Department for Education

Reforms to unregulated provision for children in care and care leavers

Government consultation response

February 2021

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Secretary of State foreword

Every child deserves a stable loving home where they feel safe and supported to thrive and achieve the best possible outcomes in life. This is all the more important for children in the care system. These children and young people have often had traumatic and challenging experiences and we must strive to do all we can to make sure that we not only improve their lives, but give them the highest chances of success.

Where children and young people live while in care and the support that they receive from people responsible for their wellbeing, is absolutely critical to our success in this endeavour. This means having dedicated foster carers, excellent children's homes and high quality independent and semi-independent settings for older children. We need a range of options for care placements and support that reflects the diverse needs of children in care and care leavers.

In recent years, we have seen increases in the use of independent and semi-independent settings, and children in care and care leavers aged 16 and 17 now depend on these settings in similar volumes to children's homes. This is, in part, due to having more older children in the care system now than we have ever had, and these types of settings are often the right choice for 16 and 17 year olds. They can offer a place to live with more independence, and when combined with the right level of high quality support to meet the needs of the older children placed there, they play a vital role in the care system.

The increasing importance of these types of settings in the care system has led us to the point where we must now look at scrutinising this provision more closely, to ensure that it is used appropriately and provides the right level of support and safety for our older children in care and care leavers. That is why, when I became the Education Secretary, I moved quickly to consult the sector and care experienced young people on an ambitious programme of reform to do just this. I wanted views on how, together, we should take forward measures to improve the use and quality of this provision.

I hugely appreciate the time taken by over 230 individuals and organisations, as well as over 160 care experienced young people, to respond to this consultation, especially during such unprecedented times. Many of you will have been affected by the ongoing global pandemic in your professional and personal lives, including those working under pressure to continue to deliver vital services to vulnerable children. I thank you for this.

The consultation has made clear to me that we must take action in this area. I cannot imagine a circumstance in which a child under the age of 16 should be placed in a setting that does not provide care, and is intended to support young people to live independently. The vast majority of respondents agreed with this view and we will be moving forward with a ban on the placement of u16s in this provision.

Local authorities should continue to ensure that placement decisions consider the individual needs of children. A ban on the placement of u16s in this provision must not create a default position by which children are moved into independent and semi-independent provision on their 16th birthday. Many of these young people will have needs that are better met in a foster care placement or a children's homes, and young people should be placed in these settings where that is the case. Placement stability and continuity is often critical in this regard and children and young people should not be moved to different placements unnecessarily.

While there is already a lot of high quality independent and semi-independent provision out there, as shone through in the consultation responses, this is not consistent enough and there are too many examples of children and young people being placed in settings that do not meet their needs and, in some cases, do not keep them safe. This is unacceptable. We will develop a suite of national standards for independent and semi-independent settings for children in care and care leavers aged 16 and 17 to raise the bar for this provision, and ensure that high quality is the minimum that our young people can expect.

We will be moving forward with plans for legislating to give Ofsted new powers to take enforcement action against illegal unregistered providers, who should be registered as children's homes but are operating without the correct registration in place. We will legislate at the earliest opportunity.

These checks and balances in the system will work towards ensuring that local authorities can be confident when making placements in this provision, strengthening our ability to take action against poor providers and, most importantly, ensuring that our children and young people are safe and have the best possible chances of success in life. I look forward to working with you to deliver these reforms for our children and young people.

Introduction to the Government's response to the consultation

In the Department's consultation *Reforms to unregulated provision for children in care and care leavers*, we set out our concerns that independent and semi-independent unregulated provision for children in care and care leavers aged 16 and 17 is not always good enough, and that it is not always used appropriately. This was made clear in our research[1] on this last year. In the consultation, we sought views from the sector and care experienced young people on a series of ambitious reforms intended to ensure that placement practice was appropriate and that we have the right checks and balances in the system to ensure the highest quality provision for our children and young people.

The package of proposals on which we consulted was intended to offer a range of options for consideration. Some of these proposals were more ambitious than others, and therefore the combination of reforms to be taken forward was always to be determined by the level of support for some of the more ambitious measures which, if taken forward, diminish the need for some of the lighter touch and less ambitious measures. This Government response explains this in more detail.

The vast majority of responses to our consultation were in support of implementing all of our proposed reforms with widespread support for our key proposals, namely the introduction of national standards and providers being registered and inspected by Ofsted, and a ban on the placement of u16s in this provision. Feedback from children and young people who have experienced placements in independent and semi-independent settings demonstrated that, whilst there are positive experiences, issues with suitability and quality of placements are all too common. When they are high quality these placements form a vital part of the care system in meeting the needs of older children, who are ready to live with the increased level of independence that these settings can afford and can absolutely be the right option for some young people. However, the response to this consultation has reaffirmed our view that reform is much needed in this area. Firstly, these settings are simply not appropriate for the vast majority of children and young people – where children and young people have complex needs that require care and higher levels of support, they should always be placed in foster care or children's homes where these needs can be met and they can be kept safe. This includes any child under the age of 16. No child of this age should be placed in a setting

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

that is intended to facilitate independent-living – children of this age are too young for this and this practice places them at risk.

Secondly, even where settings are providing for 16 and 17 year old children in care and care leavers, they are too frequently not good enough. We have seen too many examples of settings that are not providing enough support, meeting the needs of young people, and keeping them safe. It is simply unacceptable for any child or young person to be placed in a setting that does not do this for any amount of time. That is why we proposed the introduction of new national standards and sought views on whether these should be enforced by local authorities or Ofsted. The consultation has given us a clear verdict – national standards overseen by an Ofsted-led registration and inspection regime is required for this provision, and we will work closely with the sector to develop this further.

Our independent analysis of the consultation responses has been published alongside this document. This document provides a high-level summary of the findings, and sets out the government's response and planned next steps.

Summary of responses received and the government's response

The online consultation was hosted on .GOV and ran from 12 February 2020 to 3 June 2020 – this time period included an extension of eight weeks in light of the COVID-19 pandemic. The Department received a total of 237 responses; 215 to the online consultation questionnaire, with 22 respondents providing a written response. We commissioned a comprehensive analysis of these responses, which has been reported and published alongside the government response.

With the help of the Office of the Children's Commissioner, we also produced a summary version of the proposals, which a range of partner organisations used to lead a series of discussions with young people, to ensure their voices were heard in this consultation. We are grateful to the 17 organisations (listed in Annex A) who took the time to gather views and experiences from the children and young people they work with and submit their feedback. Through this, feedback was received from 165 children and young people and this significantly enriched the overall consultation response.

Evidence from both the central consultation, and the extended work with young people, has been considered in parallel to inform the Government's response and next steps.

Main findings from the consultation

The majority of respondents were in favour of all the proposals set out in the consultation, recognising that more action is needed to identify and remove or improve provision that is not meeting the needs of children and young people:

- Over three-quarters of respondents agreed that the practice of using independent and semi-independent provision for children under the age of 16 should be banned.
- The majority of respondents (70 per cent) agreed that a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in unregulated provision should be introduced.
- A substantial majority of respondents (84 per cent) agreed that legislation and associated statutory guidance should be amended to define 'care', in order to provide clarity on what amounts to 'other arrangements' i.e. 'unregulated' provision, and what constitutes 'unregistered' provision.
- Just over three quarters of the respondents were positive about the introduction of national standards. The majority of respondents (70 per cent) felt that the new standards would best be supported through a new Ofsted quality and inspection regime.

- Over three-quarters of respondents agreed that the statutory guidance should be clarified to ensure that IROs undertake visits to a placement to be able to assess whether it is meeting the needs of the child or young person and that they must send a report to the local authority to inform their decision making process about next steps for the individual child or young person.
- An overwhelming majority of respondents (85 per cent) agreed with the proposal that the Government should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions.

Across the consultation, respondents identified some recurring implementation challenges. In particular, there were concerns about the impact greater regulation might have on the sufficiency of supply of placements, which is already seen as a challenge for placing authorities, if some providers exited the market as a result. An allied concern was that such provision is often used for hard to place young people with a frequent view that registered providers sometimes refuse complex cases for fear of negatively impacting their Ofsted rating. Another challenge frequently mentioned was about costs, including those related to capacity and resourcing.

Feedback from young people also showed broad support for the reforms, akin to the main consultation. There was almost universal agreement that the placement of under 16s should be banned, and strong support for the introduction of standards, with young people setting out how these would increase quality and introduce consistency between local authorities and providers. The clear consensus was for Ofsted to check that providers were meeting the standards and that local authorities were only using providers that did so.

Some proposals attracted less feedback, particularly defining care and Ofsted powers, reflecting that these are less relevant to their lived experiences. Whilst overall supportive, there was also more ambivalence to proposals on police liaison and Independent Reviewing Officers.

The Government will ban the placement of children under the age of 16 in independent and semi-independent settings

Over the last year, we have been clear that we do not think that independent and semi-independent settings can ever be the right choice for a child under the age of 16. Even where these settings are at their best, providing high quality support for young people to live with independence, this is not enough for children under the age of 16. The consultation has made clear to us that the vast majority of the sector, including local authorities, agree with this principle – over three quarters of respondents thought the practice of placing u16s in this provision should be banned. This was supported even more strongly in our work with young people, where there was an almost unanimous agreement that these settings are not appropriate for children under the age of 16.

'We welcome the Government's proposal to end the use of independent and semi-independent provision for children under 16 years old. No child under 16 should be placed in independent or semi-independent accommodation as it is not the appropriate provision to provide the care based setting children of this age require.'

(Provider)

The Government will be amending the Care Planning, Placement and Case Review (England) Regulations 2010, to make it a condition of placing in "other arrangements settings" (i.e. independent and semi-independent settings) under section 22C(6)(d) of the Children Act 1989 that the child is aged 16 or over. Placements that fall under 'other arrangements' but are not semi-independent or independent settings, and are regulated (for example CQC registered residential care homes, hospitals or other settings providing medical care; and Ofsted/DfE regulated residential schools providing accommodation under s.89 CA 1989), will be exempt from the ban. The effect of this will be that local authorities must (subject to some limited exceptions) place looked after children who are under the age of 16 in either foster care or a children's home that is registered with Ofsted. The ban will come into effect in September 2021, following a grace period to give local authorities time to respond to the changes and make alternative arrangements.

While there was broad support for a ban on the placement of u16s in this provision, respondents did raise a series of concerns that the Government wishes to address in this response. Firstly, a small group of respondents were of the view that no child should be placed in 'unregulated provision' and that the ban should be extended to cover all children in care and care leavers, including those aged 16 and 17. The Government does not agree with this position. This provision, when it involves high quality tailored support for older children, is an important part of the care system and is vital in ensuring that there is a range of placement options that reflect the diverse needs of the children in care

and care leaver cohort aged 16 and 17. We do however accept that this provision needs to be more consistently good, and our approach to this is set out later in this document.

'Moving into semi-independent was the best thing to happen to me. I was really depressed and a friend's mum noticed things were going bad in my foster care. Moving here has given me a new outlook on life and has helped with my autism.'

(Young person)

Further, many respondents, including those in support of a blanket ban, raised legitimate concerns about the backdrop of sufficiency issues that drive the demand for independent and semi-independent placements for under-16s. For example, many respondents raised specific issues around the lack of placements available in secure children's homes and specialist children's homes placements for children with complex needs. The Government recognises that local authorities sometimes find themselves in positions where the most appropriate placement is difficult to access. That is why, alongside our reform programme for unregulated provision, we will be developing plans supported by additional investment to support local authorities to create more places in children's homes, including through the £24million investment announced at the Spending Review in November. We will set out further detail on this programme of investment in due course.

We do not believe that placing children under the age of 16 in settings that are simply not equipped to meet their needs or keep them safe should ever be an option. Providing care for a complex range of needs for young children is not the purpose of independent and semi-independent provision, and these settings cannot legally do this without carrying registration as a children's home. This leads to a scenario where providers must either operate outside of the legal framework, operating an illegal unregistered children's home, in order to meet the needs of a child under 16 with complex needs, or simply not meet their needs at all – neither of which are acceptable outcomes. This is why we are moving to ban this practice.

We know that this practice affects a relatively small number of children nationally – around 100 under-16s are placed in independent and semi-independent settings at any one time. Over three quarters of local authorities placed fewer than 5% of 14 and 15 year

old children in these settings during 2018-19[2]. This can make it difficult for local authorities to collate data and intelligence to identify local drivers and factors that lead to placing under 16s in this provision. In order to support local authorities to adapt their practice when the ban is introduced, we have produced further analysis providing more information on this cohort of children nationally. We also plan to carry out further work with those local authorities who have placed the most under 16s in this provision in recent years, to identify how best to support them to manage this change.

The Government is continuing its work to understand the sufficiency challenges facing the children's social care sector, and is looking at how we can support local authorities and the sector to address these. We have already invested over £40m worth of capital to expand the secure children's homes sector, and we will continue to look at further measures. As part of this work, we want to hear from those local authorities impacted the most. Through our extended analysis on the placement of u16s in unregulated provision, we have identified a small number of local authorities who account for a significant portion of these placements. We will work with these local authorities to understand how best to support them through these challenges.

[2] http://www.gov.uk/government/publications/looked-after-children-in-independent-or-semi-independent-placements

The Government will seek to introduce new national standards for independent and semi-independent provision which will be overseen by an Ofsted-led registration and inspection regime

As set out above, the Government recognises that independent and semi-independent provision plays an increasingly important role in meeting the needs of children in care and care leavers aged 16 and 17. However, we must take steps to ensure that this provision is more consistently of the standard that we expect for our young people. This view was supported by over three quarters of respondents to the consultation, who were positive about the introduction of national standards, citing the improvement in the consistency of provision that this would drive and improved outcomes for young people. This was further reinforced by our work with young people, who were overwhelmingly positive about the need for standards to be applied to these settings.

'Having checks would ensure that the provider takes care of the properties and the environment that young people are expected to live in. Young people often don't complain and just put up with poor standards of accommodation because they have nowhere else to go.'

(Young person)

With more older children coming into the care system, and children staying in care for longer, we must ensure that provision adapts to meet the needs of the cohort of children cared for and supported by the care system. Older children do not always want to live in a foster family or a children's home and it is not always in their best interests to do so. This means it is crucial that we have a high quality option where older children can live more independently, with the right level of support to meet their needs and keep them safe. For these reasons, the Government will develop national standards and the approach to regulation through further consultation with the sector in 2021.

In addition to seeking views on the introduction of national standards, the Department also sought views on whether national standards should either: be overseen and enforced by a local authority-led regime, where local authorities are required to only place children in settings that adhere to the new standards, with local authority practice in this regard being inspected by Ofsted under the Inspection of Local Authority Children's Services Framework; or, be overseen and enforced by an Ofsted-led registration and inspection framework.

The vast majority of respondents (over 70%) were in favour of an Ofsted-led registration and inspection regime and this was supported by the majority of all respondent types including local authorities and providers. Respondents were of the view that a national

regulator would be more likely to be more consistent in the interpretation of the standards and would not have conflicting interests such as being under pressure to find placements or have close working relationships with providers, as local authorities would, which respondents thought could affect the impartiality of judgements. With overwhelming support for this approach, the Government will consider how national standards could effectively be overseen by an Ofsted-led registration and inspection regime. This approach will give local authorities confidence in the quality of provision they have access to, increase our ability to improve quality and take action against poor providers and, most importantly, give our young people the high quality settings and support that they deserve.

'We feel that national standards would enable us to guarantee quality provision for all our young people. We have already developed local standards but implementation of national standards would ensure greater compliance and consistency.'

(Local authority)

The Government is aware that the introduction of a new regime would not be without its challenges, which is why we need to develop this approach in partnership. The sector voiced lots of constructive concerns through the consultation which we will need to account for as we proceed. Firstly, we will need to develop a set of national standards that reflect what our young people need in order to be safe, well-supported and have the best possible chances of success in life. Through the consultation, we collected views on the broad areas which we proposed to be included and this has significantly developed our understanding of what will be required. We will need to draw on the best provision already available, learning from providers and local authorities who do this well already. Secondly, the standards will need to reflect the diversity of provision that is on offer in the currently unregulated market. We will need to make difficult decisions on the type of provision that we expect as a minimum for our young people and the types of provision that we no longer think is appropriate. This will inform the development of the regime, where we will need to be clear about the types of settings that can operate provision for looked after children and care leavers and the standards they must uphold. We plan to launch a consultation on these issues in 2021.

Through the consultation, we also heard concerns that a further group of 16 and 17 year olds who are not in care or care leavers but who are accommodated by their local authority under the Housing Act 1996 will not be covered within the scope of our proposed reforms. The Government is clear that any 16 or 17 year old who is homeless,

or threatened with homelessness, must be assessed by children's services[3]. Every child whom children's services have a duty to accommodate will have to be placed in a setting that meets the new national standards. There are only two circumstances in which a local authority might find that a homeless young person should be accommodated under the Housing Act rather than section 20 of the Children's Act. These are where the young person is:

a. not a child in need;

b. a 16 or 17 year old child in need who, having been properly and fully advised of the implications and having the capacity to reach a decision, has decided that they do not want to be accommodated under section 20.

The Department will continue to work together with the Ministry of Housing, Communities and Local Government, with local government and with sector experts, to ensure this group of young people get the right support and accommodation they need.

[3] https://www.gov.uk/government/publications/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation

The Government will seek to legislate to give Ofsted new powers to take enforcement action against illegal unregistered providers

We must ensure that Ofsted, as the national regulator of children's social care settings, has the appropriate powers and levers to be able to fulfil their duties and take action against poor quality, unsafe and/or illegal providers. We know that some providers operate settings that deliver care wholly or mainly for children, and therefore should be registered as children's homes but are not, and are operating illegally. Ofsted can already prosecute these providers, but this can take a long time and we believe that Ofsted need an earlier, legally-backed step, to take much quicker action against illegal providers.

An overwhelming majority of respondents to the consultation (85 per cent) agreed with the proposal that the Government should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers, while retaining their powers to prosecute where this is needed. We will be legislating at the earliest opportunity to give Ofsted these powers. This will enable Ofsted to force illegal providers to close quickly, register their service if appropriate, or face some form of penalty. This will significantly reduce the attractiveness of operating such settings, and Ofsted will share information of illegal providers where apprioriate, to ensure that local authorities continue to make the most informed decisions on placements.

'Ofsted are seen as a powerful organisation and are experts regarding the standards of care provided. Enforcement notices can be used to allow an organisation the time to resolve and maintain agreed standards.'

(Local authority)

While some respondents to the consultation did raise concerns about the impact this could have on the availability of provision, ensuring that our children are safe is our primary responsibility and the very minimum they deserve. We must not tolerate any form of illegal provision in children's social care, and Ofsted must be able to quickly and effectively take action against unscrupulous providers – the Government will back Ofsted to do this.

In addition to these new powers for Ofsted, as set out above, we will develop national standards under an Ofsted-led inspection regime for legitimate independent and semi-independent provision. As part of this, we will consider extending the power Ofsted has at its disposal with regard to the regulation of children's homes, to independent and semi-independent settings.

The Government will not be proceeding with the remaining proposals in the consultation

While there was broad support for each of these proposals, the Government believes that the ambitious reform programme already set out in response to our earlier proposals diminishes the need for and potential impact of these additional measures.

Requiring local authorities to liaise with police forces when making out of area placements

There was broad support for this measure from all parties, however, we can build the benefits of this measure into the national standards and registration and inspection regime that we are developing. The main benefits of this measure were that local authorities and relevant local police forces would share more information about providers and settings than currently happens in many cases. This would mean that police forces could share information with local authorities including concerns they have about particular providers or settings, and the local authority would then be able to make a more informed decision, particularly when placing children out of area where placing authorities are less likely to have detailed knowledge and understanding of the settings and providers, when compared to partners in their own local areas.

'I think it would be more resource effective and potentially more productive to make this consultation and accountability apply to the provider and LA in which they operate, so that consultation has to happen at the time that they commence providing services in the local area and by regular monitoring and review […] Good police and LA partnership working in the form of liaison officers in the police for children's homes is an example of good practice which could be applied in this arena.'

(Local authority)

Local authorities already work with partner organisations and stakeholders when making care placement decisions and we expect local authorities to engage with police forces where necessary and appropriate as part of good multi-agency arrangements.

Defining 'care' to clarify the distinction between 'unregulated' and 'unregistered' provision

There was strong support for this measure, with respondents suggesting that clearer definitions between 'care' and 'support' would be helpful to inform judgements on whether something needs to be registered or not. However, as set out above, the other measures we are taking forward supercede the need for this.

‘If the Government chooses the right course of action by regulating all currently unregulated provision, it will remove the need for any new definitions or caveats.’

(Charity)

The main aim of this measure was to draw really clear distinctions between what needed to be registered as a children’s home, and what can legitimately operate as an independent and semi-independent setting without carrying Ofsted registration under existing requirements. However, as set out above, we are developing potential models for national standards and Ofsted registration for independent and semi-independent provision in future. We would expect these models to better define this type of provision, making clear the distinction between a children’s home and a legitimate independent or semi-independent provider.

Requiring Independent Reviewing Officers (IRO) to visit young people in unregulated placements

As with the previous measures, there was a lot of support for increasing the role of the IRO, by requiring them to visit young people in independent and semi-independent placements. We were of the view that this would be an important and impactful measure if we were to proceed without our more ambitious reforms to introduce new national standards and Ofsted registration and inspection.

IROs are already required to carry out a review of a child’s care plan when they are moved into an unregulated placement, and this would continue. Many IROs would already carry out a visit in order to do a full and proper review of the care plan, and respondents raised this in the consultation.

‘IROs are already required to assess whether a placement meets a child’s needs. Many local authorities have commissioning teams who undertake contract monitoring and visit placements to assess suitability. The child’s social worker also does so […] this is sufficient.’

(Consultant)

However, we believe that banning the placement of under-16s and developing a regime of national standards and Ofsted registration and inspection will work towards bringing the required rigour to assess whether providers/settings are high quality and safe for

young people, and we do not believe that an extended role for IROs would be necessary in addition to this.

Summary and next steps

We believe that the policy measures covered in this Government response represent an ambitious reform programme to improve the lives and experiences of young people in independent and semi-independent living arrangements. These measures will ensure that no child is placed in a setting that cannot meet their needs and keep them safe and give us the right checks and balances in the system to enable this and to take action where there are shortfalls. This response marks the beginning of our journey to achieve this, and we will need to engage extensively with the sector and care experienced young people in order to deliver this reform programme.

In terms of next steps, the Government will:

- Legislate to enact a ban on the placement of children under the age of 16, with this coming into effect in September 2021.
- Issue a consultation on national standards and Ofsted regulation in 2021. We will work closely with Ofsted and the sector to carefully consider how best to introduce the new regime.
- Proceed with legislating at the earliest opportunity, to give Ofsted additional powers to take enforcement action against illegal unregistered providers.

The Department thanks the sector and our care experienced young people for their contributions to the consultation, and extended work with us over the last year on these issues. We look forward to continuing this engagement as we implement these reforms.

'Whilst there will be many challenges in implementing the standards such as timings, costs, resources, ability and skill levels in reaching the required standards plus many more, they are all resolvable, short term issues that provide necessary protection for children in the long term.'

(Charity)

Annex A: List of organisations facilitating feedback from children and young people

- Article 39
- Catch 22
- Central Bedfordshire Local Authority
- Centrepoint North
- Centrepoint London
- Coram Children's Legal Centre
- Coram Voice
- Depaul UK
- Drive Forward Foundation
- Lancashire Care Forum
- Luton Local Authority
- National Youth Advocacy Service
- St Christopher's Fellowship
- YMCA
- Your Life, Your Story
- Youth Voice

Department for Education

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