

12 July 2021

Joint ADCS and LGA response to the consultation on introducing national standards for independent and semi-independent provision for looked-after children and care leavers aged 16 and 17

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) appointed under the provisions of the *Children Act (2004)*. The DCS acts as a single point of professional leadership and accountability for services for children and young people in a local area, including children's social care and education.
2. 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.
3. ADCS and the LGA welcome the opportunity to respond to the consultation on introducing national standards for independent and semi-independent provision for looked-after children and care leavers aged 16 and 17.
4. It is welcome that the DfE has commissioned Kantar to engage with care experienced young people to get their views on the current consultation on changes to unregulated accommodation. Any changes should be informed by their knowledge and experience of this provision.
5. The children's social care system is complex and has many inter-dependencies that cannot, and should not, be viewed in isolation. It is therefore disappointing that the reforms to unregulated provision are being progressed outside of the broader independent review of children's social care.
6. In response to the 2020 consultation on reforms to unregulated provision, ADCS and the LGA raised a number of issues and potential unintended consequences that continue to concern our members.
7. Placement sufficiency has long been an issue for LAs and both ADCS and the LGA have been vocal in calling for more co-ordinated national action to help deliver increased capacity within the system where it is needed most, to meet the changing needs of children and young people, and crucially, to do this at a cost that is affordable to LAs against a backdrop of 11 years of funding reductions. The system needs more foster carers, and those with the most complex needs continue to have difficulties in accessing registered provision. This situation is further exacerbated by a lack of capacity in specialist and secure children's homes that can offer intensive care and support for some of the most vulnerable children who may be a risk to themselves or to others. There are also continued challenges in accessing tier 4 provision for those who require in-patient mental health services.
8. There is a risk that by introducing regulation in this area, the challenges experienced in accessing places in registered children's homes will be replicated. There is no indication as to the expectations on LAs if, following the implementation of the reforms (both a ban

on placing those aged under 16 in this provision and the introduction of standards, registration and inspection), a registered placement cannot be found for a child or young person.

9. If LAs do not have inhouse provision to deal with emergency placements and the market (generally) remains unwilling to work with our most complex young people, the reforms will lead to an increase in the use of bespoke unregistered placements, as the placement of last resort.
10. While many of these issues are being considered by the care review, the ban on placing those aged under 16 in unregulated accommodation from September 2021 is likely to make the situation urgent and so action is needed now. A transition period may be needed to support this move and prevent further upheaval and change for young people who may be settled and making progress in their current placement. Ongoing responses to the Covid-19 pandemic and the additional pressures this context is placing on placement sufficiency adds to this complexity and urgency to ensuring children and young people are not disadvantaged in the short term by this move.

The difference between care and support

11. The indicators as set out are broadly helpful in determining whether care or support is being delivered to a young person, however, strict definitions do not reflect the changing nature of young people's needs. A level of flexibility may be required to enable a provider to be responsive to young people's needs as they change from week to week, and elements of care and extra support may be required some, but not all, of the time. For example, a 17 year old in semi-independent accommodation who voluntarily requests some time-limited budgeting support. If the definitions are too tight with little room for movement, there is a risk that good providers will be disincentivised from offering additional support services for fear of crossing the boundary into care, albeit for a limited time. It would be helpful to have some additional information as to the rationale for inclusion of the indicator relating to young people controlling what they wear.
12. There may be a small number of cases where a care leaver aged 16 or 17 refuses support and seeks to live independently, as is their legal right. It is of course preferable to find a way to support these young people as far as possible. It is therefore helpful to have enough flexibility in the national standards to be able to work with young people and encourage them to access support in their own time, offering a vital safety net and acting as any good parent would by providing reassurance about having somewhere to turn.

Defining unregulated independent and semi-independent provision

13. Use of the term unregulated to describe independent and semi-independent provision is unhelpful. It is often confused with the term unregistered, and suggests that there is no oversight of this provision. Local authorities both monitor and quality assure unregulated provision at the local level. Rather than the term 'supported accommodation for older children', it may be more appropriate to use 'supported accommodation for young people' as many people in this type of provision would not see or describe themselves as 'older children'. The term young people also indicates that those placed in this provision will be of an age where they can expect to have a level of independence and responsibility. While a broad definition is helpful, we also need to be clear that there are a number of different placement options for young people within the definition.

Introducing standards for independent and semi-independent provision

14. There is a risk that the introduction of national minimum standards will drive up the costs of this provision for LAs as providers look to recoup costs via their pricing structure. Indeed, this is exactly what happened when new regulations and quality standards were introduced in residential children's homes several years ago. The DfE must be alive to this risk and help to ensure that any costs associated with the implementation of standards are not directly passed on to already financially overstretched children's services. There is a further risk that some providers are unable and/ or unwilling to meet the standards and therefore retreat from the market, creating further capacity challenges.
15. The proposed standards seem reasonable, however, whether they are feasible will depend on the package of government support available to providers, including local authorities, and the required timescale for implementation. It is helpful that the standards refer to the 'legislation and regulation' relevant for the type of accommodation as the requirements will differ depending on the nature of the provision. For example, a property providing independent living for multiple young people will have to meet different health and safety requirements compared to a private home providing supported lodgings.
16. It would be appropriate to stipulate within the standards an expectation that providers of independent and semi-independent provision engage with local monitoring and quality assurance arrangements. This will be particularly relevant if the model of national registration and inspection is a provider-based regime and therefore may compliment local arrangements which are generally more settings-based.
17. We would welcome reference to how a provider intends to prioritise local young people, where appropriate, when offering placements. This would support efforts to reduce out of area placements and help young people maintain existing networks and access to support and services.
18. ADCS members have previously raised several different but related staffing concerns, from lack of training and development to pay and conditions – zero hour contracts are not uncommon here. The introduction of standards may provide an opportunity to address some of these concerns, particularly in relation to the need for on-going training and development for the workforce. The workforce plan standards are currently focused on employment and recruitment. They could be further developed to include an expectation that staff are also appropriately trained to deliver effective support interventions e.g. through a trauma informed response.
19. This provision is often established in low cost accommodation, in areas with pre-existing challenges which are exactly the wrong areas to place vulnerable young people. The location assessment standard should place clear expectations on providers to consult with both children's services and the police to inform their assessment.
20. There is currently no mention of the need for providers to have policies in relation to young people who go missing. While young people in this provision can come and go freely, providers should have policies in place to ensure there is an appropriate response if a young person goes missing and is considered to be at risk.
21. The accommodation standard suggests that where a young person does not have access to basic essentials, these are provided by the service. Such essentials should be provided

to all young people entering a service to avoid the need for the young person to ask. In this standard there is also reference to providing information about how a young person can complain, this should also include details as to how complaints will be dealt with.

22. ADCS and the LGA welcome the recognition in the proposed standards that young people should be able to participate in and influence how the service operates. Linked to this, the inspection regime should also have a focus on children's experiences and outcomes, rather than just buildings and policies.

Ofsted-led registration and inspection

23. Is it reassuring to see the consultation document refer to the need for the new registration and inspection arrangements to be measured and proportionate. Any future arrangements must guard against the potential for recreating the difficulties children and young people with the most complex needs currently face in terms of access to registered children's homes; homes will not accept them for fear of jeopardising their Ofsted rating, or costs of placements are driven up by the few providers that are willing to accept that risk.
24. ADCS would suggest that any new regulatory and inspection arrangements for unregulated provision are considered as part of a comprehensive review of the regulatory system, with a view to achieving a more fluid system which aims to meet the needs of children and young people; the LGA is supportive of this recommendation. A change in the regulatory framework to register providers rather than physical settings, similar to that in fostering and adoption, would allow for the flexibility needed to make emergency/ crisis placements while also allowing LAs to tailor the care and support around the individual needs of children and young people in the correctly registered provision.
25. With this in mind and given the nature of the provision, ADCS and the LGA would support a provider-based regime which would complement local quality assurance arrangements which are in place across many local authorities.
26. ADCS and the LGA would be concerned that a setting-based regime would be over-burdensome for providers and have the potential to destabilise the workforce in settings. At present, Ofsted does not have either the capacity or experience to fulfil this new form of activity so a recruitment exercise will be required. The current unregulated workforce are the people with the knowledge and experience and any new regime will have a direct impact here.