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Wednesday 15 April 2020

## **Reforms to unregulated provision for children in care and care leavers**

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) under the provisions of the *Children Act (2004)*. The DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to respond to the Department for Education's (DfE) consultation on reforms to unregulated provision for children in care and care leavers.

### **Unregulated provision**

2. The use of unregulated provision for young people in care is one element of a much wider care system that cannot be viewed in isolation and as such, it is disappointing that the consultation and proposed reforms are being progressed outside of the much anticipated care review. If the creation of new legislation is in scope, as is suggested by the consultation document, consideration should also be given to other pressing areas in children's services that require legislation, such as a ban on profiteering from the provision of services to vulnerable children.
3. ADCS welcomes the publication of the research report which sits alongside the consultation on reforms to unregulated provision, it is a helpful contribution to the debates we are having regarding reform. The report itself recognises the evidence gaps in relation to the use of unregulated and unregistered provision and ADCS members would suggest that further research/ data is required prior to any legislative changes being made. Additional research should focus on the reasons why young people under 16 are placed in unregulated and unregistered setting. If government wish to ban this practice, we need to address the causes, rather than the symptoms.
4. ADCS has a clear position in relation to unregulated provision and what is needed within the system to ensure that the right placement is available at the right time:
  - a) A review of the regulatory framework to enable local authorities (LAs) and clinical commissioning groups (CCGs) to provide and commission flexible responses to complex children. The ongoing focus on the regulation of buildings rather than providers is unhelpful. Legitimate operators should be regulated based on the quality of young people's outcomes
  - b) The introduction of legislation similar to that in Scotland (and aligned with existing legislation in England in relation to adoption) where only voluntary organisations can operate in fostering and adoption markets, respectively. This legislation to be applied to all care services for children and young people in England
  - c) A unified placement and commissioning system for welfare secure placements, children's mental health secure placements and youth justice placements, the DfE has been working on this for several years with limited progress to date

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- d) Urgent pace is needed alongside investment and block commissioning of more secure welfare placements
- e) A national campaign to help local authorities recruit many more foster carers
- f) A renewed focus on training and quality of staff in residential settings – there is a huge focus on social work models but not enough on models of direct care
- g) The current terminology in relation to unregulated and unregistered provision is unhelpful and inaccurate, unregulated provision is both monitored and quality assured by LAs.

## Context

5. As at 31 March 2019, there were 78,150 children in care in England, this represents an increase of 28% over the last decade. Placement sufficiency has long been an issue for LAs and ADCS has been vocal in calling for more co-ordinated national action to help deliver increased capacity within the system, to meet the changing needs of children and young people, crucially at a cost that is affordable to LAs. The reviews of both [residential care](#) (2016) and [fostering](#) (2018) highlighted placement sufficiency as key issues. The country does not have enough foster carers, the Fostering Network estimate that a further 7,220 foster families are needed in the next 12 months alone to meet demand. And while, as at 31 March 2019, there were 2,304 children's homes in England, totalling 12,035 places, these are not always in the right geographical location and are not accessible to children with the most complex needs.
6. As shown in the Department for Education's research, [Use of unregulated and unregistered provision for children in care \(2020\)](#), this provision is generally used: to support planned moves towards independence; for crisis/ short term accommodation; when unable to secure a place in registered provision; for placement breakdown; for 16/17 years olds entering care for the first time; and for unaccompanied asylum seeking children.
7. For some young people, a placement in an unregulated setting is a placement of choice, it is the best option to meet their needs and/ or is part of a plan to support a move towards independent living. However, for other young people, this is a placement of last resort as no other placement in registered provision can be found or indeed secured. ADCS is aware of examples where placement officers have contacted in excess of 200 registered providers and have still been unable to secure a placement for a single child. Demand for registered places is outstripping supply and registered children's homes are increasingly reluctant to accept children with highly complex needs, particularly at short notice or in a crisis situation, for fear of jeopardising their Ofsted rating. ADCS recognises that Ofsted does not want its work to directly or indirectly impact on LAs ability to place children, however these interrelated factors are in part, driving the growth in the use of unregulated provision, therefore regulatory reform is essential in addressing this issue. This is particularly true for the cohort of young people on the edge of hospitalisation, criminalisation or need a welfare secure placement who are not well served by existing frameworks or provision. The inspection framework must recognise the increasing level of risk which LAs are managing in the community, and enable providers to replicate this in their practice working directly with young people.

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8. It must be acknowledged that a small number of young people, some under the age of 16, present a significant risk to themselves and/ or others, for example, through self-harm and violence, setting fires, sexually harmful behaviour etc. Where a secure placement cannot be found or is deemed inappropriate, and the risk is so great a young person cannot be placed with others, a bespoke placement in unregulated provision is often the only option available.
9. Young people with the most complex needs and challenging behaviours can find it increasingly difficult to access and sustain a placement in registered provision. There is 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. In [Local authority use of secure placements \(2016\)](#), researchers note that the concept of alternatives to secure care is not straightforward. Additionally, the same research showed that whilst providers may claim to provide therapeutic services, when this 'offer' is interrogated, it can mean many different things across a vast spectrum. There are currently no criteria which providers of specialist therapeutic services must meet to evidence the therapeutic nature of their offer.
10. A greater focus is needed on our residential care workforce, they are critical in achieving positive outcomes for children and young people. The workforce that spends the greatest amount of time with children and young people are often the least qualified and the lowest paid. Direct care work is frequently overlooked; the government focus remains firmly on social work and teaching. There must be national investment in the residential care workforce to ensure our colleagues in children's residential settings are equipped to meet the needs of children in care today.
11. ADCS has raised concerns with the inspectorate about the speed at which registered managers can issue notice on a placement, in some cases as little as 24 hours, with very little scrutiny or accountability measures. This is a regulatory anomaly and in stark contrast to a headteacher who is required to go through a clear process to exclude a pupil. The existing regulatory framework places much more emphasis on admission to children's homes rather than how and why placements come to an end. There are further difficulties in accessing emergency placements when LAs are given notice, as homes state the risk of accepting a child in crisis, with a history of placement breakdown, is too great. Some LAs are attempting to improve placement stability by intervening at the first signs of difficulty. For example, one LA has implemented 'consolidation meetings' to bring both support and challenge to providers in relation to particular children where there is a risk of placement breakdown. As a result, there has been a decrease in the number of children having experienced more than three placements, a reduction from 13.5% to 7% over a 20-month period.
12. In addition to the sufficiency challenges LAs are experiencing, ADCS has significant concerns about the role of private equity and how this is driving rapid changes in the ownership, financial models and service delivery in residential services for vulnerable children. ADCS would welcome a review of the ability of organisations and individuals to generate significant profits from the care of some of the most vulnerable children and young people in the country, particularly when set against a decade of year-on-year budget reductions for local authorities. Although children's services have long operated in a mixed economy with private, voluntary and community providers being involved in the delivery of services locally, the entry of private equity into the provision of fostering and residential care placements is a source of worry. Multi-million pound mergers

between providers are becoming commonplace and the speed at which acquisitions take place can make it difficult to understand lines of accountability. The current regulatory framework does not reflect this new reality, Ofsted's focus is on individual homes rather than the efficacy of the increasingly common large provider chains/ organisations as a whole and the contribution they make to children's outcomes. There is also little focus on or scrutiny of the financial stability of parent companies.

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

13. The government must recognise the wider context in which LAs and children's services are operating. There is not a placement market, there is a placement monopsony whereby local authorities are the only purchaser and due to demand, providers are able to pick and choose which referrals they accept and at what price.
14. A blanket ban on placing those under the age of 16 in independent and semi-independent provision could result in a series of unintended consequences. Without the flexibility to use unregulated provision, what will LAs be expected to do if they are unable to find a placement for a young person who is not yet 16? There is a danger that the proposed reforms will replicate the current situation in relation to secure children's homes; there is a waiting list but nowhere to wait. It is unclear what support will be available to LAs and what the government will expect LAs to do if no other placement can be found. The current COVID-19 crisis has the potential to highlight the much needed flexibility that this provision provides, as we face the prospect of more children and young people coming into the care system as a consequence of these unprecedented times.
15. It must be recognised that for a small number of young people under the age of 16, a placement in independent or semi-independent provision is their placement of choice in which they thrive.
16. A ban on the use of unregulated provision for those under 16 presents an apparently simple solution to what is a complex problem linked to the wider context of the placements 'market' and regulation. At times, the use of unregulated provision allows for a crisis situation to be managed while alternative arrangements can be put in place. If this flexibility is removed, the result will be even more risk within a system that is already under pressure. The government must recognise the complex nature of the needs of some young people and a blanket ban does nothing to allow for the flexibility that is sometimes needed:

**CASE A:** Entered care following adoption breakdown. Placed in foster care and then a children's home but posed a sexual risk to others and involved in drug supply. Provider gave notice on the placement due to the young person grooming other children and absconding with them. A repeated nationwide search for a solo placement was undertaken but no provider was forthcoming and repeated attempts to find a place in regulated provision failed. This young person was 15.

**CASE B:** Significant maternal drug use and chaotic mental health resulted in this young person being placed in foster care. Placement broke down due to drug use, absconding, risky behaviour, refusing to attend school and being aggressive/ threatening to the foster carer. Placed in regulated provision but struggled with boundaries and the dynamics with other young people were

very volatile and challenging, resulting in missing episodes. Following a nationwide search, an out of area regulated children's home was the only provider to respond. Whilst in this placement, the young person reported a serious sexual assault whilst out in the local community and was terrified to remain as a result. The LA ended the placement but could not find any other regulated provider nationally prepared to offer a place. The young person was 15.

**CASE C:** Came into care following neglect and exposure to parental mental health difficulties, substance abuse and sexual risk. Foster care placement broke down at the age of 15 despite extensive support, such as additional placement support, equine therapy and respite placement, and in the context of increasing missing episodes, defiant behaviour and aggressive attitude towards the carers. At 15, no other placement could be found and so the young person was placed in supported lodgings with the carer fast tracked as a foster carer. This placement broke down and the LA was unable to source any other regulated placement after a national search. The young person was 15.

17. As an alternative to the proposed reforms, ADCS would suggest 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. 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. ADCS would be interested in exploring this concept further with DfE, Ofsted and partners in the sector.
18. Sharing of best practice and support to LAs to develop the market will be critical and must be available prior to any ban being implanted. 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, there will be an increase in the use of bespoke unregistered placements, as the placement of last resort. This is an unintended, although entirely foreseeable, consequence of these reforms.

### **Requiring local authorities to liaise with police forces when making out of area placements in independent and/ or semi-independent provision**

19. In principle, ADCS members support the requirement for LAs and police forces to share intelligence to support the placement decision making process however, in practice this can be challenging. The decision to place a young person remains that of the placing authority and it is unclear what would happen in practice where there is only one placement option available and feedback from the police is not positive. LAs can provide additional support and/ or monitoring to mitigate risk, but the wider issue of placement sufficiency and quality must be addressed across the board.
20. Police forces would need to make clear contact details available and ensure that any LA request for information is responded to in a timely manner. Decisions regarding placements, particularly emergency/ crisis placements, need to be taken quickly and there simply may not be the time to liaise with the relevant police force.

21. Since October 2015, the ADCS website has hosted a resource for LAs to notify each other of out of area placements and to simultaneously advise the relevant police force that the placement has been made. To be clear, this is not a notification system, rather it is an interactive 'address book'. Data from the ADCS website suggests it is relatively well used:

| Year | Approx. number of visits to webpage |
|------|-------------------------------------|
| 2016 | 9,800                               |
| 2017 | 9,000                               |
| 2018 | 11,800                              |
| 2019 | 15,300                              |

Not all police forces provided contact details when requested, however, ADCS would be happy to include the contact details of those police forces not currently on the resource.

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

22. Defining 'care' may provide clarity as to when 'other arrangements' constitute unregulated or unregistered provision. Generally, unregistered placements are the result of either: a young person in unregulated provision experiencing a series of crises which the LA responds to by gradually increasing support which unwittingly becomes care; or, an LA cannot find any registered, regulated provision willing to accept a young person with complex needs and, therefore, must put in place a bespoke package of care to ensure the young person is safeguarded until such a time that an alternative placement can be found. Providing a clearer definition of care may help to avoid circumstances where the level of support increases incrementally over time in response to multiple crises, however it does nothing to address the unwillingness of a large number of regulated providers to support some of our most vulnerable young people.
23. The length of time it takes to register with Ofsted further hinders the ability of providers to respond quickly in order to meet a child's needs. ADCS is aware that Ofsted recognise this as an issue and welcomes the regulators efforts to explore potential ways to speed up the process without compromising on the due diligence checks that must take place.

### **Checks and balances in the system**

24. Independent and semi-independent provision does not go unchecked by LAs, many have robust quality assurance frameworks in place which are used to monitor provision at a local level. The development of national standards should draw on these frameworks to identify the minimum standards many providers are already working to in local areas; these can be used as a basis on which to build.
25. There is a risk that the introduction of national minimum standards will drive up the costs of this provision for LAs. DfE must be alive to this risk and help to ensure that any costs associated with the proposed reforms are not directly passed on to already financially overstretched children's services. There is a further risk that some providers retreat from the market given the range of standards and associated responsibilities that are being

proposed. This would create additional capacity challenges, although it is recognised that questions must be asked of any provider not willing to meet minimum standards. ADCS members would encourage DfE to work closely with providers when drawing up standards to reduce the potential for destabilisation in the market.

26. ADCS would not welcome a new quality and inspection regime, underpinned by legislation, for independent and semi-independent accommodation. Such a move would fundamentally change the nature of this provision and could potentially replicate some of the perverse incentives we see in registered children's homes whereby access is restricted for children with complex needs due to fear of impact on inspection judgements. Providers will need an appropriate transition period to allow them to implement the required changes, some of which may require financial investment.
27. While it may be helpful to clarify in statutory guidance the role of the IRO in relation to placements in unregulated provision, it remains unclear what action is required if an IRO deems a placement is not meeting need, and yet there is no alternative placement available.
28. Increasing Ofsted's enforcement powers may help to root out unscrupulous providers who persistently flout the rules and operate illegally. At the same time, Ofsted must support those providers who are unwittingly operating outside of regulations and wish to register to do so in a timely fashion, at the moment this process is not fast enough.
29. Many of the reforms outlined in the consultation document will have the unintended consequence of increasing the number of unregistered placements as LAs will find it increasingly difficult to place complex young people who display risky behaviour in regulated, registered provision. As already outlined in this response, ADCS members would support a regulatory review to create a more flexible regulatory framework, whereby providers, rather than homes (physical settings), are registered to allow LAs the flexibility needed to make emergency/ crisis placements and allow placements to be personally tailored to the needs of the individual child or young person where appropriate. ADCS would welcome the opportunity to explore this further with DfE and Ofsted.
30. If there any questions or comments about this feedback or if representatives from the DfE would find it helpful to talk through this response in greater detail with a representative group of the Association's membership, please contact [esther@adcs.org.uk](mailto:esther@adcs.org.uk) in the first instance.