

Cafcass response to the Department for Education's reforms to unregulated provision for children in care and care leavers consultation

Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass represents children in family court cases in England. We make sure that their wishes and feelings are heard and that decisions are made in their best interests. We are independent of the courts, children's services, education and health authorities.

When a local authority applies for a court order to remove a child, the child automatically becomes a party to the proceedings and is represented by a children's guardian, provided by Cafcass. The children's guardian is independent of any other parties and is appointed by the court to promote the child's welfare and ensure decisions are made in the child's best interests. A key part of the children's guardian role is to analyse the work of the local authority to achieve the best outcome, and to make recommendations to the court. This usually involves speaking with the child, family members, and professionals working with the child such as the local authority social worker and the independent reviewing officer. The children's guardian also appoints a solicitor to act for the child.

Context

Part of the children's guardian's role in care applications is to discuss the child's needs in respect of the type of home environment they require. This could be related to specific residential provision, which may or may not be registered or regulated.

We support those proposals set out in the consultation that could provide further protection to children, specifically requiring local authorities to consult with local police forces when placing a child out of area, amending legislation and statutory guidance to make clear when a setting is providing 'care' and the difference between 'unregulated' and 'unregistered' provision, introducing national standards for unregulated provision to drive up quality and consistency, ensuring independent reviewing officers (IROs) undertake visits to placements for every child, and granting Ofsted new legal powers to crack down on illegal providers. However, we do have concerns, set out below, regarding the capacity of the system to meet the proposals when it is already under immense strain with a shortage of suitable provision and limited funding to address this.

As ever, data is invaluable to understanding and we welcome the recent report released by the DfE which flagged evidence gaps regarding unregulated provision and the reasons behind its usage. We look forward to seeing progress on the gaps identified.¹

Proposal 1: ban unregulated provision for children under the age of 16.

This would be a return to the intended purpose of unregulated provision, which was to provide 16- and 17-year olds with a stepping stone to independence. Children under the age of 16 need more oversight and 'care' than unregulated provision can provide, and registered provision, when it works in tandem with a functioning system, provides an important safeguard for children.

However, it is important to acknowledge the limited capacity within registered children's homes, and the increasing cost of placements as a result, as well as the shortage of children's homes willing to accept children with highly complex needs. The Department needs to be confident that there are sufficient placements for children under the age of 16

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865184/Use_of_unregulated_and_unregistered_provision_for_children_in_care.pdf

before placing restrictions on types of provision. Further, some of our children's guardians flagged examples of valuable unregulated provision that they would want to be exempt from a ban on unregulated provision for children under 16 years of age:

- Emergency provision – this can buy time for the local authority to look for a local placement that may not be immediately or quickly available. Emergency provision can prevent the child being placed out of the area and can offer stability in terms of support: through education (not having to move schools), keeping the same social worker and through contact with their family. If children under the age of 16 were not able to be placed in emergency provision, it would lead to decreased flexibility for local authorities to find the most appropriate placement for a child that suits their needs.
- Parent and child units with 24-hour supervision, advice and monitoring offered but no ongoing assessment or 'care' provided - this type of provision is not regulated by Ofsted and could therefore be classed as 'unregulated' provision for a child on an interim care order under the age of 16. There would be a gap in provision without these units, for example for parents to demonstrate change, or as a bridging placement before a child goes into a home.

The consultation asks for good practice for emergency placements. A member of Cafcass' legal team identified that some local authorities have/had dedicated in-house foster carers for young people who are on remand in the criminal justice system. It is characteristically a short-term emergency arrangement as an alternative to the young person being in custody, where the foster carer works closely with youth justice officials. Additional funding to allow local authorities to provide additional capacity for more local authority foster carers, including specialist foster carers for children on remand, could relieve some of the current strain on the system in relation to available provision.

Proposal 2: require local authorities to consult with local police forces when placing a child out of area

We agree with this proposal as local knowledge relevant to safeguarding children, for example child sexual exploitation or county lines, is best obtained through local services. This would enable better informed decisions on provision, based on area knowledge and the child's unique needs.

Consideration could be given to:

- Whether the onus should solely be on the commissioning local authority to liaise with the local police force, or whether the provision provider should also liaise with the police, as they may be better placed to discuss what safeguards they are able to provide.
- The commissioning local authority to liaise with the borough that has the placement to determine the suitability of the location based on known risks regarding the child's individual circumstances.
- Seeking information from the local Multi-Agency Safeguarding Partnership (previously Local Safeguarding Children's Board) to inform the decision.
- The ability of the police to respond to emergency placements which would require urgent information sharing with little notice.

Proposal 3: amend legislation and statutory guidance to make it clear when a setting is providing 'care' and clarify the difference between 'unregulated' and 'unregistered' provision

Defining these terms would provide a clear remit and reduce the risk of illegal placements. It would also aid professionals working in this setting who operate in a challenging environment where it is illegal for unregulated provision to provide 'care' rather than 'support'

for a young person, but there is currently no definition of what qualifies as 'care' versus 'support'.

However, if capacity within the system is not increased and regulations and/or statute increases in prescriptiveness there is a risk it will be stretched beyond breaking point. Increasing prescription would need to be accompanied by increased capacity, requiring additional funding to expand provision.

We echo ADCS' concerns that current terminology when referring to placements is confusing, for example 'unregulated' provision is monitored and quality assured by local authorities and is therefore not 'unregulated'. If this proposal is taken forward, consideration could be given to whether there are simpler, more appropriate terms to refer to provision.

Proposal 4: drive up the quality of support offered in unregulated provision through introducing new national standards (national standards listed in Appendix 1)

Introducing national standards for all unregulated provision should alone improve the standard and consistency of care for children, with increased accountability and oversight of placements. Local authorities would more clearly be able to assess which provision is most appropriate for the child, and national standards would allow for better evaluation and inspection of provision. The key to the success of the standards will be appropriate funding, training of the workforce and proper accountability and oversight, whether by the local authority or Ofsted.

Areas that could be covered in national standards that are not listed in the consultation document are:

- Reporting requirements for the ratio of employed and agency staff as an indicator of the stability for young people living in that environment;
- Clarity on if and/or when it is acceptable to place young people in accommodation such as Airbnbs, mobile homes and hotel rooms.
- The court's expectations of the children's guardian to be made clear where it is identified that a placement for a child should be registered but is not.
- An expectation that some lead staff within the unregulated provision having child care training experience, recognising that it is not realistic for all staff to have a childcare qualification.

Proposal 5: DfE propose two options for delivering the standards, being:

a) changing the regulations to require local authorities to only place children in provision that meets the standards. Ofsted wouldn't register and inspect providers, and instead would assess local authorities on their use of unregulated provision and compliance with the requirement.

b) all providers of unregulated provision to register with Ofsted and be inspected against the new standards. Local authorities would be required to place children in provision which is registered by Ofsted and Ofsted could take enforcement action against providers that do not meet the standards.

Our preference is option a) as it ensures professionals work together for children, with invaluable local knowledge, and is likely to be more achievable in the short term. If this option is implemented the onus should be on the placement to meet the standards rather than the local authority having to make sure the standards are met.

Option b) would centralise regulation and reduce local responsibility, leading to less effective local multi-agency working to the unique needs of the child. It would require significant

additional resources and efforts to grow the available provision. It would also likely see an immediate reduction in provision where providers choose not to register with Ofsted.

The consultation asks how effectively either option would raise the quality of unregulated provision on a scale of: not at all/a little/no change/a lot/very. Option a) would raise the quality of unregulated provision by 'a lot', but only if more capacity is put into the system.

Proposal 6: ensure independent reviewing officers (IROs) undertake visits to placements

We agree with this proposal where the scrutiny and accountability of the IRO visiting the placement would help ensure the child is placed in the most appropriate provision for their individual needs. Consideration should be given to what the IRO should do if they do not think a placement meets the need of the child but where there is no alternative placement available, and clarity about which IRO should do this visit if the placement for the child is out of area.

IROs undertaking visits to each placement could impact significantly on their workload, especially as a young person might live in various placements up until the age of 18. Stipulating this requirement in guidance would assist in ringfencing this time for IROs, but will have an impact on other aspects of their role.

Proposal 7: to grant Ofsted new legal powers to crack down on illegal providers through issuing enforcement notices.

We support this proposal which would enable unregulated providers to remedy the offending action rather than immediately closing provision and depleting already scarce resources.