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## Unregulated provision for children in care and care leavers

### Purpose of report

For discussion.

### Summary

The Department for Education (DfE) has launched a consultation on the use of unregulated accommodation for children in care and care leavers. Proposals within the consultation include banning the use of such provision for under 16s, and introducing national quality standards for unregulated accommodation. This agenda item provides an opportunity for the Board to discuss the consultation with DfE and to inform the LGA's response to the consultation.

### Recommendation

That members of the Board provide feedback on the Department for Education's consultation on the use of unregulated provision for children in care.

### Action

That officers incorporate feedback from the Board into the LGA's response to the consultation.

**Contact officer:** Louise Smith  
**Position:** Senior Adviser – Children and Young People  
**Phone no:** 0207 664 3163  
**Email:** [louise.smith@local.gov.uk](mailto:louise.smith@local.gov.uk)

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## **Unregulated provision for children in care and care leavers**

### **Introduction**

1. The Department for Education has launched a [consultation](#) on the use of unregulated provision for children in care and care leavers. Proposals within this consultation include:
  - 1.1. banning using this provision for under 16s
  - 1.2. introducing national quality standards
  - 1.3. ensuring independent reviewing officers represent young people's interests
  - 1.4. requiring local authorities and police forces to cooperate with each other
  - 1.5. new legal powers for Ofsted to take action against illegal providers
2. The full consultation is attached at Appendix A.
3. Sheila Shuttlewood, Team Leader, Unregulated Provision from the DfE will attend today's meeting to give an overview of the consultation and to hear feedback from members of the board.

### **Background**

4. The use of unregulated accommodation has received significant attention in the national media and amongst parliamentarians in recent months, while the Secretary of State for Education wrote to council chief executives about this in November, encouraging councils to reassure themselves about the quality of accommodation for children and young people. He raised particular concerns about the use of unregulated accommodation for children under the age of 16.
5. The use of unregulated settings has increased for a variety of reasons. These include a failure of the children's home market to keep pace with the increase in children requiring accommodation in children's homes, and increasingly complex needs of children in care. Anecdotal evidence suggests that in some cases, registered children's homes are refusing to provide accommodation to children with certain needs (in particular, complex or challenging needs), forcing councils to use emergency placements in unregistered or unregulated accommodation. These unregistered placements, under current regulations, are illegal.

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6. The Board may also wish to consider the impact of the following issues when considering the rise in need for accommodation and the rising use of unregulated accommodation:
- 6.1. The number of children in care aged 16 and over has increased by 42 per cent over the last ten years, from 12,900 in 2009 to 18,380 in 2019. The proportion of children in care who are aged 16+ has also increased, from 21 per cent to 24 per cent in the same period. Older children are more likely to require accommodation in children's homes than younger children;
  - 6.2. The impact of the Southwark judgement, a piece of case law made in May 2009 that obliges children's services to provide accommodation and support, and often leaving care services, to homeless 16- and 17-year-olds;
  - 6.3. Reductions in the number of young people in the youth justice secure estate, who may instead be being supported in the community. In the year ending March 2019, there was an average of just under 860 children in custody at any one time. This was a reduction of 70 per cent from ten years ago, when there was an average of around 2,900 children in custody.

**Unregulated, unregistered and registered accommodation**

- 7. Unregulated provision is used when children (usually aged 16 and over) need support to live independently, but do not need full time care. These settings, unlike children's homes, are not inspected by Ofsted, but as corporate parents, councils have a responsibility to ensure that these settings are safe and suitable for the young person being placed there.
- 8. Unregulated accommodation should not be confused with unregistered accommodation. This is accommodation that should be registered but is not, and is therefore illegal.
- 9. Most unregulated provision is supported accommodation, where young people are visited regularly to be offered support as they move towards independence. [Ofsted guidance](#) outlines in more detail what provision requires registration and regulation. The following extract from the Ofsted guidance outlines some of the criteria that can help determine whether provision is supported accommodation (and therefore does not need regulating) or is providing care, in which case regulation is required.

Criteria	Yes?	No?
Can young people go out of the establishment without staff permission?	Supported accommodation	Care
Do young people have full control of their own	Supported accommodation	Care

finances?		
Are young people in charge of meeting all their health needs, including such things as arranging GP or specialist health care appointments? Are young people in full control of their medication?	Supported accommodation (note that young people may ask for advice and help on their health, but if decisions rest with the young person, the establishment is not providing care)	Care
Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult?	Care	Supported accommodation
Are there regularly significant periods of time when young people are on the premises with no direct staff supervision?	Supported accommodation	Care
Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment?	Care	Supported accommodation

### Use of unregulated settings

10. There were 6,180 children looked-after (CLA) living independently or in semi-independent living accommodation at 31 March 2019. This is an increase of 80 per cent from 3,430 at the same time in 2010.<sup>1</sup> 6,090 of these were aged 16 or over (around a third of the 16+ CLA population).
11. There is a higher proportion of children in these placements who were unaccompanied asylum-seeking children (UASC) (43 per cent of CLA living independently and 36 per cent of CLA in semi-independent accommodation) compared to the national average.
12. There was a higher proportion of boys living independently (72 per cent) or in semi-independent accommodation (70 per cent) at 31 March 2019 compared to all CLA (56

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/864075/Looked\\_after\\_children\\_in\\_independent\\_or\\_semi-independent\\_placements\\_Feb\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864075/Looked_after_children_in_independent_or_semi-independent_placements_Feb_2020.pdf)

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per cent) This is driven by the higher proportion of UASC in these settings. When looking at the proportion of boys in these settings who were not reported as being UASC, it is in line with the national average.

13. There was a higher proportion of Asian or Asian British, black or black British, and other ethnic groups living independently or in semi-independent accommodation than the national average (4 per cent, 8 per cent and 4 per cent respectively) at 31 March 2019. This is also being driven by the higher proportion of UASC in these settings.
14. The proportion of children placed inside the local authority boundary is slightly higher for children living independently (62 per cent) and slightly lower for those in semi-independent accommodation (55 per cent) compared to the national average (58 per cent) at 31 March 2019.
15. Research for the DfE<sup>2</sup> found that most placements in unregulated settings are part of a planned transition to independence. Where this was not the case, and particularly for under 16s, the use of such placements was largely in emergencies following placement breakdowns and when registered placements could not be found. In these cases, bespoke packages of support were put in place to support the child while a registered place was identified. The level of support in some of these placements, especially for under 16s, means that these placements are in fact unregistered rather than unregulated (that is, they provide care rather than just support).

## **Consultation**

16. The full consultation is available at **Appendix A**, with key themes broadly outlined below.

### Appropriateness of placements

17. The consultation intends to ensure that unregulated settings are only used when this is most appropriate, particularly as the consultation does not propose full regulation of independent and semi-independent accommodation.
18. The proposals are to:
  - 18.1. ban the use of independent and semi-independent placements for children and young people under the age of 16;
  - 18.2. introduce new measures so that local authorities and local police forces share information before an out of area placement in this provision is made; and

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<sup>2</sup> <https://www.gov.uk/government/publications/use-of-unregulated-and-unregistered-provision-for-children-in-care>

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18.3.amend legislation to clarify the distinction between unregulated and unregistered provision, so that local authorities and providers are absolutely clear about what is legal, and what is not.

Checks and balances in the system

19. Proposals within the consultation aim to ensure that unregulated settings are appropriate and high quality, reducing inconsistencies between local authority regimes and developing an understanding of what good quality provision looks like.

20. The Government intends to:

20.1.introduce new national standards for providers of independent and semi-independent provision (and it is consulting on how these should be enforced) setting a quality benchmark and giving local authorities more assurance that provision will meet the needs of young people.

20.2.strengthen statutory guidance for Independent Reviewing Officers (IRO), to ensure that requirements on IROs are clear, including visiting every child or young person in an independent and semi-independent setting.

20.3.increase Ofsted's enforcement powers, so that robust action can be taken quickly where providers are found to be acting illegally.

21. The proposed standards would cover:

21.1.Purpose and intent standard

21.2.Quality of accommodation standard

21.3.Support standard

21.4.Protection of children and young people standard

22. Proposals for the enforcement of the standards are:

22.1.Changing the regulations, to make the standards mandatory for local authorities:

We would require local authorities to only place children in provision that meets the standards. This would enable Ofsted to assess local authorities on their use of independent and semi-independent provision, and compliance with the requirement to only place with providers who uphold the standards, under the Inspection of Local Authority Children's Services Framework. Under this option, Ofsted would not register and inspect providers.

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22.2. Legislating to introduce a new quality and inspection regime: This would require all providers of independent and semi-independent provision to register with Ofsted and be inspected against the new standards, and these could be established, through legislation, as National Minimum Standards, as defined under section 23 of the Care Standards Act 2000. The framework and associated standards would differ from the ones in place for children's homes, reflecting that the nature of this provision is different, though the regime for registration and inspection would be similar. Local authorities would be required to place children in provision which is registered with Ofsted, and Ofsted could take enforcement action against providers that do not meet the standards.

23. Members are asked to consider a further option not outlined in the consultation, which would look at fuller regulatory reform to allow for registration of providers, rather than individual buildings. This would provide additional flexibility whereby a registered provider could open emergency provision when this was necessary, providing full care rather than just support for children.

#### **Independent Reviewing Officers**

24. The consultation proposes changing statutory guidance to make it clear that IROs should undertake a visit to a placement to be able to assess whether it is meeting the needs of the child or young person, and that this report must be sent to the local authority to inform their decision-making process about next steps for the individual child or young person.

#### **Ofsted powers**

25. The consultation proposes increasing Ofsted's enforcement powers around illegal settings, replacing 'cease and desist' letters with enforcement notices as a legal step before prosecution. Ofsted would publish details of all providers served with an enforcement notice, and local authorities should not use any providers listed.

#### **Implications for Wales**

26. This consultation applies to England only.

#### **Financial Implications**

27. None

#### **Next steps**

28. Feedback from the Board will be used to inform the LGA's response to the Government's consultation. That response will be agreed by the Children and Young People Board Lead Members prior to submission.