

Reforms to unregulated provision for children in care and care leavers

28 May 2020

About the Local Government Association (LGA)

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA welcomes the opportunity to respond to [this consultation](#).

Introduction

1. Ensuring that young people in care and care leavers are able to live in good quality homes that meet their needs is a key priority for children's services. However, there are currently a range of challenges that mean meeting this priority can be exceptionally difficult, and we are keen to work with the Government and partners to tackle this to make sure children and young people are safe and well supported.
2. The need for children's home accommodation currently outstrips supply, and this is undoubtedly driving the increasing use of unregulated and unregistered accommodation. Councils in particular report difficulties finding placements for young people with particularly complex needs or challenging behaviours. We would encourage the Government to consider the reasons for the increasing need for children's home placements, alongside work to identify the kinds of placements that are needed and how to develop these. Without increasing the availability of suitable accommodation, or reducing the need for it, we will not reduce the use of unregulated and unregistered placements.
3. Furthermore, councils have faced significant funding cuts at a time of increasing demand for children's services. The overall funding available to children's services departments must be considered as part of any effort to improve accommodation for children and young people, recognising that appropriate support for children cannot be provided without sufficient staff and investment.
4. The current Covid-19 outbreak also highlights the need to consider carefully how any new legislation or regulations would retain flexibility to ensure councils and providers can safely respond to crises while keeping children's best interests at the heart of all decision-making. For example, where there may be significant pressures on staffing or individual homes, the sector must be able to put in place swift solutions to ensure children remain safe and well-cared for, with as little disruption as possible.

Ending the use of independent and semi-independent provision for children under the age of 16

5. The LGA supports the ban on the use of independent and semi-independent provision for children under the age of 16.
6. However, we must emphasise that the vast majority of unregulated placements for under 16s are made in emergency situations and where there is no other option.¹ This can be, for example, as a result of a placement breakdown, or where regulated providers refuse to accept a referral. We have attached some case studies from local authorities outlining situations in which councils have been forced to use unregulated or unregistered placements for under 16s because no regulated setting was able or willing to provide a place.
7. Making these placements illegal without investing in appropriate accommodation options will not end their use. Before any ban is implemented, it must be made clear what action local authorities would be expected to take if they were unable to find a suitable registered placement for a young person.
8. It is vital that the Government urgently takes action to increase the availability of homes for young people with complex or challenging needs, and provides funding and support to councils to ensure that they are able to give these young people the safe, nurturing homes they deserve.
9. We do not support calls to make unregulated provision illegal for young people aged 16-18. We believe that for some young people, a level of independence with appropriate support is the best way of ensuring that they can make a positive transition to adulthood. Additionally, while young people are able to leave care at 16, having accommodation options that respond to their wants and needs while making sure they are supported is vital.
10. However, we are clear that unregulated provision for under 18s should only be used as part of a planned transition and where it is in the best interests of the young person. A lack of suitable accommodation currently means that this may not always be the case, and this must be addressed urgently to ensure that young people get the right care and support for their needs.

Requiring liaison with police forces when placing out of area in unregulated settings

11. Partnership working between councils, police and other partners is vital to keep children and young people safe, and we understand that this proposal is intended to support this. However, we have a number of concerns that we would wish to see addressed before any such proposal was introduced.
12. Firstly, many unregulated placements are made in an emergency. This may not always allow time for meaningful liaison with local police forces, particularly given that many police forces are currently under significant pressure.
13. A lack of sufficiency of all placement types means that in many cases, a proposed placement may be the only one available. Therefore even where there has been time to liaise with the local police force, the placement may

¹ <https://www.gov.uk/government/publications/use-of-unregulated-and-unregistered-provision-for-children-in-care>

still need to be made to ensure the young person has a place to stay, even if this is only temporary while a longer term placement is sought. We reiterate our call for the Government to urgently take action to increase the availability of suitable homes for all young people so that councils have choices and can make placement decisions based on genuine need rather than availability.

14. Finally, we would question why liaison with police forces when placing out of area should be limited to unregulated settings. We know that young people can be vulnerable in all out of area settings, therefore we would not encourage 'two tier' arrangements that differentiate between different settings for young people.
15. If this proposal is introduced, we are clear that the Government must ensure that both councils and police forces are supported to implement and enhance effective cross-border systems and ensure that they are adequately resourced to dedicate staff time to meaningful liaison with all relevant partners when making placements.
16. We also recommend that consideration is given to the planning regime for unregulated settings. Planning permission is not currently required for unregulated settings, which means that neither the police nor the council has a say in where they can be established. This means that settings can be established in areas that partners may deem inappropriate, and we suggest that further work be carried out to identify whether amending this may help to prevent issues from occurring.

Defining 'care' to clarify when 'other arrangements' may be used by local authorities and to clarify the distinction between unregulated and unregistered provision

17. We agree that more clarity is needed to distinguish between "care" and "support" in order to clarify the distinction between unregulated and unregistered provision. This would in particular be helpful for those situations in which additional support is gradually added to a young person's package of support to respond to their needs when they are in an unregulated setting, which can result in the placement in fact becoming unregistered.
18. However, we also believe that narrow approaches to "care" and "support" can be unhelpful, and we must consider a more flexible approach.
19. For example, the needs of young people – as with all of us - can change in response to life events. Where a young person may have been thriving in an unregulated setting receiving some support to help them transition to independence, a change in circumstances might result in a need for care for a period of time. We do not believe that this should result in that young person having to move out of a setting in which they are settled, into a registered setting in order to receive that care.
20. We should also consider whether young people may need "care" in some areas and "support" in others. While a young person may welcome the independence and responsibility of an unregulated setting, they may require the level of emotional support that might come from a care setting.
21. A more flexible approach to "care" and "support" would allow councils to establish young person-centred plans and packages that ensure young

people get what they need. In the next section we outline suggestions for wider regulatory reform that may support this flexibility.

National standards

22. We encourage consideration of the language used to describe “unregulated” and “unregistered” accommodation. The two are frequently confused, while “unregulated” implies a lack of oversight, when in fact councils implement their own quality assurance and monitoring processes.
23. We would welcome the introduction of national standards for unregulated accommodation. All young people deserve to live in homes that are safe and welcoming, and where they can receive the support they need. Many providers are already delivering high quality support and accommodation to young people, and it is right that a clear statement be made that poor standards are unacceptable.
24. We also suggest that the standards ask settings to outline action they will take to prioritise local young people when offering placements, to support efforts to reduce out of area placements and to help young people maintain existing networks and access to support and services. Providers should also be asked to outline how they will consider the views and wishes of young people in the provision of their service.
25. There is a risk that some providers may increase prices as a result of the implementation of these standards, or that some providers may withdraw from the market. Neither of these risks is a reason not to implement minimum standards. However the Government must recognise these risks and work with councils and providers to ensure that they do not impact upon the availability of good quality accommodation for young people where and when they need it, and that councils have the available funding to pay for this.
26. With regard to implementing the standards, we believe that of the options outlined in the consultation, changing the regulations to make standards mandatory for local authorities is preferable.
27. Registration with and inspection by Ofsted would remove some of the flexibility that is needed for some unregulated accommodation, and we are concerned about capacity to carry out such inspections. Implementing such a regime would need to come with considerable funding and an appropriate workforce plan attached, recognising that new inspectors may well come from the sector itself, placing further pressure on an already stretched workforce.
28. A system in which councils are expected to only place in provision that meets national standards could build on the good work already happening in many local authority areas, and we would urge further consultation with both councils and providers should this be introduced to identify how to implement this effectively and to assess any associated costs.
29. We believe that overarching regulatory reform, as has been proposed by the Association of Directors of Children’s Services, would be helpful to ensure that the entire system is fit for purpose. This would include consideration of, for example, regulating providers rather than buildings, allowing councils and providers the flexibility to set up emergency placements and ensure placements meet the needs of individual children.

30. Regulatory reform would also provide the opportunity to consider how we establish better oversight of the market, which has changed significantly in recent years. Recent research for the LGA² identified that in just three years, eight of the biggest providers of children's social care placements merged to become the three largest groups. We also know that many of these companies now hold more liabilities than tangible assets. We currently have no mechanism for identifying the impact of such factors on quality of care, children's outcomes or the price and value for money of placements and as the market continues to evolve, this will become ever more pressing if we are to ensure that we have the right places to meet children's needs.
31. Finally, we would highlight that regulation or standards in and of themselves do not guarantee good quality provision. A well trained, dedicated, stable and sufficient workforce that is well supported makes a significant difference to the experience of young people in residential settings, as does the availability of excellent wider support services including mental health services. We must not expect regulation or standards to be a panacea; rather, this must be part of a wider consideration about providing the best possible care and support for young people. We urge the Government to consider these wider issues in the forthcoming review of the children's care system.

Independent reviewing officers

32. We agree that statutory guidance should be clarified to ensure that IROs undertake visits to placements to ensure that they meet the needs of children and young people.
33. However, we must emphasise that IROs will need to have the capacity to carry out this role effectively. In some areas, difficulties with recruitment and retention mean that case loads can be high, limiting the amount of time IROs are able to dedicate to each child. Furthermore, if issues around placement sufficiency are not addressed and young people continue to be placed at a distance from their home authority where this is not essential for their needs, IROs will be expected to travel significant distances to visit placements. While these visits should still take place, it will place pressure on IRO capacity and will need to be considered as part of the broader picture.
34. The Government would also need to make clear what action would be expected where an IRO considered a placement unsuitable, but no alternatives were available.
35. It is vital that the government considers both placement sufficiency and workforce planning as part of the implementation of this.

Ofsted powers

36. We are in favour of proposals to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions. This action will potentially help to swiftly remove illegal provision from the market and encourage providers to comply with regulation and national standards.

² <https://www.local.gov.uk/profit-making-and-risk-independent-childrens-social-care-placement-providers>

37. Alongside this, we would encourage consideration of how providers of all sizes can be supported to register and ensuring that the process is not a barrier to smaller providers establishing provision.

Case Studies

Child A: Became looked after aged 12. History of self harm, high levels of anxiety, and diagnoses of ASD, ADHD sleep issues and queries regarding developing mental health needs. At age 15, A's children's home gave notice due to offending behaviour and violent behaviour against staff, property and other young people in the home, including the use of sharp instruments. Placing authority was unable to secure a placement despite searching for three weeks, resulting in an unregulated placement for three days. A has experienced 7 foster placements and one children's home, and is currently in a solo residential placement.

Child B: Entered care at 14 as a result of assault against their mother, historical domestic abuse towards mother with police involvement and several missing from home episodes. Maternal drug use and mental health use, and historical physical abuse by father towards B. Diagnosed with ADHD, has episodes of self-harm and reported to have autistic traits (without diagnosis). Demonstrated high levels of agitation in initial foster placement and violent outbursts against others and property. Was placed in emergency unregulated accommodation for three days shortly after coming into care. Has had 6 emergency foster bed placements and one planned foster placement. Is now in a residential children's home.

Child C: aged 15 at the time of coming into care and into an unregulated placement, which was at a local authority address as C was continually missing having been made subject to bail conditions. C returned to their mother's care when bail conditions ceased. Significant history of offending; running, selling and taking drugs; alcohol use; persistent and repeated missing episodes; subject to violence from other young people; and concerns around exploitation and negative peer/adult associations. Not in education. Aggressive and threatening behaviour towards mother. C experienced 7 emergency foster bed placements, 1 foster placement, 1 period in Young Offenders Institute and 1 placement in semi-independent accommodation. C has ceased to be looked after.

Child D: D, aged 14, had 3 placements in residential children's homes followed by 1 unregulated placement of 5 days which was followed by a placement in secure accommodation on welfare grounds. D's placement at the secure unit was terminated by the provider due to violent behaviours, this was followed by a series of unregulated placements with the same provider which at the time were believed to be regulated under 28-day holiday provision at the time of use. D subsequently spent 2 periods in secure accommodation for offending behaviour. D diagnosed with ASD, ADHD, Hyperkinetic Socialised Conduct Disorder and Conduct Disorder with extreme emotional, anger and behavioural issues. Significant concerns regarding violence to others including the threat to use and use of weapons, damage to property, obsession and involvement with gangs, drug use and supply. Offending behaviour which includes possession of a weapon, assault and similar charges including domestic abuse against his mother. D has low self-esteem, struggles to concentrate, lacks empathy, history of witnessing domestic abuse. Not in education for a significant period. Following continued absconding from placements, D was arrested for a number of offences and received a 4-year custodial sentence.

Child E: Aged 13. E was diagnosed with ADHD, ODD, Tourette's, OCD, Generalised Anxiety Disorder, Separation Anxiety Disorder and depression. Domestic abuse

against mother and younger sibling and significant issues of parents not being able to keep E, themselves or sibling safe, police have been involved on several occasions. Violence to other young people, staff and adults, inappropriate sexualised behaviour and struggles with social interaction. Poor self-care, self-harm, not in receipt of education and has special educational needs. Experienced 5 periods of 6, 20, 14, 13, 20 days with one provider in unregulated provision. This was interspersed with one placement in a children's home for 51 days. Last 3 placements were all in residential children's homes with the longest being of 67 days duration. Following E's return to his parents' care, services have been implemented through the Accelerator Programme, Positive Behaviour Support service, CAMHS, SEN and social work as well as support from identified universal services. Multi- agency work continues with E as a Child in Need.

Child F: Aged 14, experienced multiple placement moves following the breakdown of long-term foster home in 2018. Regular missing from care episodes and engaging in risky behaviours. Eventually taken to A&E by their social worker due to suicidal ideation and an ongoing injury, where a mental health assessment indicated a need to a stable placement to begin immediately. A placement could not be found, resulting in a placement with an unregistered provider, in a single placement with a member of staff present at all times. This was at a distance from previous placements, reducing the risk of absconding. A safety plan was drawn up between CAMHS, the provider and F's social worker, including a structured timetable incorporating education and a reward system and 2:1 support at all times. This resulted in positive relationships and reducing the use of maladaptive coping strategies such as self-harming and running away. F has now made enough progress to be able to move to a registered provider.

Child G: G was 14 when arrested for assaults on staff and damage to property at their children's home. The provider gave immediate notice so that G was unable to return upon their release from custody. Despite national searches, no new placement could be found, so G was placed with an unregistered provider offering 2:1 support and an activity based daily programme. G settled quickly and received some education, remaining there without incident until a move to a long-term, registered placement.

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