



Department
for Education

Use of unregulated and unregistered provision for children in care

Research report

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Executive summary

Background

Under the Care Standards Act (2000), settings and domiciliary services that provide both care and accommodation for young people under the age of 18 are required to register with the Office for Standards in Education, Children's Services and Skills (Ofsted). These include children's homes and fostering services, in which most children in care are accommodated (registered provision). Provision for children in care that is not required to register with Ofsted (unregulated provision) includes:

- Accommodation for children (usually over the age of 16) who need support to live independently rather than full-time care (Ofsted, 2017a). This comprises:
 - 'Independent living' (such as in a flat, lodgings, bedsit, bed and breakfast accommodation, or with friends) with or without formal support;
 - 'Semi-independent living accommodation' (such as hostels, foyers, YMCAs, lodgings, flats and bedsits) which is not subject to the children's homes regulations but supervisory staff or advice workers are specifically employed and available to provide advice and support to the residents (although they do not have to live on the premises).
- Temporary care and accommodation for children in mobile settings or lettings arrangements e.g. boats, holiday cottages and static caravans (Ofsted, 2017a, 2017b). Ofsted report that this exemption is for leisure, cultural or educational activities and is about the purpose/intent of a placement.

If a provider meets the definition of care and accommodation in the Care Standards Act but does not register with Ofsted, then they are operating illegally and are open to prosecution (unregistered provision).

In recent years, the use of unregulated and unregistered provision for looked after children (LAC) and care leavers has increased but the drivers for this increase are not fully understood. Moreover, concerns have been raised about the quality of the care, support and safeguarding offered by some of the providers and the decisions being made by local authorities (LAs) in placing children in these settings. The Department for Education (DfE), working with Sir Alan Wood, Chair of the Residential Care Leadership Board, therefore commissioned the research on which this report is based to gain a better overall understanding of the issues around this type of provision.

Methodology

The research included a review of DfE statistics on LAC in England and in-depth telephone interviews with Ofsted and LAs. From an original sample of 23 LAs, 22 agreed to participate in the research study, with a total of 42 individuals participating in the interviews. The interviewees all had responsibility for arranging placements or overseeing the processes through which this is done and included directors of children's services, heads of commissioning, operations directors, strategic and service managers for children's commissioning and LAC, senior placements officers and quality assurance managers. The interviews lasted between approximately 45 and 60 minutes. It is important to bear in mind that the information gathered through the interviews is self-reported and no checks on actual practice were conducted.

Key findings

Review of DfE statistics

The DfE's statistics on LAC¹ show that the number of children living independently has increased since 2015, rising from 2,420 (3 per cent of all LAC at 31 March) to 3,400 (4 per cent of all LAC) at 31 March 2019. The number of children in semi-independent accommodation has more than doubled since 31 March 2015, and the proportion of LAC in this form of accommodation has increased slightly (from 2 per cent to 4 per cent from 31 March 2015 to 2019).

The following figures come from the DfE supplementary analysis (2020). The majority of children living independently and in semi-independent accommodation (99 per cent and 97 per cent respectively) at 31 March 2019 were aged 16 and over, with a small number of children in the 10 to 15 age group (1 per cent living independently and 3 per cent in semi-independent accommodation).

There was a higher proportion of boys living independently (72 per cent) and in semi-independent accommodation (70 per cent) at 31 March 2019 compared to all LAC at this time point (56 per cent). Moreover, there was a higher proportion of Asian or Asian British, black or black British, and other ethnic groups living independently and in semi-independent accommodation than the national average.

The proportions of children who were unaccompanied asylum seekers (UASC) living independently and in semi-independent accommodation were 43 per cent and 36 per

¹ Children looked after in England including adoption: 2018 to 2019
<https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>

cent respectively. This is considerably higher than the proportion of LAC who were UASC at 31 March 2019 (6 per cent).

The DfE's statistics do not distinguish between the use of unregulated settings for different purposes including: supporting young people who are transitioning to independence; developing bespoke packages for young people with complex needs; and providing short-term accommodation while assessments and placement searches are taking place.

Interviews with local authorities

The use of unregulated and unregistered provision

All of the LAs involved in the research stated that they use unregulated provision. For most LAs involved in the research, this type of provision is being used as a positive choice to support young people aged 16 and 17 to transition to independence. The extent to which it is used in this way varies depending on whether LAs have in place policies that encourage all children in care to remain in registered children's homes or foster care until age 18.

Several LAs use existing unregulated providers with bespoke packages designed to cater for young people with multiple issues (such as mental health issues, a history of assaulting staff, fire setting, and self-harming), often in the context of placement breakdowns. According to the LAs concerned, these children are very difficult to place in registered provision and they place them in unregulated settings as a short-term measure, while suitable registered provision is located and/or an assessment is undertaken to determine a young person's needs. The children involved range from 11 to 17 years old and include some for whom LAs are looking to obtain a secure placement.

The LAs that report using unregulated provision in conjunction with bespoke care packages indicate that this is a growing phenomenon, but that relatively small numbers of children are involved. The five LAs that reported using unregulated providers for children aged 15 years or younger indicate they have done so on between one and six occasions over the previous twelve months.

The interviews suggest that some of the provision described by LAs as unregulated may, in fact, have been unregistered. For example, some LAs believe that providers are not required to register with Ofsted so long as the placements are short-term and/or involve non-static settings or short-term letting arrangements. However, this is not accepted by Ofsted who state that the length of a placement is irrelevant and that the use of mobile settings does not exempt providers from registering with Ofsted, unless placements are primarily for the purpose of cultural, educational or leisure activities. It should be noted, though, that the latter point is not made clear in the two letters that Ofsted (2017a,

2017b) issued on unregulated and unregistered settings. It is imperative that the regulations are made crystal clear and effectively communicated to the sector to ensure that they are understood and interpreted correctly by both LAs and providers.

Some LAs appeared to believe that, if the children were over 16, then accommodation was unregulated rather than unregistered, irrespective of the amount of care and support provided by the provider. Once again, this is contrary to Ofsted's guidance (2017a) which states that if a provider provides care as well as accommodation, then they should be registered.

Some LAs report using unregistered provision as a last resort in similar circumstances; that is, when no other suitable provision can be found. It is also apparent that unregulated settings can become unregistered during the course of a placement; an LA might place a young person with a provider that is not required to be registered but, through the actions that it takes, transforms the provider into an organisation that should be registered.

The LAs report that where unregulated provision is used to support the transition to independence, placements can often last a year or more. Where the use of unregulated provision is crisis driven, LAs state that placements are typically quite short while assessment takes place and more suitable provision is identified. Unregistered placements are also said to be usually temporary in nature – typically up to a month – as they too are generally used in crisis situations.

According to the LAs interviewed, the growth in the use of unregulated and unregistered provision for children with complex needs and/or challenging behaviour is being driven by two interrelated factors. The first is that demand for registered places is currently outstripping supply. This is consistent with indications from Ofsted that supply is not keeping pace with demand (Cowen and Rowe, 2018) and research by the Independent Children's Homes Association (ICHA, 2018). The second factor identified by the LAs we interviewed is that registered children's homes are becoming increasingly reluctant to accept children with highly complex needs and challenging behaviours due to concerns about the possibility of their Ofsted rating being negatively affected if they are unable to secure positive outcomes. The ICHA's (2019) most recent annual state of the market survey also indicates that this is the case.

There is a mix of approaches to finding unregulated and unregistered provision which includes the use of frameworks, working with known providers (some of whom may also have registered provision), spot purchasing and block contracts (for unregulated provision) and relying on a brokerage team to search for suitable provision. Most LAs interviewed also use soft intelligence and information sharing when assessing the suitability of a provider which can include taking up references from other placing LAs

and talking to colleagues familiar with the provider in their own LA or in neighbouring LAs. This is usually done in an informal and ad-hoc way.

Although Ofsted report that they have been aware of children living in unregistered provision under inherent jurisdiction, none of the LAs reported using unregistered provision instead of a secure bed or in conjunction with Deprivation of Liberty orders. However, three LAs said they had used provision that they regarded as being unregulated (as opposed to unregistered) as an interim measure while they waited for a secure bed to become available.

Quality, accountability and the role of regulation

A majority of the LAs felt that the quality of unregulated provision is highly variable, with some expressing concerns about the ease with which providers could set up. Quality concerns were mainly about the experience, training and retention of staff (especially in London); the extent to which providers actually give the support they said they were offering; and the location, quality and safety of accommodation. All the LAs involved in the research said that they work with providers to address concerns and try to improve quality and undertake regular monitoring visits and/or provider meetings. The LAs that reported the fewest issues concerning the quality of provision were those that reported having developed close relationships with their core providers and working collaboratively with them to ensure that their offer is aligned with the LAs' requirements and conforms with the LAs' quality criteria.

The majority of LAs in our study stated that they do not place young people in provision where there are adults. In the LAs where this did happen it tends to be in semi-independent accommodation where the over-18s are known to them. Matching processes and risk assessments, they argue, will flag up any concerns which, if identified, would mean they would not place younger people there.

Most LAs also felt that they made all possible checks to ensure that managers and staff working in the unregulated provision they use do not pose a risk to the young people accommodated there. However, they acknowledged the ease with which providers could set up, the movement of staff between providers 'who may be under a cloud but not attracting sufficient notice to impact on DBS' and the lack of certainty that managers are sufficiently skilled in setting up robust governance processes, as concerns.

One LA said that, as part of their tendering process, they required providers to present to a panel of young people whose views were taken into account when making commissioning decisions. All LAs said that they conducted regular monitoring visits and almost all talked about seeking young people's views about the placement – both in terms of how well the placement met their needs and about the general quality of provision.

A majority of LAs believe that some form of regulation is required to ensure the quality of currently unregulated provision. There was a strong current of opinion amongst those that took this view, however, that regulation would need to be light touch in order to minimise the higher costs associated with compliance with a regulatory framework, and to avoid a reduced supply of provision due to providers withdrawing from the market and using their properties in different ways to avoid the framework. All but one LA was attracted to the idea of a national framework underpinned by standards and including information sharing protocols, although some felt that the frameworks needed to be operated regionally to allow for manageability and local variability.

Section 1 Introduction

1.1 Policy context

Under the Care Standards Act (2000), Ofsted is required to register settings and domiciliary services that provide both care and accommodation for young people under the age of 18. This includes children's homes and fostering services, in which the majority of children in care are accommodated. Ofsted is not required to register settings that provide accommodation where the level of support provided does not meet the definition of 'care'. There are also a small number of settings used to accommodate children in care which are not required to be registered by Ofsted, where the accommodation is not fixed or is of a temporary nature (Ofsted, 2017a, 2017b) and is for leisure, cultural or educational activities (Ofsted). Provision that meets the Care Standards Act definition of care and accommodation and therefore should be registered with Ofsted, but is not (unregistered provision), involves providers operating an unregistered setting, which is illegal (Ofsted, 2017a, 2017b).

In recent years, the use of unregulated and unregistered provision has increased. The reasons for this are not fully understood and, because they are not regularly scrutinised, it is unclear to what extent these settings provide high quality care, support and safeguarding for children and young people.

The research on which this report is based was commissioned by the Department for Education (DfE), working with Sir Alan Wood, to gain a better overall understanding of the issues around this type of provision.

1.2 Focus of the research

The issues considered by the research project included:

- The scale of the use of unregulated and unregistered provision nationally;
- The factors that are driving the rising use of these types of provision;
- The defined needs of and reasons for the young people being placed;
- The extent to which these types of provision provide high quality care, support and safeguarding for children and young people across the country;
- What can be done to drive improvements in quality in the unregulated sector.

1.3 Methodology

The methodology consisted of four stages.

Stage 1: Evidence review

We reviewed the most recent DfE statistics on LAC and care leavers, identifying information on unregulated and unregistered provision and noting gaps in the evidence.

Stage 2: Interviews

We selected 23 LAs to be interviewed. The sample provided a geographical spread of LAs and was based on a selection of high/medium/low LAs in terms of:

- The proportion of 16-18-year-old LAC in independent living (with or without formal support) and those in semi-independent living accommodation not subject to children's homes regulations;
- The proportion of 17-18-year-old care leavers living in semi-independent transitional accommodation, supported lodgings, and foyers and similar supported accommodation.

All but one of the LAs in the sample agreed to participate and semi-structured telephone interviews were conducted with a total of 42 interviewees. Topic guides for the interviews were developed in close consultation with DfE and Sir Alan Wood. The interviewees all had responsibility for arranging placements, or overseeing the processes through which this is done, and included directors of children's services, heads of commissioning, operations directors, strategic and service manager for children's commissioning and LAC, senior placements officers and quality assurance managers. The telephone interviews lasted between 45 and 60 minutes.

Stage 3: Analysis

For the secondary research (data review), the evidence and findings collected during the review were summarised, synthesised and critically evaluated under the research questions.

For the primary research (local authority interviews), we used anonymised comparative matrices to systematically identify similarities and differences in the interviewees' responses to the research questions. In analysing the interview data, we developed short case studies and examples of the use of unregulated and unregistered provision to build a picture of practice and illustrate the key findings. These are provided in the Appendix 2.

It is important to bear in mind that the information gathered through the interviews is self-reported and no checks on actual practice were conducted.

Stage 4: Roundtable

The findings were presented at a roundtable event organised by the DfE, chaired by Sir Alan Wood and attended by a group of LAs and providers, and other members of the sector. The roundtable considered the findings of the research and identified next steps.

Section 2 Review of DfE statistics

This section provides an overview of the coverage of the use of unregulated provision in DfE's statistics² and supplementary analysis (2020) on LAC in England and identifies additional information that would be helpful in providing a more comprehensive picture of this issue.

2.1 National data

DfE produces statistics² on LAC in England each year. These statistics are based on information collected in the SSDA903 return, which is completed annually by all local authorities in England. The return is required for two groups of children:

- Every child who is looked after by the local authority at any time during the year;
- Children who have been looked after for at least 13 weeks which began after they reached the age of 14 and ended after they reached the age of 16 who are now aged 17, 18, 19, 20 and 21 (care leavers) (Department for Education, May 2019: 5).

The most recent statistics show that, as at 31 March 2019, the number of children looked after by local authorities in England has increased since 2018, up four per cent from 75,370 to 78,150, continuing the trend of increases seen in recent years.

The DfE's statistics include details of the number of LAC that were placed in unregulated provision either living independently or in semi-independent living accommodation not subject to Children's Homes regulations in the years ending 31 March. The following figures come from DfE's children looked after statistical release and supplementary analysis (2020).

2.1.1 Number of children placed in unregulated settings

As at 31 March 2019, eight per cent (6,180) of looked after children were reported as having been placed in unregulated settings, with 4 per cent (3,400) living independently and 4 per cent (2,790) residing in semi-independent accommodation.

The number of children living independently has increased since 2015, rising from 2,420 (3 per cent of all LAC) at 31 March 2015 to 3,400 (4 per cent of all LAC) in 2019. The number of children in semi-independent accommodation more than doubled since 2015 -

² Children looked after in England including adoption: 2018 to 2019
<https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>

and the proportion of LAC in this form of accommodation increased slightly from 2 per cent to 4 per cent from 31 March 2015 to 2019.

2.1.2 Characteristics of children placed in unregulated settings

The vast majority of children living independently and in semi-independent accommodation (99 per cent and 97 per cent respectively) at 31 March 2019 were aged 16 and over, with a small number of children in the 10 to 15 age group (1 per cent living independently and 3 per cent in semi-independent accommodation).

There was a higher proportion of boys living independently (72 per cent) and in semi-independent accommodation (70 per cent) at 31 March 2019 compared to all LAC at this time point (56 per cent - Department for Education, 5 December 2019).

The DfE supplementary analysis report shows that there was a higher proportion of Asian or Asian British, black or black British, and other ethnic groups living independently and in semi-independent accommodation than the national average. This is reflected in the fact that, whereas children of white ethnicity represent 74 per cent of LAC at 31 March 2019 (Department for Education, 5 December 2019), they only comprise 45 per cent of children living independently and 48 per cent of those in semi-independent accommodation.

The proportion of children who were UASC living independently and in semi-independent accommodation at 31 March 2019 were 43 per cent and 36 per cent respectively. This is considerably higher than the proportion of all LAC who were USAC at 31 March 2019 (6 per cent - Department for Education, 5 December 2019).

2.1.4 Locality of placements

The proportion of children placed inside the local authority boundary for children living independently and in semi-independent accommodation at 31 March 2019 was similar to the national average (58 per cent) (Department for Education, 5 December 2019), slightly higher for those living independently (62 per cent) and slightly lower for those in semi-independent accommodation (55 per cent).

2.1.5 Legal status

The majority of children living independently (72 per cent) or in semi-independent accommodation (70 per cent) were on a voluntary agreement under S20 at 31 March 2019, as opposed to the majority of LAC being on a care order.

2.1.6 Care start date and placement start date

For both placements types, a high proportion of children moved into these placements within one week of entering care (37 per cent living independently, and 39 per cent in semi-independent accommodation at 31 March 2019). This indicates that these could be temporary placements and may have been the child's first placement.

2.1.7 Providers

The majority of children living independently and in semi-independent accommodation were in private provision (76 per cent and 77 per cent respectively), a much higher proportion than the national average for all LAC at 31 March 2019 (35 per cent). The use of private provision for those living independently has increased since 2010 and the proportion of children in LA own provision has decreased.

2.2 Evidence gaps

There are a number of gaps in the DfE statistics in relation to the use of unregulated and unregistered provision and it would be helpful if the following information were collected at national level and by local authority:

- The reasons why children aged 16 and 17 are placed in unregulated settings, distinguishing between those young people that are transitioning to independence (care leavers) and those that are placed in these settings for other reasons;
- The reasons why children aged 15 and younger are placed in settings other than registered children's homes;
- The number of children that are placed in unregistered provision and the reasons for this;
- The extent to which children in the 'other' placement category were in unregulated or unregistered provision;
- The extent to which (and how) unregulated and unregistered provision is used in relation to Deprivation of Liberty Orders, although Ofsted report that the [practice guidance from the president of the family division](#), published on 13 November 2019, should to some extent stop this;
- The cost of unregulated and unregistered placements.

Section 3 The reported use of unregulated provision

This section of the report focuses on the reported use of unregulated provision by those 22 LAs interviewed. It considers the scale and reasons for the use of unregulated providers, the characteristics and needs of children placed in unregulated settings and the unregulated provider market.

3.1 Scale and reasons for use of unregulated provision

All of the LAs involved in the research reported that they use unregulated provision. Table 1 summarises the reasons LAs gave for using unregulated settings and the age ranges of the children they placed in them.

As Table 1 below shows, LAs reported that they use unregulated settings in the following circumstances, which may co-occur:

- To support young people aged 16/17 that have skills for independent living but still have some support needs (18 LAs);
- For crisis/short-term accommodation while assessments and placement searches are taking place (11 LAs);
- When they have been unable to place young people in registered provision (13 LAs);
- When young people’s placements break down (nine LAs);
- When young people come into care for the first time having left their family for various reasons – especially in the case of those aged 16/17 where the LA cannot find an appropriate foster placement or the young person does not want a foster placement (9 LAs);
- For unaccompanied asylum-seeking children (UASC) (13 LAs).

Table 1: Reasons for use of unregulated provision

LA	Semi-independent (16+)	Crisis/short-term	When registered provision unavailable	Placement breakdowns	First time in care	UASC	Age 16+	Age 15 or under
1	✓					✓	✓	
2	✓				✓		✓	
3			✓	✓		✓	✓	
4	✓	✓	✓	✓		✓	✓	

LA	Semi-independent (16+)	Crisis/short-term	When registered provision unavailable	Placement breakdowns	First time in care	UASC	Age 16+	Age 15 or under
5	✓	✓		✓		✓	✓	
6	✓	✓			✓	✓	✓	
7	✓				✓	✓	✓	
8	✓				✓	✓	✓	
9	✓	✓	✓	✓	✓		✓	✓
10	✓	✓					✓	
11			✓	✓			✓	
12	✓		✓		✓	✓	✓	
13	✓	✓	✓	✓		✓	✓	✓
14	✓		✓			✓	✓	
15		✓	✓		✓	✓	✓	
16		✓	✓		✓	✓	✓	
17	✓		✓	✓	✓		✓	
18	✓	✓	✓	✓			✓	✓
19	✓					✓	✓	
20	✓						✓	
21	✓	✓	✓	✓			✓	✓
22	✓	✓	✓	✓			✓	✓

All of the LAs reported using unregulated provision for children aged 16 years and 17 years old. Five LAs also said they had used unregulated providers for children aged 15 years old or younger. In two of these LAs, this has included children aged 13 years old or younger.

Table 2: Age of children LAs place in unregulated settings

	15 years and younger	16 years and older
Number of LAs	5	22

Table 3 below provides an overview of the extent to which unregulated provision is used across the 22 LAs. The table distinguishes between: low use where LAs report only using unregulated provision as a last resort; extensive use where LAs report moving a large number of young people into semi-independent accommodation as a route to independence; and moderate use where LAs report making some use of unregulated provision, including for semi-independent living, but also have a large proportion of their 16-17 year olds in registered provision or foster care.

Table 3 shows that:

- Four LAs report making relatively extensive use of unregulated semi-independent settings to support 16-17-year olds towards independence. Two of these LAs also used unregulated providers when suitable registered provision was unavailable, with one having used it for emergency placements for children aged 15 years old and younger.
- Nine report relatively low use of unregulated provision by comparison. These LAs encourage all children in care to remain looked after until age 18. Six reported that they sometimes nonetheless use unregulated provision as a last resort, including one LA that indicated they had used unregulated providers for placements for children aged 15 years old or younger.
- Nine reported making moderate use of unregulated provision for semi-independent accommodation, with six also using it for emergency placements and complex cases that registered providers are not willing to take on. Two of the latter LAs reported commissioning unregulated providers for bespoke packages for children aged 15 years old and younger.
- The LAs that report using unregulated provision in conjunction with bespoke care packages indicated that this is a growing phenomenon but that relatively small numbers of children are involved. The five LAs that reported using unregulated providers for children aged 15 years or younger indicated that they had done so on between one and six occasions over the previous twelve months.

Table 3: Scale of use

LA	Low use	Moderate use	Extensive use	Notes
1	✓			Use as a transition to independence for a small number of 16-17-year olds with some skills for independence

LA	Low use	Moderate use	Extensive use	Notes
2			✓	Use as a transition to independence for a substantial number of 16-17-year olds (currently 87/147).
3	✓			Used only as a last resort, for a small number of 16-17-year olds, usually after several placement breakdowns.
4	✓			They have commissioned services for 16-25-year olds, but most users are 18 plus as they operate a 'staying put where possible' for under 18s. Occasionally use unregulated providers for crises and placement breakdowns where suitable registered provision is not available for 16- and 17-year olds
5		✓		Use for both planned transition to independence and in crises for 16-17-year olds
6		✓		Time-limited bridging provision for 16-17-year olds moving towards independence. Occasionally use unregulated providers for crises involving 16- and 17-year olds.
7	✓			Have a relatively low number of their 16-17-year olds living in semi-independent accommodation units.
8			✓	Use a block contract for semi-independent living for 16-17-year olds ³
9	✓			They have commissioned services for 16-25-year olds, but most users of semi-independent accommodation are aged 18 years or older. Use unregulated providers for emergency placements for "more complex" young people aged 16-17 years two to three time per year and also report occasionally using unregulated providers for younger children "with complex need".

³ See Appendix 2, example 1

LA	Low use	Moderate use	Extensive use	Notes
10		✓		Mainly used for care leavers aged 16-17 years old that don't require full-time care. Occasionally unregulated provision is used for emergency placements for children aged 16-17 years old with "complex needs"
11	✓			Only used in exceptional circumstances for children aged 16-17 years old.
12		✓		Largely used for young people aged 16-17 years old coming into care for the first time, which is a growing percentage of their LAC Occasionally used for 16-17-year olds where suitable provision is not available
13			✓	Used primarily for semi-independent accommodation for 16-17-year olds. Currently have 104 young people in this type of accommodation, over half are UASC. Also sometimes use unregulated providers for emergencies/ complex needs for children aged 15 years old and younger - 6 cases last year and 3 so far this year
14			✓	They have 105 16-17-year-olds in semi-independent units. Occasionally used when suitable registered provision for 16- and 17-year olds is unavailable
15	✓			Only used as a last resort and have no-one in unregulated provision currently
16	✓			They have 12 young people aged 16-17 years old in unregulated provision driven by a considerable increase in the number of LAC and provision not catching up
17		✓		Used with rising 18s ready for semi-independence and where unregulated providers are willing to take complex cases that registered providers are not

LA	Low use	Moderate use	Extensive use	Notes
18		✓		Mainly used for care leavers aged 16-17 years old that don't require full-time care. Also use unregulated provision for emergency placements for children with multiple complex needs, including children aged 15 years old or younger. Have two such cases at the moment
19		✓		42 young people in semi-independent accommodation, almost a quarter of which are UASC
20	✓			They have 13 young people in semi-independent accommodation (the average is 10-15). In the light of the guidance from Ofsted, they have ceased using unregulated provision for emergency/short-term placements for young people with complex needs. Set up a 5-bedded children's home last year which gives them greater flexibility
21		✓		On average have between about 22 to 28 children in unregulated supported accommodation at any one time. In a year a total of about 40 young people. Over the last 12 months they have used unregulated provision for three children with complex need – one 16 years old and two 15-year olds
22		✓		Largely used for semi-independent accommodation for 16- and 17-year olds. Also used for emergency placements for under 16s where their residential placements have broken down. They have used unregulated provision in this way on three occasions in the last 12 months

3.2 Characteristics and needs of children placed in unregulated settings

As Table 4 shows, the LAs identified four broad groups of children placed in unregulated settings:

Table 4: Characteristics of children placed in unregulated settings

	Have skills for independent living but still have some support needs (16+)	Complex needs (behavioural, mental health and/or risk)	Coming into care for the first time	UASC while age assessments take place
Number of LAs	9	10	3	3

LAs were fairly evenly split between those who thought those placed in unregulated settings had more complex needs and those who thought there was a mixture of those close to independence and those with complex backgrounds, multiple issues and often a history of placement breakdown⁴. Only one LA thought that generally those in unregulated provision had fewer complex needs. The split centres on whether the LA makes systematic use of semi-independent accommodation; where they do so, they are likely to have young people in unregulated provision as a positive choice as a transition to adulthood.⁵

Where young people in unregulated settings have more complex needs, this appears to often be crisis care because of placement breakdowns and/or those coming into the care system for the first time and where assessments need to be made before a more permanent placement. While it was not possible, within the context of a time-limited and wide-ranging interview, to derive a systematic analysis of the kinds of complex needs that have led to LAs finding it difficult to place young people in registered provision and so turning to alternatives, at least temporarily, the following were cited:

- Placement breakdowns (frequently multiple) (10)
- Violent and aggressive behaviour (10)
- Mental health issues (7)
- Moving on from secure accommodation (4)
- Risk of exploitation (4)

⁴ See Appendix 2, example 2

⁵ See Appendix 2, example 3

- History of absconding (4)
- Self-harm (3)
- Involvement with gangs (3)
- Late into care (3)
- School refusers (2)
- SEND (2)
- Destruction of existing accommodation (2)
- Challenging behaviour (2)
- Drug and alcohol misuse (1)
- Sexual behaviour (1)
- Fire-setting (1)
- Beyond parental control (1)

As noted above, five LAs also reported using unregulated provision for emergency placements for children aged 15 years or younger whose placements have broken down (generally with notice with immediate effect)⁶. According to the LAs concerned, these children have multiple complex needs and/or challenging behaviour and are very difficult to place in registered provision. The LAs reported placing the children in unregulated settings, using bespoke packages, while they try to find suitable regulated placements.

The interviews indicate that some of the provision described by LAs as unregulated may, in fact, have been unregistered. For example, some LAs that reported using short-term placements with unregulated providers involving bespoke care packages stated that the providers had not needed to register with Ofsted because the placements either did not extend beyond 28 days or involved temporary care for children in mobile settings or lettings arrangements (such as holiday cottages). However, Ofsted (2017b) report that a 28 days 'window' does not actually apply and, in the case of non-static accommodation and short term letting arrangements, the exemption that exists in law is for the provision of care in relation to leisure, cultural or educational activities and is about the purpose/intent of placements rather than purely about whether non-static accommodation is used. In addition, at least one or two LAs mistakenly believed that provision remains

⁶ See Appendix 2, example 4

unregulated rather than unregistered if the support package is commissioned separately from accommodation – for example, if the LA developed a bespoke package using their own resources or if they bought support from one or more providers that were not the same as those providing the accommodation.

It should be added that some providers appeared to believe that, if the children were over 16, then accommodation was unregulated rather than unregistered, irrespective of the amount of care and support provided by the provider. Once again, this is contrary to Ofsted's guidance (2017a) which states that if a provider provides care as well as accommodation, then they should be registered.

Two LAs described procedures that they say have to date enabled them to avoid having to use unregulated provision for children whose placements break down. These include developing close relationships with providers and putting in extra support if providers give immediate notice so that it is not necessary to secure an alternative placement on the same day that notice to end the placement is given⁷. One LA ultimately has recourse to a rota of foster carers who are on out-of-hours contracts⁸.

The majority of LAs pointed to a lack of sufficiency of regulated placements as driving the increase in the use of unregulated provision, particularly for older teenagers. There is a perception that this has created a 'providers' market' in which regulated providers can fill their places with younger children who may not present the challenges that older children do. Providers' concerns about taking on young people who may abscond or drop out of education and training with subsequent negative impacts on their Ofsted ratings are seen as an issue by some LAs.

UASC are seen by most LAs as fairly easy to place in registered children's homes, foster care or dedicated semi-independent supported (unregulated) accommodation and tend to have fewer complex issues than many other young people. However, placing in unregulated provision while age assessments take place was mentioned by one LA.⁹ One LA that makes extensive use of unregulated provision reported that they think this is often the most appropriate option for UASC.

None of the LAs identified any patterns in the use of unregulated provision that were specifically linked to gender or race. It seems, for those LAs who use such provision relatively extensively, numbers are reflective of the general population of LAC and care leavers as far as they have noticed. This is somewhat at odds with DfE's national

⁷ See Appendix 2, example 5

⁸ See Appendix 2, example 6

⁹ See Appendix 2, example 2

statistics which, as seen in Section 2, reveal that there are higher proportions of boys and ethnic groups in unregulated settings than in the general population of LAC.

3.3 Length of placements in unregulated settings

According to the LAs, the length of placements in unregulated settings vary considerably depending on the use LAs make of unregulated provision. Where provision is to support the transition to independence, placements can often last a year or more. Where the use of unregulated provision is crisis driven, placements are typically quite short while assessment takes place and more suitable provision identified.

3.4 Unregulated provider market

3.4.1 Finding unregulated provision, providers and checks

As Table 5 shows, there is a mixture of ways in which LAs identify provision, most using more than one:

Table 5: How LAs identify unregulated provision

Framework only	Framework Spot purchasing	Block contracts Spot purchasing	Framework Spot purchasing Block contract	Spot purchasing only	Own provision
7	8	3	1	3	3

Nine LAs use frameworks that operate across a number of LAs in the region, while seven operate their own framework. Four LAs commission services through block contracts and three spot purchase only, contracting with providers on a case-by-case basis. Fifteen LAs spot purchase, with 12 doing so in addition to having commissioned services or operating or being part of a framework. Three LAs also operate their own provision.¹⁰

Block purchasing was used for semi-independent living in most cases, although two LAs had emergency accommodation as part of block contracts (three beds in one case and five beds in the other) and another LA's block purchase included some single bed

¹⁰ See Appendix 2, examples 7 and 8

accommodation which could be used in a crisis and while assessments were taking place as there would be no risk to others as a result. LAs that used both frameworks and spot purchasing employed the latter for crisis placements if suitable providers were not available from their frameworks.

Most LAs mention also using soft intelligence and information sharing when assessing the suitability of a provider, which can include taking up references from other placing LAs and talking to colleagues familiar with the provider in their own or in neighbouring LAs. However, apart from some frameworks that include information sharing protocols, this is usually done in an informal and ad-hoc way.

Typical checks include looking at financial viability, staff training and recruitment, statements of purpose, support offered etc. although some of these checks may have already been done if the provider is part of a framework. Even where provision is identified through frameworks, most LAs report carrying out additional checks and visits to ensure that the provision meets the particular needs of the young person they are placing. All say that they undertake visits in addition to desk checks when spot purchasing.

The size of unregulated providers used by the LAs varies enormously. Some LAs work closely with a small number of large providers who offer a range of accommodation types, whereas others will use a variety of smaller providers, offering between one and eight beds¹¹.

Joint commissioning with housing was only specifically mentioned by one LA, however, four LAs have in-house provision and a third is about to open their own – the driver of all of this is about being able to control quality. Similarly, those LAs who worked predominantly with a small number of providers either through a block commissioning process (which may have been done jointly with housing but only one specifically said so) or a framework, did seem to feel they had more leverage over quality.

3.4.2 Costs

Data collected as part of the interviews with the 22 LAs interviewed suggested that costs vary considerably according to type of provision. The cheapest mentioned was £250 a week for semi-independent accommodation and the most expensive was £19,500 a week for an emergency placement for a young person with complex needs and extremely challenging behaviour, who required a bespoke package involving a number of staff for 24 hours around the clock care using a holiday cottage.

¹¹ ICHA (2019) defines small providers (children's homes) as those with 10 or fewer places available.

Generally, it appeared that semi-independent accommodation is cheaper than registered provision, but specialist accommodation can often be only marginally cheaper, at a similar cost or, in some cases, more expensive than registered¹².

Eighteen of the LAs provided details of placement costs for unregulated provision. Table 6 shows the lowest, highest and/or average weekly costs of unregulated provision that were reported by interviewees.

Table 6: Costs of unregulated provision (per week)

LA	Type of provision	Lowest cost	Highest cost	Average cost
1	Semi-independent living	£250	£750	
3	When registered provision unavailable	£500	£1300	
6	Time-limited bridging provision for those moving towards independence	£650	£2800	
7	Crisis/short term		£4000	
8	Semi-independent living	£400	£600	£480
9	Bespoke packages / emergency placements	£4000	£7500	
11	When used in exceptional circumstances	£3000	£4000	
12	Young people aged 16 /17 coming into care for the first time	£750	£2643	

¹² See Appendix 2, example 9

13	Emergencies/complex needs for LACs age 15 and under	N/A	£19500	
14	16-17-year-olds in semi-independent units	£300	£7000	£4000
15	When used as a last resort for 16-17-year olds	£2000	£6000	
16	Crisis/short term for 16-17-year olds	£400	£7500	
17	Used with rising 18s ready for semi-independence (lower cost) and complex cases that registered providers are not able to take (higher cost)	£800	£5000	
18	Care leavers aged 16/17 years (Also use unregulated provision for emergency placements but costs are not available)	£1000 (or less)		
19	Independent accommodation, almost a quarter of which are UASC			£790
20	Semi-independent accommodation			£958
21	Supported accommodation (lowest cost) and children with complex needs aged 16 years old and 15 years old (highest cost)	£450	£13000	

22	Supported accommodation for 16- and 17-year olds (lowest cost) and emergency placements for under 16s (highest cost)	£800 (average)	£7000 (average)	
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3.4.3 Use of unregulated placements outside the local authority boundary

Two LAs interviewed stated that they placed young people exclusively within their boundaries.

Table 7: Unregulated placements outside the LA boundary

	Place young people exclusively within their boundaries	Place young people outside their boundaries	Total
Number of local authorities	2	20	22

The remainder of the LAs interviewed all place young people within their own LA or in neighbouring areas, two mentioning that they had very little provision in their own area because of being predominantly rural in one case and because of the high cost of local housing compared to neighbouring boroughs in the case of the other. Another LA stated that they had a high proportion of 16-17-year olds in bordering wealthier areas due the availability of higher quality semi-independent provision.

Six LAs sometimes placed young people further afield; the most common reasons for this were: the young person having ties elsewhere; safety issues such as the young person being at risk of exploitation or involvement in gangs; and needing specialist provision unavailable more locally.

3.4.4 Other local authorities placing children in unregulated provision within their LA boundary

As indicated in Table 8, most local authorities (19) were aware of other LAs using unregulated provision in their area, but not the extent of this. Some were notified or were called by placing LAs for information on the provider, but this seemed to be an informal process.

Table 8: LAs awareness of other LAs using unregulated placements in their area

	LA aware of other LAs placing children in unregulated provision in its area	LA unaware of other LAs placing children in unregulated provision in its area
Number of local authorities	19	3

Section 4 The reported use of unregistered provision

This section focuses on the reported use of unregistered provision – that is provision that is not registered with Ofsted but should be. It considers the scale and reasons for use of unregistered provision, the characteristics and needs of children placed in unregistered settings and the unregistered provider market.

4.1 Scale and reasons for use of unregistered provision

Eight of the LAs stated that they have used unregistered provision, one of which had only used unregistered provision once while waiting for a certificate to come through, which took a week from placement. Fourteen LAs reported that they never use unregistered provision; however, some of these based this assertion on their understanding that when they use unregulated providers to set up bespoke short-term packages, registration is not necessary provided they use non-fixed accommodation and/or the package does not extend beyond 28 days and/or the children are aged 16 or older, which, as noted in the previous section, is not legally correct.

Table 9 summarises the reasons these LAs gave for using unregulated settings.

Table 9: Reasons for use of unregistered provision

LA	Crisis/short-term	When registered provision is unavailable	Placement breakdowns	First time in care	Insufficiency of places in secure provision
1		✓			
2	✓	✓	✓		
3		✓			
6	✓				
9	✓	✓	✓		
11	✓				
12	✓				
19	✓				

The LAs that reported using unregistered provision all said that they had done so as a last resort¹³, when no other suitable provision can be found. This is often linked, in their view, to insufficiency of placements generally as well as providers' reluctance to take on a young person without an assessment and care plan who has just come into care.

One LA reported that they do not place children and young people in unregistered accommodation if they know it is unregistered. However, it was reported by some LAs that unregulated settings can become unregistered during the course of bespoke placements; an LA might place a young person with a provider that is not required to be registered but through the actions that it takes transform the provider into an organisation that should be registered.

4.2 Characteristics and needs of children placed in unregistered settings

As Table 10 shows, the young people identified as having been placed in unregistered provision were said to typically have complex needs with often a history of multiple placement breakdowns. Where this is the case, registered providers may be reluctant to accommodate young people.¹⁴

Table 10: Characteristics of children placed in unregistered settings

	Semi-independent	Complex needs	First time in care	UASC
Number of LAs identifying characteristics and needs	1	7	0	1

4.3 Length of placements in unregistered settings

The LAs indicated that unregistered placements are usually temporary in nature – typically up to a month. This is because they are generally used in crisis situations and either suitable registered provision cannot be quickly located or time is needed to undertake an assessment and determine a young person's needs.

¹³ See Appendix 2, examples 10, 11 and 12

¹⁴ See Appendix 2, example 12

4.4 Unregistered provider market

The LAs indicated that they tend to work with a limited number of providers known to them; in some cases where those providers also have registered provision. Occasionally, according to the LA, providers are going through the registration process.

4.4.1 Identifying unregistered provision

There is a mix of approaches to finding provision, which includes the use of frameworks (4), working with known providers (some of whom may also have registered provision) (3), and relying on a brokerage team to search for suitable provision (4).

Table 11: How LAs identify unregistered provision

	Frameworks for registered and unregulated providers	Known providers	Brokerage team
Number of LAs	4	3	4

All LAs using this provision say they carry out rigorous checks before placement. As with provision reported as unregulated, these included desk checks for financial viability, statement of purpose, staffing etc., soft intelligence from users in their own or other LAs where possible, and visits to the accommodation.

4.4.2 Costs of unregistered placements

Three LAs were able to provide details of the costs of unregistered provision per week. As can be seen in Table 12, they varied significantly. The LAs reported that costs are often not dissimilar to comparable registered provision because of the often complex needs of young people placed in unregistered settings.

Table 12: Cost of unregistered provision (per week)

LA	Lowest cost	Highest cost
1	£1200	£7000
6	£6000	
11	£500	£4000

4.4.3 Use of unregistered placements outside the local authority boundary

As with unregulated provision, the LAs try to place within their boundary or in neighbouring areas but will go further afield if necessary, to find specialist provision or to ensure a young person’s safety.

Table 13: Unregistered placements outside the LA boundary

	LA places young people exclusively within its boundaries	LA places young people outside its boundaries
Number of local authorities	1	5

4.4.4 Other LAs placing in unregistered within their LA boundary

As with unregulated provision, LAs were generally unaware of the extent of this, relying predominantly on informal contacts from placing LAs to know when this is happening.

Table 14: LAs awareness of other LAs using unregistered placements in their area

	LA aware of other LAs placing children in unregistered provision in its area	LA unaware of other LAs placing children in unregistered provision in its area
Number of local authorities	3	2

4.4.5 Deprivation of Liberty Orders

Although Ofsted report that they have been aware of children living in unregistered provision under inherent jurisdiction, none of the LAs reported using unregistered provision instead of a secure bed or in conjunction with Deprivation of Liberty orders. However, three LAs had used provision that they regarded as being unregulated (as

opposed to unregistered) as an interim measure while they waited for a secure bed to become available¹⁵.

¹⁵ See Appendix 2, examples 17,18 and 19

Section 5 Quality, Accountability and the role of regulation

This section focuses on the quality of unregulated and unregistered provision, accountability and statutory guidance.

5.1 Quality of providers of unregulated/ unregistered settings

As can be seen in Table 15, the majority of the LAs felt that the quality of unregulated and/or unregistered provision was highly variable, with some expressing concerns about the ease with which providers could set up¹⁶. Their perceptions were based on the outcomes of their quality assurance procedures, including visits to providers' premises.

Table 15: LA perceptions of the quality of unregulated and unregistered provision

	Good quality	Variable quality
Number of local authorities	6	16

Quality concerns were mainly about: the experience, training and stability of staff (especially in London); the extent to which providers actually give the support they said they were offering; and the location, quality and safety of accommodation.

Table 16: Quality concerns about unregulated and unregistered providers

Concerns about unregulated and unregistered providers	Number of LAs
Lack of appropriately experienced, skilled and trained staff	9
Poor staff retention	3
Use of safer recruitment	2
Not meeting the needs of young person	8
Safety and quality of accommodation	8
Inadequate procedures around administering medication	1
Poor locations	5
No concerns regarding the providers they use	3

¹⁶ See Appendix 2, example 12

All LAs said that they work with providers to address concerns and try to improve quality and undertake regular monitoring visits and/or provider meetings.

5.2 Views on the statutory guidance

As Table 17 shows, 13 of the LAs thought that the statutory guidance on suitable provision is satisfactory, while seven LAs believed it requires improvement.

Table 17: Is the statutory guidance on ‘suitable provision’ satisfactory?

	Satisfactory	Requires improvement	No View
Number of local authorities	14	7	1

As can be seen in Table 18, where LAs had views on how the statutory guidance could be strengthened, it was often to do with the extent to which the guidance is enforceable given the lack of external regulation and the reliance on the calibre of the teams who are using the guidance. Some LAs thought this issue could be addressed through the introduction of a national framework underpinned by standards, which is discussed in section 5.6 below.

Table 18: How could the guidance be strengthened?

Areas where guidance could be improved	Number of LAs
Lack of compliance and enforceability	10
More clarity on what constitutes unregistered/unregulated provision	2
Quality of arrangements to ensure needs are met	2
Safeguarding	1
Health and safety	1
Standards of accommodation	1
Administering medication	1

5.3 Safeguards

The majority of LAs in our study stated that they do not place young people in provision where there are adults. Where this does happen, the LAs reported that it tends to be in semi-independent accommodation where the over-18s are known to them. Matching processes and risk assessments will flag up any concerns that would mean they would not place younger people there when identified.

Most LAs also felt that they made all possible checks to ensure that managers and staff working in unregulated provision do not pose a risk to the young people accommodated there. However, they acknowledged the ease with which providers could set up, the movement of staff between providers 'who may be under a cloud but not attracting sufficient notice to impact on DBS' and the lack of certainty that managers are sufficiently skilled in setting up robust governance processes as concerns¹⁷.

One LA said that, as part of their tendering process, they required providers to present to a panel of young people whose views were taken into account when making commissioning decisions. All LAs said that they conducted regular monitoring visits and almost all talked about seeking young people's views about the placement – both in terms of how well the placement met their needs and about the general quality of provision.

5.4 Reporting concerns

Other than notifying Local Authority Designated Officers (LADOs)¹⁸ where there are allegations and safeguarding concerns, the approaches are largely informal and include monitoring visits, working with the provider to address concerns, and information sharing with neighbouring LAs known to use the provision.

5.5 Providing support for care leavers in unregulated settings

When asked how they ensure care leavers aged 16 and 17 who are placed in unregulated settings are provided with the levels of support that they need, most LAs

¹⁷ See Appendix 2, example 13

¹⁸ The role of the LADO is set out in HM Government guidance Working Together to Safeguard Children (2018) Chapter 2 Paragraph 4. and is governed by the Authorities duties under section 11 of the Children Act 2004 and MKSCB Inter-Agency Policy and Procedures (Ch 2.8). This guidance outlines procedures for managing allegations against people who work with children who are paid, unpaid, volunteers, casual, agency or anyone self-employed. The LADO must be contacted within one working day in respect of all cases in which allegations arise.

cited assessment of needs as driving the provision of support, allied to careful matching and regular monitoring to ensure that the contracted support is actually being provided and continues to meet the young persons' needs.

Four LAs reported that, where young people are placed outside the area, ensuring that they are provided with the support they need from other services such as mental health, can be challenging.

Baseline support for semi-independent accommodation seems to be five hours per week. Several LAs said that the vast majority of young people require more than this, and so they were either buying in additional support (from the provider of accommodation or elsewhere) or providing additional support themselves e.g. through CAMSH.¹⁹

5.6 Driving improvements in quality in the unregulated sector

As Table 19 shows, 14 of the LAs thought that provision that is currently unregulated should be regulated, while five thought that it should not and three responded that they did not know.

Table 19: Should settings that are currently unregulated be regulated?

	Yes	No	Don't know
Number of local authorities	14	5	3

As can be seen in Table 20, the LAs' concerns with regulating provision that is currently unregulated relate to the effect on sufficiency of places and costs²⁰.

¹⁹ It should be noted that one LA said they would put together a package of support for a young person themselves as the role of unregulated provision is to support young people towards adulthood but not to provide specialist or therapeutic support. In their view, this enabled the provider to remain within the definition of 'unregulated.'

²⁰ See Appendix 2, example 14

Table 20: Concerns about regulating settings that are currently unregulated

Concern	Number of LAs
Reduction in the number of places available / negative effect on sufficiency of places	18
Higher costs	9

It is widely felt among the LAs that, if regulation was perceived to be too onerous by providers operating in the unregulated market, they could opt to use their properties in different ways and that would reduce the number of places. Costs, which most LAs have seen rising considerably anyway, are seen as likely to rise further as providers seek to offset the additional costs attached to regulation.

While LAs acknowledge that steps need to be taken to stop poor provision, they are concerned that “Ofsted style regulation” would make it impossible to place some of the most vulnerable young people, as providers would worry about the possible impact on their rating.

All but one LA was attracted to the idea of a national framework underpinned by standards and including information sharing protocols, although some felt that the frameworks needed to be operated regionally to allow for manageability and local variability.²¹

²¹ See Appendix 2, example 15

Section 7 Conclusions

All the LAs involved in this research use unregulated provision, although some of what they assert to be ‘unregulated’ may actually fall within the Ofsted definition of ‘unregistered’. For most LAs, this type of provision is being used in accordance with regulations as a positive choice to support young people aged 16 and 17 to transition to independence. The extent to which it is used in this way varies depending on the extent to which LAs have a policy that encourages all children in care to remain looked after until age 18.

In several LAs, unregulated provision is also being used with bespoke packages designed to cater for young people with reportedly “complex needs”, often in the context of a placement breakdown. LAs using unregulated provision in this way indicate that this is a growing phenomenon and cite between two and six cases over the past year, often at a very high financial cost. The children involved range from 11 to 17 years old, with five LAs reporting having used unregulated providers for children aged 15 years old or younger.

Our interviews suggest that there is a considerable degree of confusion and uncertainty amongst LAs about whether and in what circumstances this type of provision should be defined as unregulated or unregistered. For example, some LAs believe that providers are not required to register with Ofsted so long as the placements are short-term and/or involve non-static settings or short-term letting arrangements. However, this is not accepted by Ofsted who state that the length of a placement is irrelevant and that the use of mobile settings does not exempt providers from registration if care is involved, unless placements are primarily for the purpose of cultural, educational or leisure activities. It should be noted, though, that this is not made clear in the two letters that Ofsted (2017a, 2017b) issued on unregulated and unregistered settings. Other LAs interviewed appeared to think that accommodation for 16 and 17-year-olds primarily intended to support a transition to independent living remains within the definition of ‘unregulated’ even when it is used for young people requiring considerable additional support. It is imperative that the regulations are made crystal clear and effectively communicated to the sector to ensure that they are understood and interpreted correctly by both LAs and providers.

According to the LAs interviewed, the growth in the use of unregulated and unregistered provision for children with complex needs and challenging behavior is being driven by two interrelated factors. The first is that demand for registered places is currently outstripping supply. All the LAs highlighted this as an issue and report similar experiences. This trend is noted by the Independent Children’s Homes Association (ICHA, 2018), which reports that its members are receiving at least five hundred referrals a month and that supply is not expanding to meet the growing level of demand – in fact in 2017, there was a slight decline in the number of children’s homes. This is confirmed by

government statistics which show demand for placements in children's homes increasing, with providers experiencing unprecedented numbers of referrals, and indications from Ofsted that supply is not keeping pace (Cowen and Rowe, 2018).

The second factor is that registered children's homes are becoming increasingly reluctant to accept children with highly complex needs and challenging behaviours according to LAs. The LAs we interviewed believed that this is due, in part, to registered providers becoming increasingly risk adverse as a result of their concerns about their Ofsted rating being negatively affected if they are unable to secure positive outcomes. In their most recent annual state of the market survey, ICHA (2019) also indicates that this is the case:

“Providers perceive acute risks to their Ofsted grading should they be judged by the regulator to have accepted a referral later judged as a mismatch to a vacancy. This has been a strong theme in each of the last two surveys. Providers report that despite the apparent shortage of children's homes placements local authorities will not consider homes with a rating less than “Good”. As a consequence there is clearly reported risk aversion in the selection of referrals that are considered by each provider” (ICHA, 2019: 12; see also ICHA, November 2017)²².

One of the LAs we interviewed suggested that one way to counter this trend would be for Ofsted to offer providers reassurance that their rating would not be affected by negative events or behaviours involving children taken on through urgent placements by allowing for “exceptional circumstances”.

While many LAs report that their use of unregulated provision to support care leavers to transition towards independence has positive outcomes, interviewees identified concerns about unregulated provision when used as a last resort for children and young people with more complex needs. While LAs said that they took every step necessary to ensure young people in such provision had the support they needed, including through providing or commissioning additional support to that offered by the provider, they were clear that their preference would have been to place in registered provision. Where children were placed at a geographical distance (either for safeguarding reasons or because specialist provision was not available locally) monitoring became even more difficult, although again LAs interviewed said that they ensured that this still happened.

As we have seen, some LAs reported having taken steps to avoid having to use unregulated/unregistered provision for emergency and/or short-term placements by expanding their own provision, offering additional support to residential homes while they

²² This is the fifth survey of Children's Homes providers in a series that started in June 2015. Around 130 organisations accessed the survey in February 2019 and of these up to 90 gave comprehensive and detailed feedback to questions.

look for alternative placements or using out-of-hours foster carers. These strategies appear to have been successful in the case of two LAs and another is currently contemplating following a similar route. There is a need to look more closely at these strategies and to establish the extent to which they could be carried over to other LAs of different sizes and budgets, with different numbers and profiles of young people, and different groups of providers.

A majority of LAs believe that some form of regulation is required to ensure the quality of currently unregulated provision, with most suggesting the introduction of a national framework underpinned by standards – an option which Ofsted identified as the minimum that should be in place in their 2018 annual report. This is consistent with the recommendations of the Children’s Society, which has called for appropriate standards, regulation and inspection for the unregulated sector (Children’s Society, 2015b). There was a strong current of opinion amongst those that took this view, however, that regulation would need to be light touch in order to avoid exacerbating the current situation through higher prices, due to the costs of complying with a regulatory framework, and reduced supply of provision, due to providers withdrawing from the market and using their properties in different ways to avoid the framework.

Most of the LAs reported that, while there are many examples of high-quality provision in the unregulated sector, overall the quality is highly variable. The LAs that reported the fewest issues were those that said they had developed close relationships with their core providers and work collaboratively with them to ensure that their provision is aligned with the LAs’ requirements and meets the LAs’ quality criteria. It would be worth considering how good practice could be identified and shared across LAs.

Section 8 Roundtable – next steps

The project's findings and conclusions were presented at a roundtable involving 15 sector stakeholders, as well as representatives of Ofsted and DfE. The purpose of this roundtable was to explore the implications of the research and consider the next steps to be taken.

The key takeaways from the roundtable were:

- Given that there are different catchments of placements and providers in the unregulated/unregistered market, it is necessary to identify the parts of the market where most of the problems are, to ensure DfE's policy response addresses these.
- More research is required to understand the characteristics and complex needs of children placed in unregulated/unregistered settings, to inform discussions about the gaps in provision that are leading to increased usage of unregulated/unregistered settings.
- Group members will continue to engage on these issues and work together, specifically to consider and develop the options identified in the research, which were regarded as a sensible framework for this. In the first instance, DfE will look to establish some smaller stakeholder working groups for each of the elements of the framework.
- Attendees were invited to share case studies, evidence and intelligence with DfE, to continue to develop the evidence base, as this will be helpful in framing DfE's policy response and resource requirements.

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Appendix Examples of the use of unregulated and unregistered provision

Example 1

One large non-metropolitan local authority operates a block contract for supported accommodation of 75 beds, the majority of which are single-occupant flats. These can be used for young people up to the age of 25 where they have additional needs, but the majority are 16 – 25-year-olds. They have two providers in this contract – one operates nationally, the other regionally. The two providers responded to the service specification as a consortium. The specification included requirements for services, DBS checking, and staff skills and experiences, as well as the suitability of accommodation. The average cost of this provision is £480 pw with a range of £400 - £600, depending on whether or not staff are present 24/7 and the extent of support provided.

Placement in this accommodation is only used where a young person's social worker considers that semi-independent is appropriate for them. The background and characteristics of young people in this unregulated provision are quite varied. Some are coming into care for the first time at 16 or over and are adamant that they don't want to go in a children's home or foster home; some have been in care and have done well but are ready to make the step into semi-independence. It is not used in any other context – for example, as a substitute for someone who needs fostering or residential home. It is 'next-step' provision.

The block contract also includes three emergency units where a young person could be accommodated for a short period (for example, where they present as homeless or a placement breaks down) but they would only be transferred into the semi-independent provision proper if their assessment concludes that that is what is appropriate for them.

There is no set length of stay, although the average is 9 months. Young people are not moved on until they are ready when the LA will work with district councils to find them independent accommodation.

The LA has a dedicated UASC team and have been active members of schemes such as the National Transfer Scheme. They do have some 16 - 17-year-old UASCs in semi-independent accommodation but this would not be used for spontaneous arrivals, particularly where they may have been trafficked and need safe fostering. In addition to the block contract, they use two unregulated hubs located in two of the larger towns within the authority for UASCs. The location gives them access to nearby cities that meet their educational and cultural needs and these have been a real success story.

Example 2

In one London borough, the aim is that unregulated provision should only be used for 17-year-olds that are judged to be ready for semi-independent living. Despite this, the provision is often used where young people have been through multiple placement breakdowns and registered providers will no longer take them. The LA finds that registered providers are often reluctant to take on teenagers and, because of the general shortage of provision, they do not need to take on high-risk cases to fill their places. For example, the interviewee was currently trying to place one young man who has 'smashed up' two registered homes and she was unable to find another willing to take him. The only option now is the semi-independent unregulated provision but with wrap around support to manage his behaviour. The provision she will use is staffed 24/7.

One of their biggest challenges is UASC with around five a month coming in to the borough, the majority of whom are aged 16 plus. Often their age is disputed and their history is unknown so the LA is uncomfortable placing them in foster or children's homes and use semi-independent living accommodation in dedicated houses.

Example 3

One LA is a port local authority and has a significantly higher proportion of LAC in the higher age group, of which 35% are UASC who they often place in unregulated provision.

Other than UASC, young people in unregulated provision are often transitioning from foster placements or children's homes. Some benefit or want to move from care, but the LA is committed to keeping children in foster care/children's home until 18 if that is appropriate. Some young people reach 16 and really want to move into semi-independent provision but it is the assessment and care plan that dictates whether this happens. There are instances where young people do deliberately disrupt their current placement because they believe they are ready for semi-independent living, but if, in their assessment, the LA believes they are not ready, this may lead to the LA finding more specialist accommodation for them instead. Therefore, young people in semi-independent provision tend to have fewer complex needs.

Where they have more complex needs and cannot be supported to stay in their current placement, which is the preferred approach, young people may be placed in more specialist unregulated provision or, rarely, the LA may provide them with additional

support within semi-independent accommodation. This would all be decided through a needs assessment.

Example 4

A 13-year-old boy had been arrested for serious assault and criminal damage at the residential setting and his bail conditions were that he could not return to the property. On a Friday evening, the LA was very limited in what they could do to find a registered placement for him. He was therefore placed in an unregulated setting with one of the post-16 providers that they use regularly. They always attempt to move children on within 28 days when they use these types of arrangements. However, the young man hasn't been placed within that time – registered providers are still saying “no” even though the cost would be £10000 a week for solo provision with three members of staff. They see the reports on him and say “no” due to dangers attached. There is also the issue of Ofsted holding them accountable if a young person goes missing, as providers need to keep their outstanding rating otherwise they will not get referrals from LAs.

Example 5

The LA has used unregulated provision for children with complex needs previously. Last year they used it for three young people who had come out of secure accommodation and needed a very high package of provision due to their behaviours. Children's homes wouldn't offer a bed for them because of matching with younger children and by this time they were 17.5 years old. Some of their 16 plus providers at that time provided provision to support their preparation for independence. However, since the guidance came out from Ofsted, the LA has stopped using that type of provision and they try to secure a children's home provision or they look at where they require support and not care.

In terms of getting provision, they are very persistent when they are ringing round and looking for provision. They also have a provider forum that involves regular meetings with their providers. For the 16+ market they inform providers about what types of placements they might be looking for, the profiles of the young people they are looking to match and the kind of localities they think would be most popular with young people. There are several examples where providers have developed provision in line with what they require.

They also set up a five-bedded children's home last year to meet some of the local insufficiency and they can use that for the younger cohort of high-risk young children. The children's home gives them their flexibility to be able to respond quickly. They had

three young people the previous night, for example that they needed to respond to. Two were placed in their own regulated provision, one was placed in another LA nearby.

They have had some very difficult discussions in stressful circumstances/situations with registered providers giving immediate notice and demanding that children are removed on that day. They search for provision but if they can't find that provision they go back to the provider and say "we haven't got a provision, what can we support you with and we will continue looking tomorrow". If there is any learning nationally it is about the quality of the relationship between the commissioner, the provider and frontline colleagues. "In some LAs commissioners don't even know the social workers. It's two separate activities."

Example 6

The LA uses providers of unregulated provision for care leavers aged 17-18 only. They do not use unregulated providers for children with complex needs and/or extreme behaviour who are difficult to place. It is very rare for a placement to end on the same day; if providers give immediate notice, they negotiate with them and provide additional support and additional staffing rather than immediately moving the child. If they are unable to subsequently locate a suitable placement for the child, they place them with emergency duty foster carers for the night or a longer period of time while they continue the search to find an appropriate registered placement. The LA has a rota of foster carers who are on out of hours contracts.

Example 7

One borough has its own provision consisting of six flats (one for staff) for seven residents each for 17-year-olds. In addition, they have an agreement with a local housing provider to provide 15 1-bed flats for care leavers. The borough's own unregulated provision is about teaching young people to be a good tenant for when they move on at 18 to one of these places or elsewhere. Time in unregulated provision varies depending on the work needed to prepare them for independence but is typically between 3 and 12 months.

Example 8

One LA is about to open up two new 6-bed units that they have commissioned, one for 16-17-year-olds and the other for 18 plus. They hope to have more of these in the future, with another two planned to open in the next year or two. The LA sees this as a way to improve quality and outcomes and also to take control of the financial risks

Example 9

One, largely rural LA, commented that costs depend on need and can range from £650 to £2800 pw for a very comprehensive package. This is less than the cost of registered provision, which ranges between £2500 and £5000 pw. They don't have a huge range of registered provision in their footprint because of its rural nature and the comparatively high cost of housing compared to neighbouring areas, so they have to go further afield often. The lack of sufficiency of regulated provision in the area is driving costs up.

A London borough also commented that providers' awareness 'that you have limited options so few levers to negotiate costs' was leading to price increases.

Another LA found costs broadly similar to registered provision and the high costs are leading them to increasingly develop their own packages of support instead. For example, they were recently quoted £9000 a week for a 16-year-old. "I could have bought him a house, a chauffeur and several people going in daily for that! But it isn't just about money; it's about making sure that the provision is what the child needs. But there could be 20 LAs bartering for the same placement."

A London borough commented: "Providers are increasingly able to charge. Last week we were quoted £10,000 for a children's home so the cost of registered provision rising so much is driving up the cost of the unregistered provision. In London we have an increasing number of older children coming into care for the first time and the registered providers don't want to take them on and this shortage is driving up charges."

An LA in the Midlands stated that, for supported accommodation pay around £450 a week. In contrast, for complex cases, they had to rent a property and put social workers in in the evenings. On the two occasions when they had had to do this recently, they have come at an absolutely significant cost – bordering on £10000 a week. The most expensive was £13000 for a young person with significant mental health needs. They are now looking at the possibility of developing their own specialist residential unit for people like that.

An LA in South East England currently has a young man aged under 16 with complex needs whose placement has broken down. An emergency placement in an unregulated setting is costing £4788 per week. This compares with £4083 per week for the residential placement which broke down (which is around the average cost for registered provision).

Example 10

The LA has noticed, as they think everyone else has, an increasing complexity of need of children presenting, particularly in relation to girls with significant self-harm issues and boys with quite challenging behaviour and autism. Providers are telling them they actually

accept that their provisions that they have available in the market at the moment aren't necessarily geared to meet the needs of the children they (the social workers) are referring. "That is a major challenge at the moment."

A couple of their providers in the last year have been rated inadequate by Ofsted and were closed immediately and they had to move their children out. These were children that had very complex therapeutic and care needs. Consequently, the LA found themselves in a position where they were trying (on the same day) to source providers across the country, but despite contacting around two hundred providers, everyone was saying no to them. So, they had to place them on a time-limited basis, until they could source appropriate provision for them, in unregistered provision with a support agency that they use a lot and trust to manage children's behaviour and keep them safe. "It's not ideal" but it was a position they were in. They have subsequently managed to source solo residential provision for those children. Given they were solo, they took quite a while to set up, but they are working well.

Subsequently, they have had "a few children that have just crashed out of their residential placements due to challenging behaviour where residential providers have served immediate notice. The feeling is that the resilience of the residential sector at the moment is very strained - so providers seem quite anxious and quite cautious about taking children who may jeopardise their Ofsted rating who could then put them out of business. So, there is a lot of risk involved with these children. And it seems like providers are taking less and less risks. So, whereas, before, they may have stuck with a child and served a notice period they are now saying get them out, come and collect them today. So, we are literally left with a child with nowhere to go with quite significant needs."

Example 11

A 15-year-old girl with complex needs had 14 placements in 16 months. The LA had difficulty identifying a children's home that could look after her safely and address her issues. Consequently, they had to place her with an unregistered provider for a very short period of time because "otherwise she would be on the street". The LA believes that this reflects the lack of sufficiency for children with highly complex needs: "Registered providers should be allowed to take on short-term cases as exceptions, which would not affect their Ofsted rating."

Example 12

One LA is not using unregistered provision currently but has done so three times this year in crisis situations. On all three occasions, they informed Ofsted explaining the

situation and what they were doing to assure themselves of the suitability of the accommodation. They also notified Ofsted when placements ended.

All three were placement breakdowns, two to do with the placement itself. The other occasion was caused by the sexually harmful behaviour by the young person; placing him in alternative registered provision was challenging, especially as more work needed to be done to understand what was going on and to undertake a risk assessment. He had been in a stable placement for a long time and in all other respects was doing exceptionally well but the placement broke down because the provider was concerned about how that issue might impact on their Ofsted inspection outcomes. There is a “genuine anxiety about what taking complex cases might mean for their Ofsted ratings and, because of the sufficiency gap, providers don’t need to take the risk.”

Two young people stayed in the unregistered provision for 28 days but for the one showing sexual behaviour it was longer as they needed to complete the assessment before moving him on.

Two of the providers used were going through the registration process at the time.

Example 13

One LA commented that they “can’t be 100 per cent sure about whether the staff in all unregulated provision are ok with regard to safeguarding because there is a lot of sort of underground provision. Or you get places where the staff have experience in working with young people but haven’t got the management experience to know how to ensure safe practice across the board.”

Example 14

LAs had very similar views on the risk that regulation would make it harder to place more challenging young people if taking them on would put providers’ Ofsted rating at risk as they believe is happening with registered provision. Nonetheless, most LAs had concerns about the unregulated market and many were attracted to the idea of a lighter touch regulatory framework for provision for 16 – 17-year-olds:

“It is difficult to know what else would work with the semis. It’s already so difficult to find provision I wouldn’t want to do anything that would make things even harder.”

“Sufficiency is a national issue. We are trying to grow providers – particularly for teenagers who can be both troubled and troublesome. They can have a record of going missing or be in and out of the justice system. These are often the ones

where we have to go to unregulated provision because registered providers won't take them because they worry about the impact on their Ofsted ratings. Because of the shortage of provision, registered providers don't need to accept the high-risk cases."

"One reason why 17-year-olds go into unregulated provision is where they abscond, refuse school, have behavioural issues and registered providers won't take them because of their profile and the risk to their Ofsted rating. They would rather take a ten-year old. If you make all providers regulated, where will these young people go? A tier of regulations might be better that takes account of the client group, recognising what can the provider do with a 17-year-old school refuser with multiple issues and multiple placement breakdowns? Yes, they can work with them but they might find it difficult in the short term and the Ofsted approach doesn't distinguish between kids with these issues and, say, UASC who tend to be no problem."

"My aspiration would be that Ofsted would do it because when it comes down to it these are children. They wouldn't need to do it in the same way they do children's homes, but it would need to come under their umbrella."

"The main risk is that it would reduce provision. In some ways it could be positive in that there are providers who are not up to standard and have not got children's best interests at heart but can enter the market quite quickly and it would reduce these and drive them out of the market and allow the good ones to flourish and expand. But regulation can make providers more risk adverse in taking more complex and challenging young people. It can be difficult to demonstrate to the regulator that you have achieved the best outcomes when they have the most complex needs. Another risk is that we could lose completely the solo placements which we do need for crisis placements while the matching process takes place or for young people who may be a risk to others or because they are at risk of exploitation. You couldn't, for example, have a registered manager for every single-bed unit. Solo provision can also be important as a stepping stone to independence – it can be difficult for young people to make the transition to independence if they have only known group living so unregulated solo provision can be important."

Example 15

The overwhelming majority of LAs were attracted to the idea of a national framework, although there were some concerns:

- A quality framework would be helpful if achievable. They have a lot of frameworks and some work better than others. Some push the costs up so they are unaffordable. This is particularly the case in London where frameworks are commonly used and have driven up costs. “Presumably policing the national framework would be another thing that LAs would have to do.”
- A framework with standards would be “brilliant if providers have to join and be registered as they did with the London consortium for PVS [Private and Voluntary Sector] providers. There should be a mechanism for removing providers who don’t continue to meet the standards. The issue is, who is going to govern it? Maybe it needs to be operated regionally rather than nationwide so groups of LAs can operate the framework collectively and make it more manageable.”
- They like the idea of a ‘kite mark’ for providers based on national standards: “you would know what you were buying if the providers all met standards that applied across the country and it would increase your ability to hold them to account. If providers were at risk of losing their kite mark if they didn’t keep to the standards it would drive up quality and drive those not willing to meet the standards out of the market. Although this might still have the effect of reducing provision to an extent, it would be sub-standard provision and would not have the risks of reducing the flexibility of provision or the willingness of providers to take more complex young people that regulating them under the current model would have.”

Example 16

If the LA is placing with a provider that is unregulated, within about three months of a placement being made, a contract manager officer visits the setting with a set template and looks at staffing files and agency staff, training, policies and procedures. They do very similar checks to those they do for regulated provision and children’s homes. They give providers action plans with clear timescales and the contract managers will go out again to review those actions. If there was any serious issue identified, this would require action with a number of days before a follow-up visit to check that appropriate action had been taken.

Example 17

One metropolitan LA was trying to find a secure placement for a girl whose placement had notified them that they could no longer keep her because she was at risk. The LA felt a secure placement was needed but there were no beds available and “you can’t make an application without having a bed.” At one provider they contacted, they were number 70 on the waiting list. They therefore had to use an unregulated provider (non-secure) and put in a care package around her, until they could find a secure placement.

Example 18

The LA is currently looking to go to court with a secure application for a young man aged 15 years old but they had been unable to find a bed and, at the time of interview, had been looking for 10 days. “There is an average of 23 or 24 young people on the waiting list, so we are in a queue and waiting for vacancies to open up” to which the young person can be matched. In the meantime, the young man is being accommodated by one of their semi-independent providers, with a bespoke package, because they do not have their own provision as an alternative.

Example 19

“Ideally, we would want all of our children in regulated provision but like every other local authority we struggle to get that right provision for the one per cent with the higher complex needs. It is about there not being enough provision or specialist provision to meet the needs and demand”.

“Every local authority is in a similar position - we all have that one young person at the high end that you’re really concerned about and their provider has handed their notice in. We have one at the moment, a young lady in hospital that tried to throw herself off the roof yesterday and her provider that we’re paying specialist support to has refused to take her back. So, we are in a position today where we’re hoping that they are going to detain her under the mental health act, so that we can get the right support for her. If not, we are in a really challenging situation because we know there is nowhere else in the country and we know she needs secure accommodation but we know that there are 26 people waiting for the next bed in secure accommodation. So, it’s about the resource not being available anywhere for these young people.”



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