live in over-crowded and damp housing is less than likely to shine.

The waste of opportunity in the early years too often multiplies and grows over a lifetime.

And the reality is too many of our public services are failing our children. That is why the CBI is determined that reform must not only continue, but accelerate. We intend to play our part in ensuring these reforms succeed. When we needlessly or carelessly dash the hopes of our children we are all diminished.

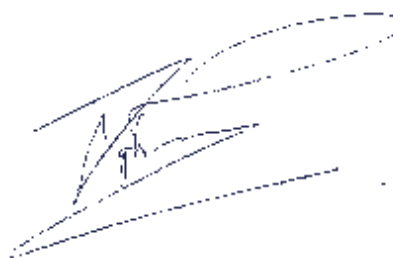
Of course, there is nothing about reform itself that demands the private and voluntary sectors have a role. We have to prove our worth just as much as any part of the public sector. We are not afraid of that challenge, indeed we relish it.

But one thing is clear. Without a level playing field that allows the charities, voluntary bodies and independent providers to offer their proposals and services, there will be no reform at all. Wrapping existing providers in a web of lopsided regulations or shielding them with a dysfunctional and perverse tax regime is not going to deliver any improvements.

In this area, as in so many others in the public services, the government faces a clear choice. It can opt for the quiet life: after all, children have no voice, either in elections or at party conferences. Or it can demonstrate it is as good as its word and act to ensure children come first, and quality and innovation are valued by ensuring the climate is right for voluntary and independent sector challengers to existing state monopolies to enter the market.

So far the government has procrastinated. We have had scoping surveys and investigations, and while the Childcare Bill represents a positive step forward in many areas, we still need to see that its words are backed up with thorough action across all areas of services for children.

It is never too late to deliver reform, and this report makes clear just what we expect the government to do to create a transparent and fair marketplace. Ministers say that is what they want to see, so now it is up to them to act.



Sir Digby Jones, Director-General, CBI

Executive summary

Children and young people deserve the best support society can provide for them, as what happens when we are young shapes our whole lives. The CBI supports the efforts the government is making to improve the range and quality of services for children.

The organisation of children's and childcare services is going through a period of great change. Responsibility for children has been brought together in one department – the Department for Education and Skills (DfES). Children's trusts are being established so all relevant agencies work together. In keeping with the approach of the green paper *Every child matters*, these trusts will have particular responsibility to provide the support needed by young people at risk.

Yet these efforts will be restricted in their scope and partial in their success if public agencies fail to take advantage of the wide range of expertise and innovation private, voluntary and independent (PVI) providers can offer. Making and managing markets in public services means achieving the best possible outcome for the public which is also cost effective for the taxpayer. The CBI wants barriers to fair competition to be dismantled and the government to work as hard on effectively delivering its strategies as it does on creating them. In order to deliver transformational improvements a co-ordinated approach is required which is driven by central government. This report identifies that:

- A clear lead is needed from the government in policy and practice
- Functioning markets are required for the best outcomes.

There are already some good examples of best practice in children's services, but this good practice needs to spread. It requires the government to act. The excuse of complexity is not a reason for delay: many of the measures proposed in this report could have a wider applicability to other public services. Children, young people and their parents are missing out while this agenda is not addressed.

The government has already taken steps to make and sustain markets through legislation, funding, performance management and other action such as the creation of a list of

approved providers. But despite these measures, serious problems remain in the way markets for children's and childcare services operate. The CBI survey of PVI providers sought to establish which policy solutions were required to ensure contestability in the market for children's services and higher quality provision. Based on these findings, this report recommends priorities for action.

The survey suggested that if these recommendations were followed, providers would feel confident to bid to provide services in many more areas than they are currently considering. This will help create the sustainable competitive market that will enable the full benefits of choice to be felt in children's services. The government will reap the benefits of better value for money, and users will enjoy higher levels of service.

This report identifies and addresses these priorities and makes recommendations in two main areas: clear leadership from government and action to create a functioning market.

A clear lead is needed from government in policy and practice

Only by exercising clear and strong leadership can the government influence both policy and practice on the quality of the market.

When the government has taken a lead progress has been good. One area where it has made a deliberate effort to establish contestability is in the provision of LEA services. This leadership needs to be maintained, but the impetus behind the policy initiative has slowed, even stalled. The government has failed to go far enough.

In childcare by contrast, a lack of government influence has damaged the sustainability of the market. The CBI is concerned that the current high level of investment, with limited contestability, could lead to oversupply in some areas. In addition, there is a worrying lack of knowledge about the developing arrangements for an *Every child matters* common assessment framework.

CBI recommendations

The government should:

- Use a number of levers on local authorities to encourage the creation of sustainable markets. These include: using the local area agreement (LAA) process, legislating that all authorities operating a best value regime have to act in a fair and transparent way in delivering their best value obligations; supported by a statutory requirement to promote open and accountable commissioning and procurement decisions; clear and consistent rules for PVI providers to be accepted onto the list of approved local authority childcare providers; and transparency in competition between schools and PVI providers
- Introduce a fair, unified inspection regime to ensure all providers are treated equally
- Issue statutory guidance which should be widely disseminated, and assess whether further regulatory action is required
- Provide better information for parents to help them make the best choice
- Establish a national dialogue forum to bring all stakeholders together.

Functioning markets are required for the best outcomes

Government actions alone will not suffice. In order to achieve the full benefits of choice and higher standards of service, it is essential a properly functioning market is created that providers can trust. Effective commissioning and economic interventions are essential to achieving this.

The CBI survey identified commissioning-related problems as a major source of concern among providers. There is much to do if the full scale of the contribution the PVI sector can bring to the *Every child matters* agenda is to be realised.

Aspects of commissioning and procurement practice also feature as problems – authorities have been ineffective at improving their procurement practice over the past three years.

CBI recommendations

The government should:

- Set out clearly which services should best be commissioned and at what level. This will help clarify the nature of a market in a particular service
- Issue guidance on how long contracts for different services should be and draw up and circulate model contracts
- Develop a clear model for carrying out market-led needs assessments
- Draw up lists of approved providers at local or regional level
- Set up a process to deal with complaints regarding market making
- Consider the introduction of a national tariff as cost transparency can aid market development
- Attach conditions to grants in order to assist market creation
- Consider using direct payment to boost innovation.

1: Putting children first – creating sustainable children's services

Children and young people deserve the best education, care and support society can provide for them. What happens when we are young shapes our whole lives. The CBI recognises the efforts the government is making to improve the range and quality of services for children. The urgent challenge is to take action in several policy areas in ways that are mutually reinforcing. Yet these efforts will be restricted in their scope and partial in their success if public agencies fail to take advantage of the full range of expertise and innovation private, voluntary and independent (PVI) providers can offer.

The CBI has already shown the performance benefits such action can bring to children's services through a report on the education system in early 2005.¹ In order to deliver transformational improvements a co-ordinated approach is required which is driven by central government. This report identifies that:

- A clear lead is needed from the government in policy and practice
- Functioning markets are required for the best outcomes.

There are already some good examples of best practice in children's services within the Department for Education and Skills (DfES) and other government departments. But this good practice needs to spread. It requires the government to act. The excuse of complexity is not a reason for delay: many of the measures proposed in this report could have a wider applicability to other public services. Children, young people and their parents are missing out while this agenda is not addressed.

This section sets out the opportunity that reform of the children's services market gives for improving the quality of service delivery. It points to the importance of involving all stakeholders, including PVI providers, and highlights several actions providers feel will be crucial to the success of reform. Later sections of the report will expand on these key points. Exhibit 1 points to some of these actions: clear leadership in policy and appropriate regulation must be accompanied by action to support the market through better commissioning and use of government funds.

PVI providers do not expect favours. Making and managing markets in public services is about achieving the best possible outcome for the public that is the most cost effective for the taxpayer. The CBI wants barriers to fair competition to be dismantled and for government to work as hard on effectively delivering its strategies as it does on creating them.

EXHIBIT: 1

A summary of actions required to create and sustain markets in public services



A new approach – a real opportunity

The organisation of children's and childcare services is going through a period of great change. The Laming Report has been a catalyst for major overhaul of children's services and a new approach has been adopted. Within government, responsibility for children has been brought together in one department – the DfES, and a green paper *Every child matters*,² has outlined the government's policy goals.

Children's trusts are being established so all the relevant agencies in an area – the local authority, the police, the NHS, schools, the criminal justice system and other organisations involved with children and young people – work together. In keeping with the approach of *Every child matters*, children's trusts will have particular responsibility to provide the support needed by young people who are at risk or who have particular needs.

Government aims to greatly increase the availability of childcare services

The ten-year childcare strategy is designed to expand and improve the range of childcare support available to parents and children. Councils will be required to provide 'sufficient' affordable childcare as far as practicable. An integrated inspection framework for childcare and early years education is to be set up, along with 3,500 children's centres providing a range of advice and support services. Entitlement to early years' education is also to be expanded. The *Youth matters*³ green paper, published in 2005, sets out a blueprint requiring local authorities to offer young people a range of 'things to do and places to go'.

Stakeholder involvement is crucial to achieving government aims

The CBI strongly supports the government's commitment to improve children's and childcare services. When agencies – public, voluntary and private – fail to work properly together they put the welfare of children at risk. The government's aspirations are to ensure:

- Parents are able to choose the form of childcare that best meets their needs
- Vulnerable children are protected
- Children and young people are involved in the decisions that affect them and in the services provided for them.

The government and public agencies will need to draw on all available resources and expertise as they implement these change programmes. CBI members are keen to play their part in meeting the needs of parents and children.

Organisations in both the private and voluntary sectors are already providers of services to children, young people and their parents.

Businesses have a strong record of providing services such as:

- Fostering and adoption placements
- Specialist services, including residential services, for children with multiple and serious disabilities
- Childcare
- Youth services
- Education services for children with behavioural or learning difficulties
- Careers advice.

CBI members have much to contribute to the government agenda both in terms of imaginative solutions and cost-effective services. The CBI's view is not that the private sector has all the answers or should always be the main provider. Rather, it is that as the new framework for children's and childcare services takes shape, voluntary and business organisations should be encouraged and invited to contribute to that emerging framework and enabled, through fair competition, to use innovative ideas and expertise to deliver the outcomes government seeks.

Provision is evolving, but significant problems persist

At present, the way in which services for children, young people and their parents are delivered is complex and varied but not yet fully developed. The range of services for children and the providers of them are wide and diverse. In October 2004, PricewaterhouseCoopers (PwC) undertook a study for DfES that scoped the market for children's services.⁴ The study categorised children's services into 19 areas and analysed the degree to which the public, private and voluntary sectors were involved in each of them.

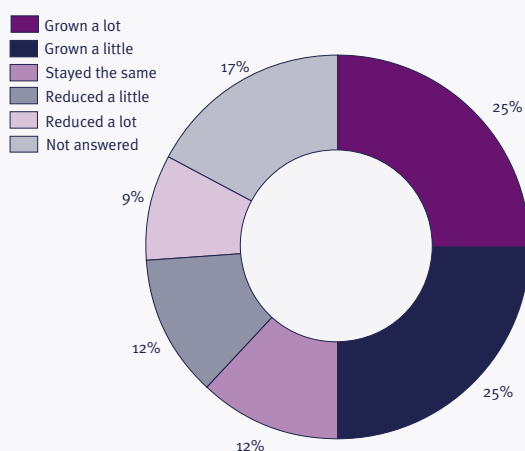
EXHIBIT: 2

Further developments 2004-2005

Service	Comment
Special educational needs	The public sector share is lower, and that of the PVI sector higher.
Fostering	There is more of a national dimension to the market.
Special schools	The PVI sectors are providing or running more special schools.
Family & parenting services	There is greater provision by the public and voluntary/community sectors.
Children's centres	Predominantly run by the public sector.
Social work for children	The voluntary sector is providing a greater proportion.

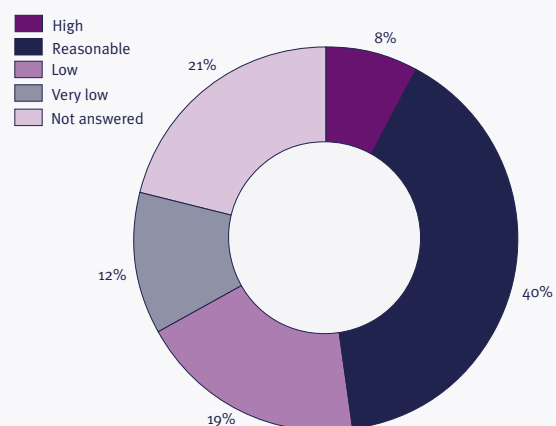
Source: CBI Survey

EXHIBIT: 3

Development of commercial opportunities in children's and childcare services over the past 12 months

Source: CBI Survey

EXHIBIT: 4

Rates of return on contracts for children's and childcare services

Source: CBI Survey

While the public sector was the predominant provider in most areas, the PVI sector had a medium stake in just over half the areas, but only a high or predominant role in three: childcare, Connexions⁵ and children's homes.

The CBI surveyed PVI providers about developments in this area since the PwC study was produced.⁶ Respondents were asked to comment on whether, one year on, it was still accurate to describe the shape and operation of the market for children's and childcare services in these ways. Respondents felt that progress was slow and the situation had moved on in only a few areas (Exhibit 2).

The survey also pointed to the impact of the extra investment in children's and childcare services, with around half of survey respondents reporting commercial opportunities were expanding; for a quarter of firms this was by a significant amount (Exhibit 3). But more than a third of respondents stated that commercial opportunities were the same or reduced.

The government's plans for children's services will require a sustainable market. Without this few providers will wish to take the risk of participation. An important measure of the sustainability of a market is the ability of providers to make a reasonable rate of return on their investment. Just under half of providers reported that they are making a reasonable rate of return but nearly a third seem to be operating at the margin, with a low or very low rate of return (Exhibit 4). This has potentially serious implications for the future provision of affordable childcare. Without reasonable margins for providers, choice is likely to be limited.

Clear and focused policy action is needed to ensure competition can deliver better children's services

The government has already taken a number of steps to make and sustain markets through legislation, funding, performance management and other actions such as the creation of a list of approved providers. But despite these measures, serious problems remain in the way markets for children's and childcare services operate. The CBI survey of PVI providers sought to establish which policy solutions were required to ensure contestability in the market for children's services and higher quality provision. These cover action in the four areas identified at the beginning of this section. As Exhibit 5 (page 10) shows, all but one of the interventions proposed to improve performance and contestability were strongly or overwhelmingly supported.

These policy changes would enhance the confidence of providers in doing business with the government. The survey of PVI providers suggested that if these steps were taken, providers would feel confident in bidding to provide services in many more areas than they are currently considering. This would help create the sustainable competitive market that will enable the full benefits of choice to be felt in children's services. The government would reap the benefits of better value for money, and users would enjoy higher levels of service.

Chapters two and three of this report develop these priorities for action through a series of specific recommendations. They centre on the need for clear leadership from the government on the benefits of choice, and for co-ordinated action to create a market to supply these benefits.

EXHIBIT: 5

PVI providers' response to potential policy interventions

Overwhelmingly supported	Strongly supported	Not supported
A statutory duty on local authorities to act in a fair and transparent way	More services commissioned regionally	More services commissioned nationally
Stronger statutory guidance on using a wider range of providers	National or regional lists of approved suppliers for certain services	
Enabling councils to contract out services that currently can only be delivered directly	Exemplar projects to demonstrate good commissioning	
Resolution of VAT problems	Involving PVI providers in local needs assessments or commissioning forums	
Longer contracts	Standard contract conditions	
Standard and transparent reporting of unit costs for each local authority	National steering group with DfES and LGA to discuss commissioning problems	
	Inspection report on commissioning	
	A national complaints procedure on commissioning	

Source: CBI Survey

2: A clear lead is needed from government – in policy and practice

By exercising clear and strong leadership the government can influence both policy and practice on the quality of the children's services market. Part of the problem is that, until now, it has been unclear whether the government sees the PVI sector as an alternative when – but only when – public provision is unacceptably poor, or as an alternative provider across the board.

This chapter identifies the benefits that can accrue in areas where the government takes a clear leadership role and the need for it to do so across children's services. It makes key recommendations on how to achieve this.

Policy and practice actions required

- Leverage local markets
- Impose inspections regime
- Provide statutory guidance
- Better information for parents
- Establish a national dialogue forum

Sustained leadership produces progress

When the government has taken a lead, progress has been good. One area where the government has made a deliberate effort to make a market is in the provision of LEA services. Shortly after coming to power in 1997, the government introduced inspections of LEAs by the Office for Standards in Education (Ofsted). LEAs with unfavourable inspections were inspected again. Where there was insufficient improvement, some authorities were persuaded or obliged to have their services outsourced. DfES assisted this process by:

- Using inspection to establish the benchmark for an acceptable level of service
- Giving the secretary of state the power to oblige underperforming authorities to make alternative provision for discharging their duties

- Establishing a list of approved providers
- Legislating to remove barriers to contracting out certain LEA functions
- Enabling schools to establish companies to procure or supply services
- Setting aside £1.8m in 2001 to fund 11 projects to develop new and innovative ways of working with the private sector.

As a result, 20 LEAs have either outsourced education performance improvement and management to the private sector or involved an external provider in a substantial way.

This leadership needs to be maintained, but the impetus behind the policy initiative has slowed, even stalled. An evaluation in 2003 of new ways of working in local education authorities reported: 'The development has, we understand, been less than was hoped for by policymakers.'⁷ It has certainly also been a disappointment to suppliers of services. The government appears to have decided not to continue with the policy, beyond dealing with seriously underperforming LEAs. The strategy has effectively been to deal with public service failure rather than create a contestable market place. This is a telling illustration of how leadership by government has failed to go far enough.

Childcare – lack of government influence damages sustainability

A market is already well developed in childcare. In part this is because parents have for many years spent their own money and exercised choice in buying childcare, whether this has taken the form of an au pair, a playgroup place or full daycare for their child. In 2003, parents spent around £3bn on childcare.⁸ This state of development is also because government policy since 1997 has sought to make a more sustainable and affordable market in childcare by boosting both supply and demand, as Exhibit 6 (page 12) demonstrates.

EXHIBIT: 6

Government measures since 1997 to support the development of the childcare market**Supplieside measures**

- Capital and start-up revenue funding to create 45,000 neighbourhood nursery places providing good-quality childcare to children and families in disadvantaged areas
- 180 Sure Start children's centres (planned to rise to 2,500 by 2008 and 3,500 by 2010) providing integrated childcare, early education and family support services for the under fives
- Funding for local authorities to incentivise the creation of places with registered childcare providers
- £218m of lottery funding via the New Opportunities Fund, creating over 300,000 childcare places for school age children
- Grants to recruit and train childminders.

Demandside measures

- The introduction of an entitlement to 12.5 hours a week free early years education for all three and four year-olds. The entitlement can be 'cashed in' with any approved provider in the public or private, voluntary or independent (PVI) sector
- The introduction of childcare tax credit (now the childcare element of the Working Tax Credit) worth, until April 2005, up to £135 a week for qualifying families with one child and £300 per week for families with two or more children
- Support for employers to offer up to £50 per week towards the cost of childcare, free of any tax liabilities and NI contributions
- The establishment of a children's information service in every local authority to provide information and advice about access to childminding and childcare.

Government funding for childcare was £1.1bn in 1996/97. By 2007/08 it is planned to rise to around £5.5bn.⁹ The impact of these measures has been a net increase of 525,000 in the number of childcare places since 1997, with many of the places being in areas where there was previously no existing market for, or provision of, services.

This expansion of the market has particularly affected the PVI sector. Ofsted reports that the number of out of school clubs – most of which are run by PVI operators – has more than trebled since 1997 and the number of places in those clubs more than quadrupled.¹⁰ The National Audit Office (NAO) estimates that between 1997 and 2003 there was a 90% increase in private sector day nursery providers.¹¹ The majority of parents of three-year-olds use PVI nurseries.¹²

Despite this apparently healthy situation there are significant problems with how the childcare market is operating. For example, the National Audit Office (NAO) report pointed to a substantial regional and local variation in the provision of pre-school childcare places with the number of places varying between 11 and 58 places per 100 pre-school children across local authorities.¹³ The NAO also highlights the problem with the sustainability of the childcare market. Between March 1999 and March 2003, 626,000 new childcare places were created in England, but at the same time 301,000 closed (Exhibit 7). The government accepts the turnover and closure rates for childcare providers are 'high in comparison with other small

businesses'.¹⁴ This lack of sustainability in the market is a symptom of the government's failure to give a clear lead on the desirability of a sustainable market in children's services.

This lack of sustainability is attributable to a number of causes. These include variable levels of demand, affordability, a lack of business planning skills, short supply of skilled workers, poor quality information services, and poor strategic procurement and market making.

EXHIBIT: 7

Change in total number of childcare places 1999-2003 by year

Source: Based on information contained in *Choice for parents, the best start for children: a 10-year strategy for childcare*, HM Treasury, DfES, DTI and DWP, December 2004.

Source: National Audit Office

CASE STUDY

WALSALL AND SERCO

After Walsall received a poor Ofsted inspection in 1999, which identified a 'formidable list of weaknesses', Serco Learning was contracted in July 2001 to strengthen the LEA's response. Initially the contract only covered a limited range of services. After a follow-on inspection in April 2002 the improvements across the LEA were considered fragile and the impact of intervention was not being felt. This was because in those areas remaining under LEA management there were weaknesses at the corporate centre. Consequently, Walsall was required, under DfES direction, to outsource all its LEA services to Serco from 2002. The expanded contract covers the school improvement function, behaviour support, children in public care, support for attendance, Key Stage 4-excluded pupils and pupils whose parents choose to educate them at home. A full transfer of staff has taken place. Since then:

- Improvement in Walsall has surpassed the national average in KS2 and 5+ GCSE A*-Cs
- Against its statistical neighbours¹⁵ (SNs) the same pattern emerges with Walsall out-performing its SNs in KS2 and 5+ A*-Cs
- By 2005 the service had improved to the extent that Ofsted commented:

'The secure partnership between Education Walsall and the council has ensured that the council operates with similar decision-making processes to a council without formal intervention.'

But the CBI is particularly concerned by the possibility that current high levels of investment, with limited contestability, could lead to oversupply in some areas. Better strategic procurement and market making is required.

Some of the government's current actions suggest that it is ready to take a lead in changing policy and practice to address current problems. For example, the draft statutory code of practice on the entitlement to free nursery education:¹⁸

- Makes clear that 'local authorities should fund both the maintained and PVI sectors fairly, transparently and equitably'

'Education Walsall has improved the quality and effectiveness of its work in this area and now delivers better services to schools. This has been achieved by a skillful reorganisation of teams and responsibilities.'

'There is a strong culture of continuous improvement within Education Walsall.'

'It is indicative of the strength of this partnership that both parties have agreed that all bonuses and penalties relating to the meeting of contractual targets should be re-invested in the education service.'

'School inspections over the last year indicate that this focus is bearing fruit, with the leadership of headteachers judged consistently to be good or better.'

'There is good reason to have confidence in the capacity of the LEA, in partnership with Education Walsall, to make further improvement in the implementation of the [school improvement] strategy.'¹⁶

This perception is shared by headteachers in Walsall:

'Education Walsall and Walsall Metropolitan Borough Council are working very effectively as partners and are now being ably supported by elected members. This is an authority which is not only improving rapidly, but also has great capacity to further improve.'¹⁷

- Encourages authorities to take advantage of the rolling three-year, ring-fenced budget for schools that is being introduced and to '...set rates for PVI providers over three years'. This should help to deal with the budgetary uncertainty which many providers find a problem
- Tells school admission authorities they should not 'give priority in their arrangements to children attending the nursery or otherwise imply that parents have to enrol their child at the nursery to secure a school place,' since to do so would disadvantage parents who take up the free entitlement in the PVI sector and so distort the market

- Recommends 'effective and mutually beneficial partnerships between PVI and maintained sectors.'

If parents are to have a genuine choice about where to send their child and how to use their entitlement, there has to be a clear lead from government on establishing a level playing field across the country and between different sectors so that proper comparisons between service providers can be made. The government should send a clear and strong signal of the importance it attaches to market making by including effectiveness in making and managing markets as part of a joint area inspection of children's services. This would show the government means business.

The government should use levers on local authorities to achieve its policy goals

There are a number of steps that could be taken to achieve government aims:

Firstly, the government could use the local area agreement (LAA) process, where central government and local agencies come together to agree action on a range of national and local priorities. Local authorities are paid a bonus if they achieve the agreed outcomes. Government could include the creation of a diverse range of providers for children's services or a sustainable local market for childcare as outcomes to be delivered within the scope of LAAs.

In 1999, the government introduced a requirement on local authorities to secure best value in delivery of their services. Best value has played an important role in creating a more open, diverse and pluralistic approach to service provision within local government. But much of best value implementation revolves around process: best value performance indicators which in turn feed into an annual and then a comprehensive performance assessment (CPA). These measures have their value but can tend to become ends rather than means, as authorities become more interested in chasing CPA ratings than working out the best way to deliver services.

Secondly, the government should legislate to require all authorities operating a best value regime to act in a fair and transparent way in delivering best value obligations. Such an obligation would, for example, require local authorities to consider all providers – and not just publicly sponsored providers – when commissioning children's services or allocating childcare subsidies on market sufficiency or social policy grounds.

Thirdly, this legislative requirement should be supported by a statutory code of practice that would promote open and accountable commissioning and procurement deci-

sions. The code would, for example, give teeth to the principles set out in the commissioning guidance for children's trusts and ensure that those responsible for making commissioning decisions were independent of service providers.

Fourthly, an urgent review of constraints on public authorities' ability to work with other providers is necessary. For example, there are requirements and restrictions on how pupil referral units operate. These are constraining the ability of some organisations with great expertise and experience in educating young people with behaviour problems from being able to provide such facilities and services.

Fifthly, clear and consistent rules for PVI providers to be accepted onto the list of approved local authority providers of childcare are essential to provide certainty. Local authorities are to have discretion not only in applying the rules, but in deciding what rules are appropriate in each area. The CBI view is that it would be easier for parents and fairer, more consistent and more predictable for providers if rules on gaining approved provider status were standardised across the country. Such rules would also help ensure lists of approved providers are used to encourage, and not restrict, choice and innovation. The arrangements for an appeal process in the event of being denied access to the approved provider list should also be set nationally.

Sixthly, the government should ensure transparency in competition between schools and PVI providers for childcare provision. As parents are to be given the right from 2007 to use the early years entitlement to nursery education more flexibly, schools are being encouraged to integrate their free nursery education provision with wraparound childcare paid for by parents. This will be welcomed by many parents, and many schools are likely to offer this service in partnership with childminders or PVI providers. But some schools may decide to expand their own provision, so it is important this is done on a fair and transparent basis. The same concerns also apply to after-school childcare.

A level playing field on inspection is required

It is right that urgent action is taken to deal with low-quality childcare or nursery provision wherever it is found. So we can understand why, if an Ofsted inspection reveals unsatisfactory provision by a PVI provider of nursery education, the government is empowering local authorities to require providers to establish an action plan. We can also accept that in extreme cases, it might be necessary for an authority to withdraw a PVI provider from its approved directory of providers. We hope this would be a rare event,

as it would mean the provider would not be recognised or eligible for early years funding. In fact, a provider could well be forced out of business, particularly as removal from the local directory means no reinstatement for at least 12 months.

These are firm measures to protect the quality of nursery education, which will reassure parents. It is, however, anomalous that parents get less protection if their child receives free nursery education at a maintained school.

A local authority must state what action it is going to take to help the school overcome its difficulties. The school could be put into special measures, subject to re-inspection and ultimately closed if it did not improve. But unlike PVI providers, it can continue to trade as normal and provide a service in the meantime. This dual standard seems to breach the 'fair and transparent' rule.

Statutory guidance will be an essential tool – but regulation may be necessary

Many of the actions the government is taking to create a market in children's services are being introduced as guidance. But much of this guidance is non-binding. Apart from exhortation there appear to be no levers that will help the government make a reality of the policy approach. Statutory guidance is essential to help reach policy goals.

The 2005 Childcare Bill does take some regulatory steps. It gives a statutory duty to English local authorities to '...secure, so far as is reasonably practical, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare to take up or remain in work, or to undertake education or training which could be reasonably be expected to assist them to obtain work'.¹⁹ It also introduces a presumption that the local authority will not be a default provider of these services.²⁰ The decision to introduce a legislative presumption against direct provision is a good example of how legislation can be used to maintain or stimulate a market. There are several other measures that could be equally powerful in their impact.

Better information services for parents are vital

A childcare market needs well-informed consumers if it is to operate effectively. Despite the introduction of children's information services, the NAO found that they were not used '...by the majority of parents, who rely much more on informal sources of information in choosing providers'.²¹ The report for Sure Start found the impact of various information initiatives to be 'not yet discernible'.²² Clear policy and good information driven by government will build confidence in the market.

A national forum would improve dialogue

Building confidence in the market and creating sustainability could be facilitated by setting up a forum at a national level where representatives from government, the PVI sector and local authorities could discuss policy and practice issues. Although *ad hoc* sessions do occur from time to time, there is no regular or structured forum for developing understanding and discussing policy. There would also be a case for having forums at a regional level linked to the regional centres of procurement excellence. This need is reinforced in some of the responses to the CBI survey. There is a worrying lack of knowledge among respondents about the developing arrangements for an *Every child matters* common assessment framework: around three quarters of the respondents answering this question said they were either poorly informed or unaware of any new arrangements. There was more knowledge about the new legal framework for delivering childcare and the creation of children's trusts, but the majority of respondents were still either poorly informed or unaware of the new arrangements. This lack of knowledge is hardly surprising, given there is no regular forum for the PVI sector to discuss policy and market developments with ministers and officials.

Summary of policy and practice actions required

The government should:

- Use a number of levers on local authorities to encourage the creation of sustainable markets
- Introduce a fair, unified inspection regime to ensure all providers are treated equally
- Issue statutory guidance which should be widely disseminated, and assess whether further regulatory action is required
- Provide better information for parents to help them make the best choice
- Establish a national dialogue forum to bring all stakeholders together.

These actions alone will not suffice as they need to go hand in hand with measures to create a sustainable and competitive market – this is the theme of chapter three.

3: Functioning markets are required for the best outcomes

In order to achieve the full benefits of choice and higher service quality, it is essential a properly functioning market is created that providers can trust. Effective commissioning and economic interventions are as essential to achieving this as government leadership.²³ This section sets out the barriers currently preventing effective commissioning and economic actions contributing to better services, and suggests actions to remedy them.

Actions required to support the market

- Clarity on regional and local procurement
- Longer contracts and model contracts
- Approved list of providers
- Standard models for needs assessments
- Regional or national complaints process
- Cost transparency
- Conditions of grant
- Direct payments

Government must act on commissioning problems

The CBI survey identified commissioning-related problems as a major source of concern among providers (see Exhibit 8). Respondents were asked to assess which issues were causing the most problems for them. Budgeting and financial uncertainty emerged as the top two problems, followed by changing specifications and VAT issues.

Aspects of commissioning and procurement practice also feature as problems, the majority of respondents saying that authorities have been ineffective at improving their procurement practice over the past three years. Although most respondents were involved to some degree in local authorities' needs assessments and plans for joint commissioning, there is much to do if the full scale of the contribution the PVI sector can bring to the *Every child matters* agenda is to be realised.

Clarity is required in this area. The CBI recommends that the government should set out which services it thinks should best be commissioned by frontline organisations, such as schools, which by local authorities and which by regional consortia. This will help clarify the nature of a market in a particular service.

AEP: where PVI is not being fully exploited

A good example of an aspect of children's services where there is little use of the PVI sector is in alternative education provision (AEP). In 2003, DfES published the results of a survey of alternative education provision.²⁴ AEP covers the provision of educational services for pupils who, for a variety of reasons, need to be educated outside mainstream schooling. The survey included results from 120 of the 150 local education authorities in England. It showed that in 2002/03 local education authorities (LEAs) each spent on average just under £1.8m per year each on services such as:

- Pupil referral units
- Home tuition
- Work-based learning
- Specialist units for young mothers
- Hospital schools
- Other specialist services such as secure units, independent schools and private residential childcare.

On average only 14% of LEA spending went on non-LEA provided services (Exhibit 9). This was despite the wide range of available voluntary and private organisations with track records in reaching and working effectively with pupils posing the most challenging behavioural problems in a way that statutory services find hard to do. Eighty-six percent of the spending went on services directly provided by local authorities themselves. On average, only £234,000 per LEA was spent on non-LEA services.

EXHIBIT: 8

Scale of problems encountered when bidding for children's services and childcare contracts

Issue	Rating (1 = creating most severe problems)
Unrealistic budget for the service	1
Public sector budget uncertainty	2
Changing specifications	3
Application of VAT rules	4
Absence of a standardised approach	5
Complex procurement models	6
Multiple customers/clients	7
Failure to address policy issues at the outset	8=
Poor baseline data	8=
Inadequate specifications	10=
Over-specification	10=
Many small buyers in the market	10=
Undue support for in-house bid	10=
Regulatory and inspection requirements	14
Political interference	15
EU procurement regulations	16

Source: CBI Survey

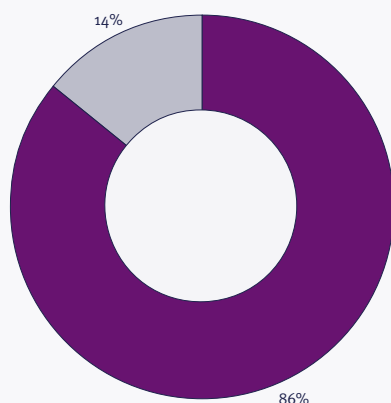
This low level of spending is further reflected in the fact that only 47% of the authorities made use of services provided by the private sector and only 44% procured services from the voluntary sector. The survey also reported that a third

of authorities were unable to provide information on their spending on external providers, a lack of transparency apparent in other service areas.

EXHIBIT: 9

Use of LEA spending in alternative education provision

■ In-house
■ Commissioned provision



Source: CBI Survey

In general, local authorities have responded well to the task of creating new childcare places. But their funding streams and targets have tended to be ad hoc. This has failed to encourage the development of a strategic approach to childcare markets in their localities. A recent survey of 26 rural and urban authorities across England by the Daycare Trust²⁵ found around half had conducted a needs assessment in the past 12 months. Significantly, where such an assessment had been undertaken it was not unusual for authorities to find surpluses in some areas and gaps in others. This points to the need for government action to improve the use and quality of needs assessments.

The government should also develop a clear model for carrying out market-led needs assessments both for children's and childcare services. But if children in a locality are to have access to the best range of services then the needs assessment must also include a supply side assessment, drawn up following consultation with PVI providers. Similarly, instead of commissioning or creating childcare places on an ad hoc basis, local authorities should work closely with PVI

providers to map provision and assess sufficiency and sustainability. Standard models for undertaking these tasks should be developed.

Other limited steps are being taken to address these concerns, but they need to go further. At the time of writing, the DfES was finalising its framework for joint planning and commissioning of children's and young people's services.²⁶ Responsibility for commissioning a number of services – careers advice and behaviour management – is being devolved to schools or groups of schools. The vision offers some possible models, but this is where standard contracts, nationally or regionally approved lists of providers and nationally negotiated tariffs – discussed later in this chapter – could help improve the quality of the market.

Two of the key principles of the proposed joint planning process contained in the guidance address some providers' concerns. The document states that:

- The planning and commissioning function should exercise independence of decision making from service providers
- Commissioners must follow national and EU procurement laws and decisions must be transparent and fair.

These are important principles and the guidance based on them also contains advice the CBI endorses. For example, DfES recommends that in deciding how to purchase or commission services, local partners should include '...drawing in alternative providers to widen options and increase efficiency.'²⁷

The guidance also endorses the use of standard contracts, consistent commissioning processes, outcome-based contracts and long-term contracts to '...encourage providers to invest in services and innovate preventative solutions.'²⁸ Significantly, it also includes a welcome section on developing, diversifying and creating local markets. This is very welcome, but regulation may also be necessary.

The CBI recommends that DfES should build on the progress that has been made by issuing guidance on how long contracts for different services should be and drawing up and circulating model contracts through its recently established Centre for Procurement Performance. The guidance would not be binding, but the CBI believes it would be welcomed by commissioners and providers alike. Longer contracts are also likely to have the benefit of producing greater up-front investment by the private sector as it has a longer period over which to make a return.

Connexions: a good commissioning model at risk

Connexions provides assistance to all young people on careers, education, housing, health and social services, with additional targeted support available to those most at risk or in need of help. Connexions' services are delivered directly by local authorities as well as through public-private partnerships.

The *Youth matters* green paper proposes that responsibility for commissioning information, advice and guidance (IAG) services be devolved from the Connexions service to local authorities. In turn, local authorities will be expected to devolve mainstream funding for this function to groups of schools, with support for children at risk or with particular needs being channelled through children's trusts. In practice this means the end of the Connexions service as it is currently organised. It is one of the few areas of children's services where a market has been operating. The consequence of the change looks likely to be less, not more, contestability.

Since February 2004 at least seven contracts for this service have been brought in-house on contract expiry.²⁹ The uncertainty around the future of Connexions has contributed to this. For example, Wiltshire County Council decided in October 2005 to bring the Wiltshire and Swindon Connexions partnership in-house from April 2006. The bulk of the service had been operated by a CharterMark-rated private provider for nine years. Among the reasons cited for this decision was that it was '...not clear what the specification of any new service might be given the publication of *Youth matters*.'

In addition, a lack of competitive neutrality has skewed the market. Before 2002, the VAT charged by contract providers was reclaimable from HM Revenue & Customs, resulting in a level playing field between in-house and external provision. But in 2002 a decision by HM Revenue & Customs in relation to Connexions' role in providing advice and assistance to young people meant funding paid by DfES was deemed to be a grant rather than consideration for a service, so VAT on contracts in which the private sector was involved was not refundable. This anomaly was resolved in 2004, with the level playing field being preserved by the allocation of additional funding from DfES. Yet in February 2004 it was decided this funding would no longer be provided, which led to in-house teams being given a 17.5% competitive advantage.

The policy approach outlined in *Youth matters* will also have two other impacts on the market for youth and support services. First, Connexions services are currently procured on a cross-authority or sub-regional basis. As the component parts of Connexions are devolved to local authorities and groups of schools, providers will have to engage with many more commissioners. The market will therefore become much more diverse and fragmented. This could make it possible for

niche providers to enter the market, but it could also render it uneconomic for larger players to stay in unless there is some approved list arrangement.

Lists of approved providers should be drawn up at local or regional level, in accordance with where the service is being commissioned. This will be particularly beneficial for schools, who are unlikely to have either the time or expertise for in-depth vetting of potential providers of behaviour support and extended school services. It will also assist providers who, as more services are devolved to schools, could struggle to make known their services to a more fragmented market.

A national complaints process is needed

At present, there is no independent body to which users or providers can raise concerns about the commissioning process and where they can have confidence these will be addressed. Providers have no option other than not making a complaint or going to court. The CBI recommends that the government should set up a process, operating at either a regional or national level, to deal with complaints regarding market making and management. The education white paper of October 2005³⁰ commits the government to establishing the Office of the Schools Commissioner. The commissioner's role is primarily to help bring about a more diverse range of school providers and, as part of this role, challenge local authorities if it is considered they are not doing enough to promote choice diversity and fair access. The government should create a similar sort of function or process in respect of children's and childcare services.

Economic incentives can improve outcomes

The government should use its role as a funding provider to create incentives that support well functioning markets. One example of how this can be done is improving cost transparency, which is currently lacking in a number of areas. Ensuring the real unit costs for key activities are reported in a standard, open and consistent fashion will be vital in securing competition, and therefore real choice. This will help cost comparisons and drive efficiency, ensuring it operates in a fair and transparent way.

At present, a lack of cost transparency could be damaging. The government's intention, included in the Childcare Bill, to enable local authorities to subsidise childcare could be counter-productive. While it is intended to benefit parents by making childcare in particular areas or for particular groups of parents more affordable, if not implemented appropriately it could end up causing more harm than good.

As a matter of public policy an authority may wish to subsidise childcare provision, either to pump prime or sustain places in areas where the market would not otherwise provide them. Such action may, for example, be necessary if

authorities are to discharge the proposed legal duty to provide a sufficiency of childcare. A government or a local authority may decide to subsidise childcare provision for certain groups of children or families on social policy grounds. But the CBI recommends that such subsidies must be made on a fair and transparent basis and allocated following a competitive process. If this is not the case, childcare providers may start to vacate the market – the very outcome the policy was designed to avoid. The CBI also believes an assessment on the overall impact on the local childcare market should be carried out before decisions are made on the scale and scope of any subsidies.

The NHS provides a good example of how cost transparency can aid market development. The introduction of a national tariff – payment by results – for a wide range of elective surgical procedures has:

- Driven efficiency by making hospital trusts apportion their costs more accurately and by incentivising them to scrutinise their costs base
- Supported the development of patient choice, enabling patients to move round the system without price being an issue
- Provided a fairer and more consistent basis for hospital funding, reducing reliance on historic budgets or the negotiating skills of particular managers.

Areas where such an approach might be applied include the funding of nursery education and children centres. Both are services provided on the basis of national standards. The introduction of such an approach would have to be phased but it could provide much greater budget transparency and certainty.

A variation on a tariff system is being piloted by the London Development Agency (LDA) with support from DfES. The childcare affordability programme (CAP) is potentially an effective model of a transparent standardised system to provide public support for childcare. The CAP scheme, which is being run through the London boroughs, is open to all Ofsted-registered group childcare providers in London. The aim is to make childcare more affordable for low-income parents and incentivise providers to move to more flexible childcare arrangements to better suit parents' working patterns (see case study, page 20). The CBI welcomes being involved in evaluating this initiative.

CASE STUDY

THE CHILDCARE AFFORDABILITY PROGRAMME

The London Development Agency (LDA) is, with DfES support, co-ordinating a package of LDA and Sure Start funding 2005-2008 to subsidise full daycare and flexible childcare places in London, creating the Childcare Affordability Programme (CAP).

Throughout the three-year duration of the project, CAP will support a combination of subsidised daycare places and flexible childcare. London boroughs are invited to seek applications from group childcare providers in their area, to subsidise up to 50% of the childcare places they are offering for parents. CAP subsidised places will either be:

- Affordable daycare: group daycare providers can bid for full daycare places to be subsidised up to £30 a week for families in receipt of the Child Tax Credit at a higher rate than the family element

- Affordable flexible childcare: providers can apply for funding to offer improved flexibility of places in terms of the number of hours per day or session at the times of day and day per week. Providers have to decide on the level of flexibility they wish to offer and include this in their application. Providers will be able to apply for up to £68 a week per 'place' – ie per full-time place converted to flexible care.

Providers can apply for funding to offer 50% of the registered childcare places for either, affordable day care or, affordable flexible childcare or a combination of affordable daycare and affordable flexible childcare places.

Conditions of grants can speed the creation of markets

The CBI supports the establishment and operation of children's centres. The principle of the policy to set up 3,500 centres across the country is not an issue but the way the policy is being implemented could be detrimental.

The implementation strategy for this policy is not making the best use of public money. For early years provision the government has accepted the principle of '...building additional childcare services around existing provision of stand alone early years' education places'.³¹ The government is investing in new and free-standing facilities – children's centres – when there is an existing childcare setting and service on which to build. The guidance issued in July 2005 began to address this by encouraging authorities to build on nursery schools, neighbourhood nurseries and early excellence centres to create children's centres providing the comprehensive service the government wants.³² But references to building on existing PVI provision were absent. New guidance on children's centres was issued in November 2005.³³ It provides clarification that existing provision – including PVI provision – should not be simply duplicated by children's centres. But it does not go far enough. The guidance does not establish the principle of contestability - ie that councils should invite providers to compete to establish and run children's centres. While it recognises a mix of service provision is crucial to the success of children's centres, it does not support this with action. The guidance only requires that local

authorities should determine whether it is appropriate for PVI providers to deliver services or run new children's centres before they do so themselves. They need '...only look to involve PVI providers' and are advised only that '...an element of contestability can help to improve both the quality of provision and ultimately outcomes for children and families'.

The CBI recommends that where appropriate, the government should attach conditions to grants in order to assist market creation. It could, for example, make it a condition of a grant for children's centres that a local authority had followed a contestable process in deciding who should provide or operate the service. If it were reluctant to adopt that approach across the board it could apply the policy to authorities achieving a low CPA rating.

The government should act to provide a level playing field for costs. The CBI has already made strong representations about the unfair costs that accrue for commercial operators having to pay VAT on transactions from which local authorities are exempt. The government must also ensure that the public and PVI sectors are charged on the same basis for registration and inspection costs. Removing these barriers will demonstrate to suppliers the government is committed to the operation of a fair market.

Direct payment can boost innovation

Consideration should be given by the government to whether new demand-side measures could empower parents and children and stimulate competition on the

supply side, providing they are administered in an effective and non-bureaucratic manner. For example, the principle of direct payments to people with disabilities is now well established and the CBI would support establishing a scheme to test the application of such an approach to children with special educational needs. The local authority would, as now, be responsible for the assessment of need but would then make a payment to the family, who would arrange their own package of support. Such an approach might not be applicable in cases where there were multiple or very specialist needs, but a pilot scheme would help to establish the limits of what was appropriate.

Another area where the direct payments approach could be developed is the proposal in *Youth matters* to empower young people by providing them with an opportunity card entitling them to purchase goods and services at a discount. We believe the government should work with providers and retailers of youth and leisure services to develop this concept so young people can have access to something of real value.

The government should make pump-priming funding available to help promote new approaches to service provision and to stimulate new markets. For example, the government is currently planning to pilot the concept of targeted youth support teams. It could construct these pilots – as it did when seeking to create a market in local education authority functions – to incentivise involvement and partnership with the PVI sector. In addition, the transformation fund of £125m, which the government has set aside as part of its ten-year childcare strategy and which commences in April 2006, is a prime opportunity to help the PVI sector develop and grow the skills of the childcare workforce and so ease one of the constraints on market development.

Summary of actions required to support the market

The government should:

- Set out clearly which services should be commissioned at which level
- Issue guidance on how long contracts for different services should be and draw up and circulate model contracts
- Develop a clear model for carrying out market-led needs assessments
- Draw-up lists of approved providers at local or regional level
- Set up a process to deal with complaints regarding market making
- Consider the introduction of a national tariff, as cost transparency can aid market development
- Attach conditions to grants in order to assist market creation
- Consider using direct payment to boost innovation.

Appendix: Sources

The report draws on a range of studies commissioned by DfES and other government and independent bodies. These are acknowledged throughout the report. The report is also informed by a CBI survey of children's services and childcare providers. The survey was circulated to four key groups:

Private sector

Members of the CBI Public Services Industry Forum (PSIF), which consists of companies with an interest in public services, and selected day nurseries. (113 organisations)

Providers of children's services that are listed on the West Midlands Centre for Procurement Excellence provider database. (25)

Voluntary sector

Members of the Association of Chief Executives of Voluntary Organisations (ACEVO). (203)

Voluntary organisations that contributed to a report carried out last year by PricewaterhouseCoopers.³⁴ (44)

In total the survey was sent to 385 organisations and the CBI received 73 responses – a response rate of 25%. Details of the survey are at: www.cbi.org.uk/publicservices

Footnotes

- 1 *The business of education improvement*, CBI, Jan 2005.
- 2 *Every child matters*: DfES green paper, September 2003.
- 3 *Youth matters*: DfES green paper, July 2005.
- 4 *Scoping the market for children's services* – report for DfES by PricewaterhouseCoopers, October 2004.
- 5 Connexions provides information advice and guidance to young people.
- 6 Visit www.cbi.org.uk/publicservices for full details.
- 7 Evaluation of new ways of working in local authorities for DfES – Indepen and Bannock Consulting, May 2003.
- 8 *A new era for universal childcare? Childcare and early years services in 2004*, Daycare Trust, September 2004.
- 9 HM Treasury, DfES, DTI and DWP, December 2004 – Op cit.
- 10 Figures cited in Daycare Trust report – Op cit.
- 11 *Early Years: Progress in developing high quality childcare and early education accessible to all*, NAO, February 2004.
- 12 Nursery & Childcare News, Laing & Buisson, October 2005. NAO Report – Op cit.
- 13 HM Treasury, DfES, DTI and DWP, December 2004 – Op cit.
- 14 HM Treasury, DfES, DTI and DWP, December 2004 – Op cit. Figures cited in Daycare Trust report – Op cit.
- 15 Walsall's statistical neighbours are; Bolton, Bristol, Derby, Coventry, Kirklees, Oldham, Rochdale, Stoke-on-Trent, Tameside, Wolverhampton.
- 16 Ofsted: Inspection of Walsall LEA January 2005.
- 17 Audit Commission survey: Walsall headteachers' views of education services, 2004.
- 18 Consultation on draft code of practice on the provision of free nursery education places for three and four year-olds, DfES, June 2005.
- 19 Clause 6(1) of the Childcare Bill.
- 20 Clause 8(3) of the Childcare Bill.
- 21 NAO Report – Op cit.
- 22 Research report for Sure Start – Op cit.
- 23 *Public Policy: Using market-based approaches*, DTI economics paper No. 14, September 2005.
- 24 *Survey of Alternative Education Provision*, a research report for the DfES by TNS, November 2003.
- 25 *Supply and Demand for Childcare in England*, a report by the Daycare Trust for DfES, September 2005.
- 26 *Framework for joint planning and commissioning of children's and young people's services*, draft version 9.0, DfES, 2005.
- 27 *ibid.*
- 28 *ibid.*
- 29 CBI monitoring data.
- 30 *Higher standards, better schools for all: More choice for parents and pupils*, DfES, October 2005.
- 31 DfES – Op. cit.
- 32 *A Sure Start Children's Centre for Every Community: Phase 2 Planning Guidance (2008-20008)*, DfES, July 2005.
- 33 *Sure Start Children's Centres: Practice Guidance*, DfES, November 2005.
- 34 Op cit.

MetaPlus

Subhead