

## **Strengthening protections in unregistered alternative provision**

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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 strengthening protections in unregistered alternative provision (AP).
2. AP offers a valuable alternative to mainstream schooling for children and young people who, for a variety of reasons, find it difficult to access a full-time timetable or the national curriculum as well as those who have been excluded from school. AP is a broad church, from pupil referral units (PRUs), alternative provision free schools and hospital schools to bespoke vocational or recreational arrangements put in place to meet the needs and aspirations of individual learners. ADCS members believe reintegration to mainstream provision must be a priority and it is welcome that the Department acknowledges the role of AP as an intervention, not a destination.

### **The use of unregistered AP as a time-limited intervention to complement education being provided in school**

3. ADCS agrees in principle that unregistered AP should be time-limited, however, there must be sufficient flexibility for LAs to put in place the right provision that meets a child's needs. LAs are grappling with a shortage of AP providers and we have now seen an increase over the past year in the number of children and young people placed in unregistered provision according to recent [Ofsted data](#). Any limitations placed on how unregistered AP can be used must be met with additional funding to increase the sufficiency of places available.
4. The expectation that there be plans for successful reintegration into full-time education in a school when each placement has concluded is reasonable and ADCS welcomes the proposal that schools must provide evidence of re-integration into full-time education at the end of every time-limited placement. However, it is not clear how this will happen in practice in the current climate of rising exclusions and use of part-time timetables alongside a significant rise in children absent from school or missing education since the pandemic. ADCS would welcome greater detail as to how this would work with clear expectations for all schools and LAs to work collaboratively to ensure children are successfully re-integrated and supported in mainstream school where it is in their best interest.
5. If LAs were no longer able to place children who are not on a school admission register in unregistered AP in order to meet their section 19 duties, LAs must be given time and resource to be assured that there is enough provision available in order to find suitable full-time education. Furthermore, if LAs were unable to place children not on a school role in unregistered AP, the significantly reduced pool of

providers available may lead to inflation of costs from independent AP providers. In the context of a dramatic increase in the number of permanent exclusions during the 2022/23 autumn term (3,100) in comparison to the previous year (2,100), LAs are under increasing pressure to find appropriate provision that meets children and young people's needs at short notice.

6. Central to this issue is a school accountability system that does not incentivise inclusivity. The changes set out in this consultation must be accompanied by reforms to the accountability system, with funding for mainstream schools to match, so that more children, particularly those with additional needs, can remain in mainstream education where appropriate. ADCS previously welcomed some of the proposed measures set out in the 2022 Schools White Paper and encourages government to re-visit these, particularly those outlined within chapter 4.

### **New regulatory arrangements for unregistered alternative providers offering time limited interventions to complement the education being provided in school**

7. ADCS is concerned that the introduction of a duty on LAs to quality assure all unregistered provision within their local area creates an unfunded new burden. LAs that have their own existing quality assurance frameworks will have to alter these in order to reflect the national standards, and then assure themselves that all unregistered provision within their local area meets the new national standards which would have to be updated when necessary. This could span multiple teams within an LA across commissioning and education to ensure that teaching within a setting is robustly quality assured. The overall cost burden on LAs could be significant and it is not clear how this proposal may result in a cost saving as outlined in the consultation.
8. Where unregistered AP is used successfully, it will be put in place using the appropriate formal commissioning routes and include all checks and balances to ensure adequate safeguarding measures are put in place. This should include ongoing regular monitoring, including site visits (which can be both announced and unannounced) to satisfy the LA of the quality of provision being provided and that progress is being made. Efforts to formalise this process and avoid duplication are welcome and ADCS would welcome further conversations with DfE on how this would work in practice. However, ADCS is clear that placing full responsibility on LAs to quality assure all unregistered AP in their local area must be accompanied by appropriate funding to allow LAs to meet this requirement.
9. ADCS would welcome further detail on what an LA should do in the event it identifies a provider that does not meet the standards, but continues to operate, or a provider that already has pupils placed within it but is no longer meeting the standards. Will the LA be responsible for overseeing an action plan to support the provider to return to the necessary standard, or would all pupils need to be moved into different provision?

### **Greater flexibility for local authorities to enable EOTAS special educational provision to be delivered in a single unregistered setting**

10. It is important that all children and young people are able to develop a sense of belonging to where they receive their education. Attending multiple settings for short periods of time can have a detrimental effect on a child's sense of belonging or

feeling included and ADCS welcomes efforts to allow for children to remain in the same setting where it is in their best interest. However, regarding the proposals to provide greater flexibility to LAs to allow EOTAS to be delivered in a single unregistered setting and for national regulation for providers delivering such provision, ADCS would welcome further conversations with the Department to better understand the detail and how national regulation would work.

11. Consideration must also be given to the impact of First-tier SEND Tribunal decisions which can rule that an LA provide bespoke provision in unregistered provision for a child or young person. If the relevant provider does not meet the national standards, it is not clear how this situation would be resolved. Furthermore, this can limit an LAs' ability to allow EOTAS to be delivered in a single un-registered setting if a Tribunal ruled that a child must receive provision that can only be delivered across multiple settings. If the proposals set-out in the consultation are implemented, there will need to be clear join-up between DfE and the SEND Tribunal.

### **New national standards for unregistered alternative provision**

12. The proposed new national standards look reasonable with regard to ensuring that children in unregistered provision receive good quality education that meets their specific needs. However, the Department will need to be cognisant of any unintended consequences such as the burden of further regulation and the potential impact on provider exit.
13. It is welcome that the Department will carry out a new burdens assessment. As outlined above, ADCS is concerned that the requirement for LAs to carry out quality assurance checks on all unregistered provision in their local area will represent a significant new burden. ADCS would welcome further conversation with the Department to discuss the detail of potential cost implications for local authorities.