



Department  
for Education

# **Analytical report: consultation on unregulated provision for children in care and care leavers**

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**Professor David Greatbatch and Sue Tate**

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# Executive summary

## Introduction

An increasing number of looked after children and care leavers are being placed in independent and semi-independent settings that are not required to register with Ofsted (unregulated provision). Whilst recognising that unregulated provision plays an important role in meeting the needs of children and young people, the Department for Education is acutely aware that concerns are being raised about the quality of the care, support and safeguarding offered by some providers and the decisions being made by local authorities in placing children in unregulated settings. The Department launched a consultation on this topic as a matter of urgency, ahead of the Government's anticipated wider care review. The consultation, which ran from 12 February 2020 to 3 June 2020, presented a range of proposed reforms designed to ensure unregulated settings provide the right level of support and are used appropriately. This report presents the key findings from an independent analysis of responses to the consultation.

## Methodology

The Department supplied the researchers with an anonymised Excel file of all responses to the consultation; names of individuals and organisations were removed but the data indicated whether the response was by an individual or broad type of organisation. A total of 215 respondents completed the online consultation questionnaire, with a further 22 providing a written response. The largest respondent groups were local authorities (67), providers (33), charities (28), police (24) and NHS Trusts (19).

The analysis covered all responses to the 15 consultation questions; a mixture of closed-ended and open-ended questions that solicited respondents' views on the proposed reforms. For the closed-ended questions, analysis involved producing descriptive outputs using graphs and tables to explain the data. For the open-ended questions the researchers used an inductive analytical approach to identify key themes and subthemes in the responses and used these to develop coding frames for each question. The coding frames were tested by both researchers coding a sample of responses and checking where any decisions differed or were problematic and amending the frame where necessary. The researchers then used the coding frame to manually code responses to each of the open-ended questions in Excel.

## Key findings

### **Banning the use of independent and semi-independent placements for under 16s**

Over three-quarters of respondents agreed that the practice of using independent and semi-independent provision for children under the age of 16 should be banned. Nine respondents were opposed to a ban and 36 were non-committal.

Amongst those agreeing with the proposal, there was broad agreement that the ban would lead to better quality provision, improved safeguarding, more clarity regarding the rules around the use of unregulated provision, greater consistency and transparency in relation to placement decisions, and improved outcomes for children. Some thought that the ban should be extended to 16- and 17-year olds, while others took the view that a national drive to increase alternative provisions and/or the inclusion of exemption clauses would be required to make the ban viable. Those who opposed a ban felt it would not be viable due to a lack of registered placements nationally and / or because, in their view, in some circumstances bespoke arrangements using unregulated settings are in the best interests of the child.

Respondents were asked to supply any examples of good practice relating to unregulated provision and just over 60 per cent did so; local authorities, providers of unregulated provision, charities and academics were most likely to offer examples. Of those who provided examples of good practice, the greatest number concerned ways in which local authorities ensure the quality of providers, with examples of high-quality support in second place. The most frequently mentioned ways of ensuring that providers used were of an appropriate quality was through what respondents believed to be robust commissioning arrangements and quality assurance and monitoring visits.

Some local authority respondents gave examples of different ways they have supported the skills and understanding of providers. These include guidance leaflets explaining the different types of provision (unregulated and registered); upskilling foster carers – in particular so that they are able to take emergency placements and so reduce the use of unregulated provision; and provider forums with training, workshops and opportunities to share good practice.

### **Requiring local authorities to liaise with police forces when making out of area placements**

A majority of respondents (70 per cent) agreed that a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in unregulated provision should be introduced. There was a high level of support for the proposal amongst the police, NHS Trusts and those categorised as 'Other'. In contrast, there was more variation in the responses of local authorities, providers, charities and consultants, although a majority of each of these respondent types agreed with the

proposal. Respondents who supported the proposed reform believed it would improve local authority out of area placement decisions due to contextual intelligence provided by the police and would improve safeguarding by providing police forces with prior knowledge of the children being moved into their area.

The most commonly mentioned issue was the need for formal mechanisms to facilitate information sharing between different local authorities and the police by clearly specifying what information is required, who is responsible within organisations for holding and sharing this information, details of single points of contact with organisations, and response times.

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

A substantial majority of respondents (84 per cent) agreed that legislation and associated statutory guidance should be amended to define ‘care’, in order to provide clarity on what amounts to ‘other arrangements’ i.e. ‘unregulated’ provision, and what constitutes ‘unregistered’ provision. The remaining respondents were divided between those who disagreed with the proposal (11 per cent) and those who were not sure (5 per cent). There was a broad consensus amongst those who supported the redefinition of care that the proposed reform would clarify the distinction between care and support and enable stakeholders across the country to consistently recognise arrangements that do and do not need to be registered with Ofsted. Those who disagreed with the proposal suggested that an appropriate definition of ‘care’ already exists in terms of legislation for children’s homes or Ofsted guidance and/or that attempting to distinguish care and support is not necessary because in their opinion all children should receive care up to the age of 18.

### **Introducing national standards for unregulated provision**

Just over three quarters (177) of the respondents were positive about the introduction of national standards. The remainder were either negative (31) or non-committal (19). Those who responded positively indicated that the introduction of national standards would improve provision across the country and lead to greater consistency and improved outcomes for children. Those who were negative about the proposal were largely driven by the belief that care should remain a part of provision for 16- and 17-year olds and that therefore unregulated provision should not be used for this age group. The majority of these respondents were among those who felt that the proposed ban of unregulated placements for children under the age of 16 should be extended to cover children under 18. Some respondents stated that any new standards should be based on

the nine quality standards for children's homes<sup>1</sup>, which they believed could be modified to reflect semi-independent and independent accommodation services.

## **Implementing the standards by either changing the regulations, to make the standards mandatory for local authorities (option 1), or legislating to introduce a new quality and inspection regime (option 2)**

The majority of respondents (70 per cent) felt that the new standards would best be supported through a new Ofsted quality and inspection regime, with just under a quarter preferring the requirement that local authorities should be responsible for ensuring that young people are only placed in providers that meet the standards. The predominant reason for the majority preference for Ofsted was that a national regulator was likely to be more consistent in the interpretation of the standards and would not be under pressure to find placements or have close working relationships with providers which could affect the impartiality of judgements.

For those preferring that the standards be made mandatory for local authorities, this same relationship with providers was seen as an advantage in that they would have more information and local knowledge on which to base judgements. This option was also seen by those who supported it as less likely to have an adverse effect on the supply of provision. Many felt this possibility would be ameliorated by the grace period that would allow providers to prepare to operate to the new standards, while commenting that they will need considerable support and guidance during this time.

However, respondents saw raised charges from providers as a potential implementation challenge whichever option was chosen.

## **Ensuring appropriate Independent Reviewing Officer representation**

Over three-quarters of respondents agreed that the statutory guidance should be clarified to ensure that IROs undertake visits to a placement to be able to assess whether it is meeting the needs of the child or young person and that they must send a report to the local authority to inform their decision making process about next steps for the individual child or young person. Amongst those agreeing with the proposal, the most commonly referenced reasons were those to do with improving quality and accountability and the belief that the IRO, as an independent voice, provides more objective evaluations of placements than local authority employees. Amongst those disagreeing with the proposals, the most common reasons given were the somewhat contradictory argument that IROs already do this so the changes are unnecessary or, alternatively, that the proposals go beyond the IRO role. Linked to the latter point, a number of respondents

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<sup>1</sup> <https://www.gov.uk/government/publications/childrens-homes-regulations-including-quality-standards-guide>



raised concerns about the scheduling of visits and the capacity of IROs to meet new demands.

### **Introducing new legal powers for Ofsted to act against illegal providers**

An overwhelming majority of respondents (85 per cent) agreed with the proposal that the Government should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions. Respondents expressed the view that greater enforcement powers would act as a deterrent to poor providers and that sub-standard provision could be closed down more swiftly. They also often welcomed the opportunity that better providers would be given to meet the requirements. A number did raise concerns, however, about the possible effect on the availability and sufficiency of provision.

Loss of provision was the most prominent concern from those who were against the proposals, including the fear that providers may refuse to accept children with the most challenging needs for fear of impact on their Ofsted ratings, which they saw as an issue for registered provision currently.

# Introduction

## Policy context

An increasing number of looked after children and care leavers are being placed in independent and semi-independent settings that are not required to register with Ofsted (unregulated provision). Our previous research for the Department (Greatbatch and Tate, 2020) showed that these settings are generally used as follows: to support planned moves towards independence; for crisis/ short term accommodation; when unable to secure a place in registered provision; for placement breakdown; for 16/17 years olds entering care for the first time; and for unaccompanied asylum-seeking children.

Whilst recognising that unregulated provision plays an important role in meeting the needs of children and young people, the Department is acutely aware that concerns are being raised about the quality of the care, support and safeguarding offered by some providers and the decisions being made by local authorities in placing children in unregulated settings. The Department launched a consultation on this topic as a matter of urgency, ahead of the Government's anticipated wider care review. The consultation ran from 12 February 2020 to 3 June 2020.

The consultation presented a range of proposed reforms designed to ensure unregulated settings provide the right level of support and are used appropriately. The proposals include:

- Banning the use of unregulated provision for under 16s.
- Requiring local authorities and police forces to cooperate with each other prior to placements in unregulated provision being made.
- Defining 'care' to clarify when it is appropriate to use 'other arrangements'.
- Introducing national quality standards to improve the quality and security of placements and defining how they should be monitored.
- Ensuring young people's interests are appropriately represented by independent reviewing officers.
- Providing new legal powers for Ofsted to take action against illegal unregistered providers.

This report presents the key findings from an independent analysis of responses to the consultation.

## Objectives of the analysis

. The objectives of the analysis were to:

- Analyse the responses to the questions included in the consultation.
- Compare the views expressed within and between different groups of respondents.
- Summarise key findings in relation to each of the proposed reforms.
- Relate the findings to previous research on unregulated provision and its relationship to the wider care system.

## Methodology

The Department supplied the researchers with an anonymised Excel file of all responses to the consultation; names of individuals and organisations were removed but the data indicated whether the response was by an individual or broad type of organisation. A total of 237 respondents completed the consultation questionnaire, with 215 using the online portal and 22 submitting their responses offline.<sup>2</sup> As can be seen in Table 1, the largest respondent groups were local authorities, providers, charities, police and NHS Trusts.

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<sup>2</sup> The Department and researchers added responses submitted offline to the Excel spreadsheet

**Table 1: Respondents to the consultation by type**

<b>Respondent groups</b>	<b>Number of respondents</b>
Academic	7
Care Leaver	2
Charity	28
Consultant	10
Education	4
Foster Carer	1
Independent Reviewing Officer	1
Local Authority	67
NHS Trust	19
Ofsted	1
Other	22
Police	24
Provider	33
Provider & Charity	2
Representative Body	16
Total	237

The analysis covered all responses to the 15 consultation questions, which comprised a mixture of closed-ended and open-ended questions. For the open-ended questions, the researchers used an inductive analytical approach to identify key themes and subthemes in the responses and used these to develop coding frames. The coding frames were tested by both researchers coding a sample of responses and checking where any decisions differed or were problematic and amending the frames where necessary. The researchers then used the coding frames to manually code responses to each of the open-ended questions in Excel.

Having completed the coding, the researchers prepared frequency tables for all the closed-ended questions and open-ended questions and used these tables to identify where different groups had contrasting views and where there was consensus.

# Banning the use of unregulated provision for under 16s

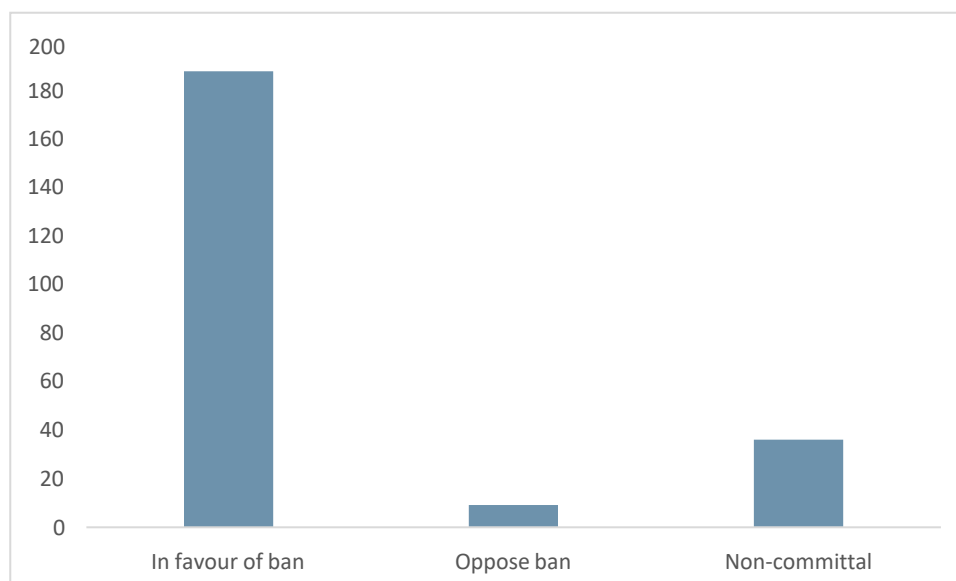
Q1) Please set out any positive and/ or negative impact you think this change would bring about, and the areas we should consider to ensure it is effectively implemented.

Q2) Please share any examples of good practice

## Positive and negative impacts

Responses to question 1 were coded into three categories to distinguish between respondents who were in favour of a ban on the use of unregulated provision for under 16s, those who were opposed to a ban and those who did not express an opinion one way or the other. As Figure 1 shows, 188 of the 233 respondents who answered Question 1 indicated that they supported a ban (which equates to just over three-quarters of the responses), while nine were against a ban. The remaining 36 respondents were non-committal.

**Figure 1: Number of respondents who supported or opposed a ban on the use of unregulated provision for children aged under 16 years of age**



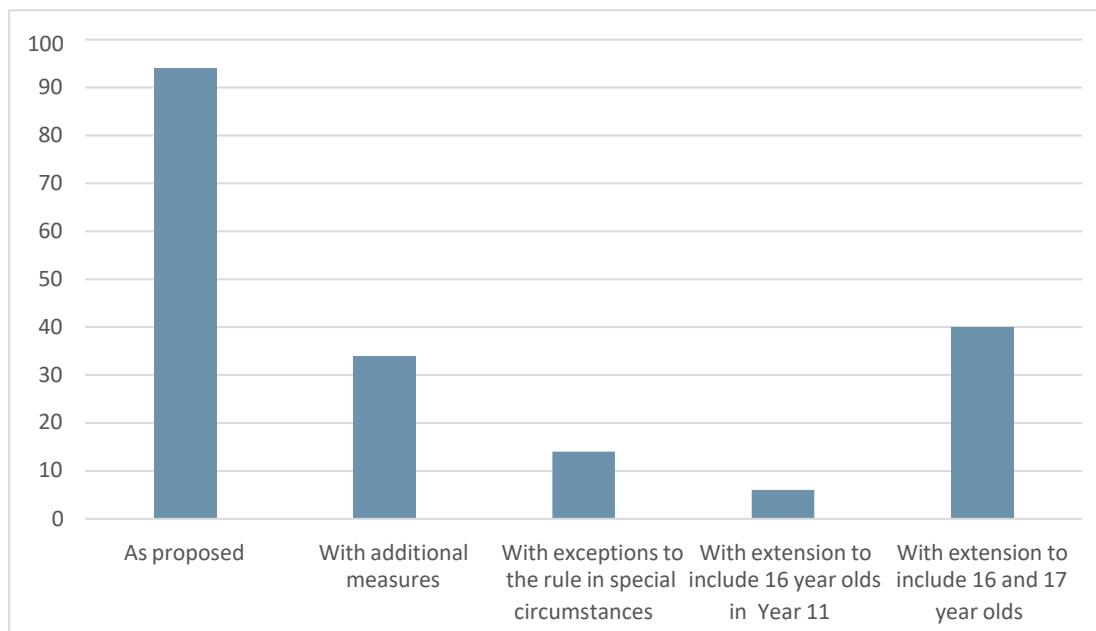
Source: Coding of responses to question 1; n=233

Large majorities of local authorities, NHS Trusts, charities and providers supported the proposed ban. Those opposed to a ban comprised five local authorities, two representative bodies, an NHS Trust and one Other (See Annex, Table 2).

## Support for banning the use of unregulated provision for under 16s

A review of responses to question 1 that were in favour of the proposed ban on unregulated placements for under 16s revealed that the respondents adopted one of five approaches towards the implementation of the ban, as can be seen in Figure 2.

**Figure 2: Different approaches advocated by respondents who were in favour of a ban on the use of unregulated provision for under 16-year-olds**



Source: Coding of responses to question 1; n=188

Of the 188 respondents who were in favour of banning the use of unregulated placements for under 16s, 94 were broadly in agreement with a ban as proposed by the Department in the consultation documents. These respondents thought a ban would lead to better quality provision, improved safeguarding, more clarity around the rules regarding the use of unregulated provision, greater consistency and transparency in relation to placement decisions, and improved outcomes for children.

“We welcome the Government’s proposal to end the use of independent and semi-independent provision placements for children under 16-years-old. No child under 16-years -old should be placed in independent or semi-independent accommodation, as it is not the appropriate provision to provide the care-based setting children of this age require. The banning of children under the age of 16 from independent and semi-independent accommodation settings and the placing of these children in appropriate care settings will positively ensure that their safeguarding and care needs are met.” (Provider)<sup>3</sup>

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<sup>3</sup> ANON-1B1H-AE4Y-Y

“There can only be positive implications if the proposals are supported. Those under 16yrs are vulnerable and the challenge of living in unsupported living is a safeguarding risk. The dynamics of unsupported living are very different to those in a regulated care setting where bespoke care plans are developed to ensure the overall wellbeing of the young person is maximised. There may also be wider safeguarding risks for under 16yrs in unsupported living such as CSE [Child Sexual Exploitation] and CCE [Child Criminal Exploitation].”and CCE.” (Police)<sup>4</sup>

Thirty-four respondents who supported a ban felt that, without additional measures, shortages of suitable registered placements would make the ban unworkable, especially in the context of crisis placements where, for example, a placement of a child with complex needs has broken down and emergency accommodation is required. The additional measures suggested by respondents were as follows:

- Introducing a transition period to allow local authorities and providers enough time to adapt to the new context.

“I am fully supportive of this change, as under 16s are vulnerable children and require a regulated setting to ensure they have the best opportunities to prepare them for the future. I am concerned that given the number of under 16s currently in independent/ semi-independent placements, it will need to be a slow and well managed transition as regulated placements of this number do not currently exist. Extensive recruitment would be required for additional Foster placements and the setting up of appropriate Care Homes and trained staff. The children in placement will have already experienced massive upheaval in their lives and they should be consulted and involved in their transitions/ future moves.” (Police)<sup>5</sup>

- Allowing provider organisations and not just settings to register with Ofsted in order to provide greater flexibility for registered provision to be set up at short notice.

“The introduction of national standards will be helpful to set a quality benchmark for this provision. At the moment, all our local authorities only use these provisions for under 16s as a last resort. There are some children for whom it is extremely difficult to find a placement and often one is created for them creating a 1:1 resource. This takes time and with good quality providers it is sometimes necessary to use unregulated placements as there is simply no other option available. One alternative model could be to register organisations and not just settings – this could enable a company to set up a legal home very quickly in order to respond to immediate placement needs. A placement registration could follow

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<sup>4</sup> ANON-1B1H-AE8Q-U

<sup>5</sup> ANON-1B1H-AE66-X

directly, whilst the young person has been placed. Our overall belief is these measures would result in a positive impact, raising the quality of provisions in this area and helping mitigate against criminal exploitation and county lines.” (Local authority)<sup>6</sup>

“With respect to Under 16’s being placed in homes that are not regulated by Ofsted we think a pragmatic and creative approach needs to be taken. Currently it is the residential home that is regulated and the fostering agency (not the foster carer) that is regulated. Therefore, perhaps consideration could be made to regulate a provider (not the home) to provide a more flexible approach when trying to find a solution for under 16s where there is no regulated placement that has a vacancy.” (Local authority)<sup>7</sup>

- Introducing a national initiative by the government to increase other provisions, such as foster care, and encourage more registered providers to accommodate children with complex needs at short notice.

“We think that this change would be positive in helping to ensure that children are placed in provision which is appropriate to meet their needs. However, corresponding work would need to take place with the placement market prior to any change to support the growth of good quality provision for both children aged under 16 and young people aged over 16. We would need to see an increase in emergency or intensive provision in foster placements and children’s homes, with providers reassured that if they take very complex children this will be supported. Currently providers are often fearful that if they take very complex children this will affect their Ofsted performance.” (Local authority)<sup>8</sup>

“As per the response from the ADCS (Association of Directors of Childrens Services), it would be helpful to have clear guidance as to what LAs would be expected to do if a registered/regulated placement simply cannot be found. If this change is implemented, there needs to be a clear, centralised plan to increase sufficiency across the country, and rules to ensure that private providers do not use this opportunity to profit excessively and unfairly.” (Local authority)<sup>9</sup>

“Most local authorities would not consider placing a young person aged under 16 in unregulated provision to be in that child’s best interests; however, many such placements arise out of a lack of local sufficiency. For this to be effectively implemented, a greater range of resourceful, resilient foster carers and children’s

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<sup>6</sup> ANON-1B1H-AEAE-R

<sup>7</sup> ANON-1B1H-AE4X-X

<sup>8</sup> ANON-1B1H-AEAP-3

<sup>9</sup> ANON-1B1H-AEA2-5



homes need to be available to meet the needs of young people who may be coming into care in later adolescence as a result of family crisis, arriving in the UK as an unaccompanied minor or experiencing a placement breakdown during their teenage years.”(Local authority)<sup>10</sup>

Fourteen respondents believed that the proposed ban would only be viable if there were exemptions allowing local authorities to place under 16s in unregulated provision if they had exhausted all other options and/or could show that it is in the best interest of the child.

“We agree that it is extremely undesirable to place children under the age of 16 in independent and semi-independent settings, even temporarily. However, caution is needed on making all unregulated settings illegal, as in exceptional circumstances these can provide the only placement option for a child, or the option which best meets their needs. For example, where a child has been placed under regulation 24 with a family member, with a longer-term plan for a Special Guardianship Order. In this scenario, where the carers do not meet fostering standards and/or do not wish to be assessed, regulation 24/25 approval ceases – but remaining with the carers can, in some exceptional circumstances, be the best option to meet the needs of the child. Our view is that this should be allowed with a robust support/scrutiny plan in place and senior management authorisation.” (Local authority)<sup>11</sup>

Six respondents thought the proposed ban should be extended to include 16-year-olds in Year 11 at school in order to prevent disruption to their education.

“It is my view that unregulated provision should not be used for any young person who has not completed year 11 (the last weekend in June) to ensure they are able to complete any educational provision.” (Local Authority)<sup>12</sup>

Finally, 40 respondents suggested that the ban should be extended to include all looked after children and young people under the age of 18.

“We need to register & inspect all provision for children in care at least up to 18 to ensure they are kept safe & protected. It does not require unregulated provision to enable young people to gain the skills required to cope. Unregulated provision places children at risk, & exposes children to older homeless adults who may exploit or serve to criminalise them. It is discriminatory not to treat these young

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<sup>10</sup> ANON-1B1H-AE9C-E

<sup>11</sup> ANON-1B1H-AEZB-E

<sup>12</sup> ANON-1B1H-AE6D-C

people in care as we would other young people in care & offer personalised care into adulthood.” (Charity)<sup>13</sup>

The largest group of respondents who felt that the ban should be extended to cover all looked after children under the age of 18 were from charities (13), although it is noteworthy that less than half of charities who participated in the consultation advanced this viewpoint. There was also substantial support for the proposal amongst academics and NHS Trusts. In contrast, only a handful of local authorities, providers and police advocated this option (see Annex, Table 3).

## **Opposition to banning the use of unregulated provision for under 16s**

Those respondents who were against a ban believed that it should not be introduced due to a shortage of suitable registered placements nationally and/or because they thought that social work practitioners should be able to determine what is in the best interests of children on a case-by-case basis.

“Local Authorities as corporate parents of the children are ultimately responsible for understanding each child’s needs through meaningful relationship building between the children and the practitioners. We need to give trust to practitioners that they will always act in the best interests of their children and they will not make decisions that will compromise the child’s well-being. At the same time we need to have the policies and procedures in place to hold professionals to account for their decisions, as well as, challenge their proposed plans from the outset. Putting blanket bans in place is not solution to a rather complex issue on the contrary it will feed into a culture of risk aversity and fear that are not compatible with outstanding social work practice. We need to ensure that we equip front line practitioners as well as service managers and policy makers to assess each situation individually (as every child has its’ own unique personality and set of needs), assess the pros and the cons of each option available and make clear plans for their young people. Also, in every decision making we need to include the views and the wishes of the young people and trust them when they request for more independence.” (Local authority)<sup>14</sup>

## **Examples of good practice in unregulated provision**

Respondents were asked to supply examples of what they believed to be good practice relating to unregulated provision. This was an open question. Just under 40 per cent (93 respondents) did not offer any examples, with the remainder offering examples from their own or others’ practice within a number of, often inter-related, themes. In terms of

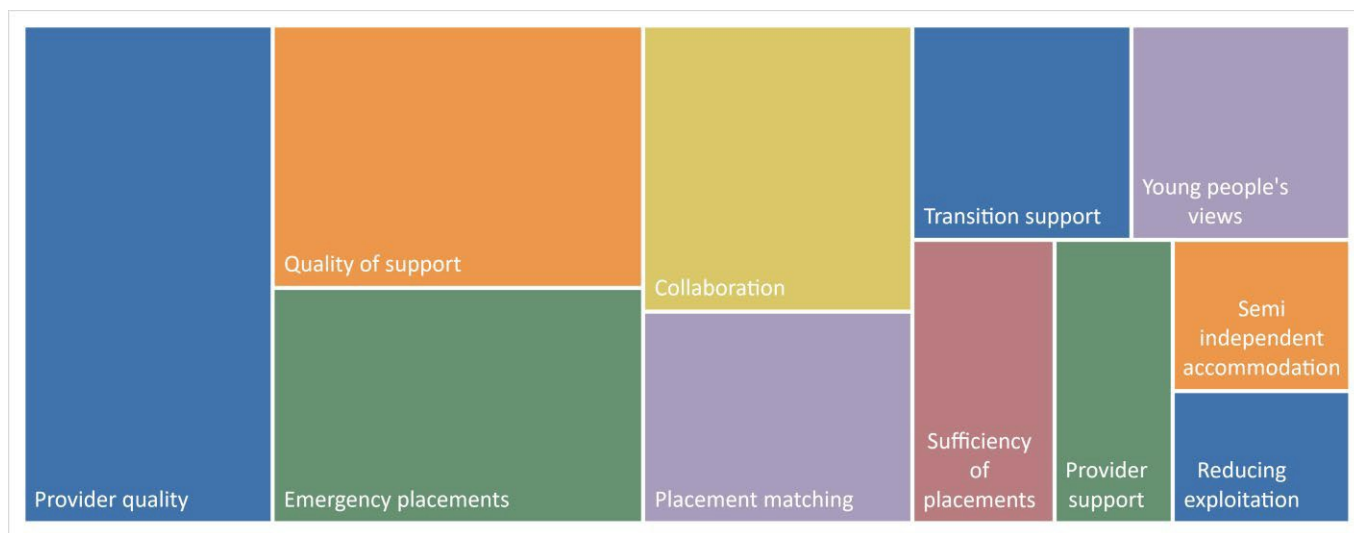
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<sup>13</sup> ANON-1B1H-AE7U-X

<sup>14</sup> ANON-1B1H-AEUS-T

respondent types, local authorities, providers, charities and academics were most likely to offer examples (see Annex, Table 4). The open responses were coded by theme, each of which is explored in more detail below. Of those who provided examples of good practice, the greatest number concerned ways in which local authorities ensure the quality of providers followed by examples of what respondents viewed as high-quality support. Inevitably, many examples touched on more than one theme. Figure 3 below represents the themes reflected in the responses:

**Figure 3: Themes identified in respondents' views of good practice in unregulated provision**



Source: Coding of question 2

### No examples offered

The majority of respondents who offered no examples of what they believed to be good practice (74 out of 93) simply left this question blank or noted that they did not have an example to offer; 19 respondents used the space either to offer examples of poor practice or to raise issues they felt were not covered elsewhere. A range of examples of poor quality provision were identified by respondents, some of which seemed to relate to regulated provision.

Responses also included one from a provider who states that they have:

“been critical of the ‘sound bytes’ of negativity about the unregulated sector which have covered social media in the past 12 months and condemned the lack of analysis about these complex issues.”

This respondent also argued for a lengthier consultation period and a wider consultation to include young people. Similar concerns regarding the lack of consultation with “care experienced people” were raised by a charity and an academic who argued that the consultation is ‘flawed’ because of the lack of consultation of children in care or their parents.

## Provider quality

Analysis of the responses to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregulated provision - showed a number of examples of the ways in which commissioners of provision ensure that this meets their expectations. The most frequently mentioned ways of ensuring that providers used were of an appropriate quality was through what they believed to be robust commissioning arrangements and quality assurance and monitoring visits. Three examples of robust commissioning involved service level agreements and two examples each involved the use of frameworks and quality standards. An example of the latter was the:

“co-production of regional quality standards across Liverpool City Region for the unregulated sector. Children in Care Council/Care Leavers, providers and commissioners worked together over a period of a year to design and test them in line with current Annex A requirements.”<sup>15</sup>

Another local authority mentioned working with the Local Government Association to develop national standards for unregulated provision.

One local authority stated that their block contract approach enabled them to establish close relationships with providers and gave them full oversight of bed availability. For the most complex cases, this same local authority has a:

“dedicated function to monitor and support Tier 4, Secure placements and discharge and placement plans for highly complex children, building relationships across providers, partners and geographical boundaries. This includes having regular forum/panels to review children’s placements, offering a QA mechanism to oversee decision making, tracking progress, avoiding drift and making child focused decisions.”<sup>16</sup>

Participation in a regional quality assurance network which monitors placement quality through monthly meetings and the use of a portal for information sharing is seen as good practice by one local authority. This authority is also exploring the possibility of a kite mark.<sup>17</sup>

One respondent (Other) argued that best practice would be unannounced visits on a regular basis to monitor the quality of provision. A provider felt that best practice as undertaken by some local authorities would be for an initial visit prior to placement, a

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<sup>15</sup> ANON-1B1H-AEPQ-K

<sup>16</sup> ANON-1B1H-AEAP-3

<sup>17</sup> A kite mark is a mark of quality and reliability approved by the British Standards Institution. It is not clear whether the respondent is referring to an official kite mark or their own, local version.

subsequent visit to ensure any required improvements arising from the first visit had been made, and then regular inspections. Another provider emphasised the importance of regular local authority audits so that good providers are not tainted by the practices of unscrupulous providers not meeting the required standards.

A respondent (provider and charity) made the point that there are a number of quality marks, often with overlapping standards, that they meet which ensure they achieve

“an excellent standard of provision”<sup>18</sup>;

these include NSPCC inspection, section 175 audit, trusted charity status, Quality Advice from “Matrix”, Pi (Psychological informed) Enabling Environment Award, No Wrong Door Standard, and when accommodation is provided, Homes England Standards.

## **Provider support**

Despite the acknowledged importance of provider quality in meeting the needs of young people, only ten respondents made mention of support to providers to enable them to improve in response to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregistered and unregulated provision -.

One charity could not think of any examples but argued that good practice would be to supply providers with data so that they could forecast need and make plans to grow to meet those needs, working with social workers and commissioners.

Some local authority respondents gave examples of different ways they have supported the skills and understanding of providers. A local authority has produced a leaflet for providers that explains the different types of provision (unregulated and registered) and how the different services provided by each has implications for meeting the needs and supporting the independence of young people. Another LA has been focusing on upskilling foster carers – in particular so that they are able to take emergency placements and so reduce the need for unregulated provision. A provider forum for the unregulated sector with training, workshops and opportunities to share good practice is offered by one LA, whereas another relies on positive but informal relationships between LA officers and providers to build quality.

An NHS Trust is also in the process of re-establishing provider forums through which they intend to provide information, training and support. Another NHS Trust has developed a provider pack in collaboration with the police and local authority

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<sup>18</sup> OFF22

commissioners while another Trust has set up a multi-agency group to do something similar.

## Placement matching

Placement matching was included in examples from 17 respondents to question 2 in response, although in some instances this was theoretical – that is, the importance of good matching to meet individual needs was stressed – rather than citing examples of how this has successfully been achieved. Examples each offered by more than one respondent included interrogation of placement requests by a panel to ensure they meet the needs of the children in question; close relationships with providers so that commissioners understand what they can offer; quality assurance visits before placements are made; and guidance notes for those making placements outlining the decision making process to be followed.

## Emergency placements

It is clear from many respondents offering examples in response to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregulated provision - that, despite any good practice described above for matching young people to placements, finding a place for children and young people at short notice – for example because of placement breakdown or coming into care for the first time – is a challenge for many.

For some local authorities, commissioning or developing in-house provision specifically for short-term placements has been at least part of the answer. Fifteen of the 26 responses linked to this theme described setting up or commissioning dedicated emergency placements.

“We have commissioned a small residential Children’s home which is a regulated environment, predicated on short term placements, commissioned to support our most complex young people – those who were previously excluded from the regulated sector.”<sup>19</sup>

“Under 16’s - We have experienced this problem where a young person’s needs/risks has meant that no regulated home/foster care provisions have been available. The solution we came up with together with a provider was creative. The provider has several regulated children’s homes and offered us a solution to use other accommodation options but using the equivalent record keeping,

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<sup>19</sup> ANON-1B1H-AE4H-E

assessments, qualified staff with robust training that were on a par as if they were working in a regulated home.”<sup>20</sup>

“Paying a retainer for a bed in a local children's home to respond to emergency needs for placements.”<sup>21</sup>

“There are several positive models such as salaried foster carers for emergency placement or specific emergency bed provision homes.”<sup>22</sup>

“I am aware of an authority that had successfully used a 'crash pad' for up to 48 hours with a skilled staffing team to keep a high needs young person safe while a planned transition to a well-equipped unit took place...As many residential providers are showing reluctance for emergency and same day placements, this sort of service can be vital to keep children safe temporarily.”<sup>23</sup>

“YMCA Contract and Crash Pads (over 16s). Having access to an emergency bed helps provide the time to source a placement in an emergency. Turn around foster carers (Emergency, short term, in-house foster placements.) In house residential provision, however it must be noted this can be challenging with matching criteria which impacts on capacity.”<sup>24</sup>

However, several commented on the high costs of such services.

## Sufficiency of placements

In response to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregulated provision - there were 12 responses linked to placement sufficiency which have clear overlap with the steps that local authorities are taking to secure emergency placements. However, a number of local authorities gave examples of initiatives they had instigated to try and improve the number of good quality placements available to them. These include projects aimed at increasing the number of foster carers, especially for older children; providing partnership arrangements to encourage the expansion of services; developing in-house provision; developing a residential strategy to increase in-house and external provision; and exploring an employee-owned model of residential children's homes.

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<sup>20</sup> ANON-1B1H-AE4X-X

<sup>21</sup> ANON-1B1H-AE6F-E

<sup>22</sup> ANON-1B1H-AE8U-Y

<sup>23</sup> ANON-1B1H-AEB4-8

<sup>24</sup> ANON-1B1H-AEN8-R

## Collaboration

In response to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregulated provision - 23 respondents emphasised the importance of collaboration and multi-agency working.

Examples from six respondents concerned information sharing to support placement decisions and ongoing monitoring processes. One local authority described an on-line portal where various authorities could record and share information but which also allowed providers to upload insurance certificates, policies and procedures so that they did not have to share them individually with each authority.

Other respondents described multi-agency working to meet young people's needs. These included multi-agency High Risk Panels to track and support the most vulnerable 16 and 17 year-olds; working with police and other agencies to identify and support high-risk children (two respondents); internal residential placements with multi-agency support (four local authorities); the co-production of regional quality standards (two respondents); multi-agency support for semi-independent accommodation (three respondents).

## Reducing the risk of child exploitation and offending

Examples relating to this theme were offered by seven respondents in response to question 2 – an open question which invited respondents to provide examples of good practice in relation to unregulated provision - and often overlap with examples of collaboration, particularly with police, above.

One local authority provides both free and paid-for training to practitioners working in the unregulated sector on child sexual exploitation, child criminal exploitation and county lines.

A respondent from the police emphasised the importance of local authorities notifying local police forces when placing young people out of their area, but commented that few did so systematically. Another police respondent felt that much could be learnt from successful offender management programmes on how they

“develop pathways to employment, education, training and housing when delivered well are an excellent blueprint for a way to support young people as they make the transition to adulthood.”<sup>25</sup>

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<sup>25</sup> ANON-1B1H-AEM7-P



A local authority reported on the benefits of short-term (12 weeks) placements for young people at risk of exploitation following an outward bound<sup>26</sup> model which helped create stability.

## Quality of support

The emphasis of this theme differs from provider quality in that it looks more broadly at the nature of support that young people receive and best practice in this area although there is clearly some overlap. For many of the 29 respondents who offered examples in this area in response to question 2, these were about how the emotional needs of young people are prioritised.

“The care homes where children are dealt with as children and are treated as a family are the ones that see a lot less issues.” (Academic)<sup>27</sup>

“I have compiled an offer letter with an attachment which it is requested the Social Worker completes confirming whether or not the young person requires a move in pack which consists of bedding, towels, toiletries in order that the young person does not land in service with nothing. We also endeavour to have a resident mentor who will guide, inform and support the new resident if they are agreeable. and this will include familiarising them with the area if it is new to them. Prompts and encouragement to use office phone to call friends/associates if they wish is offered. Access to a resident computer also enables our residents to maintain contact via Social Media as is the priority for much of this client group. as is WIFI!” (Charity)<sup>28</sup>

“Staying Put is good practice, Shared Lives is good practice; both schemes recognise the value of living amongst loving, trusted adult support - essential for development providing solid foundations from which young people can thrive. The opportunity to develop meaningful relationships, having care and support is essential for all young adults.” (Charity)<sup>29</sup>

This emphasis on ‘care’ as something which extends beyond ‘support’, for one IRO, is what distinguishes really good providers. Another local authority praised those providers who engage in conversations about young people’s specific needs, rather than offering a

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<sup>26</sup> The Outward Bound Trust is an educational charity that helps young people to build resilience and make positive changes in their lives through learning and adventures in the wild. It is not clear whether the respondent is referring to a course offered by the Trust or if the local authority is adopting some of the approaches in their own provision.

<sup>27</sup> ANON-1B1H-AEAZ-D

<sup>28</sup> ANON-1B1H-AE3W-V

<sup>29</sup> ANON-1B1H-AE3W-V

'one size fits all' approach. One provider mentioned the importance of providing what they characterised as 'soft' support - such as helping young people register with doctors, dentists and training providers.

However, another local authority observed that good person-centred practice came at a cost, often due to higher staffing levels. This intensity of support, and associated costs, was highlighted in another example:

"The Local Authority provided support to a 17 year old young person with very complex needs including Autism. This young person had been known to Social Care for several years of his life.

A needs led support package was created for this young person. It was considered that his needs could be best met within his own home and this plan was aligned to his wishes, and the wishes of his family. The plan involved staff providing support to him on a 3:1 basis, alongside a high level of family care, within his own home. His parents moved temporarily into a rental property sourced by them, they were able to use their allocated personal budget for this purpose.

Delivering on this plan was extremely challenging, a number of provider agencies were approached however the majority advised that that they could not support him. Interim packages of support were created by a few providers although they withdrew advising that they were unable to sustain the support due to the levels of challenging behaviour from this young person.

However, this plan was delivered following a significant search for a suitable provider service. The arrangement enabled family members to come and go to help support this young person as required and the consistency helped retain this young person's sense of identity within his family. The care plan also enabled his siblings to have space to relax without being constantly in the company of support staff. The outcome for this child is that his levels of anxiety reduced and his sleeping pattern improved significantly. The arrangements, over time, led to the family coping and for this young person to enjoy good health, his opportunities improved and he remained within his family unit." (Local Authority)<sup>30</sup>

One local authority respondent described a Christmas Day event for Care Leavers with food, entertainment and gifts (with, largely respected, rules of behaviour) that fostered a sense of 'belonging' for young people. Crucial to good provision, they felt, was providers offering "strict but loving" support in the way that a good parent would. Another local authority also emphasised the importance of a family environment and its Edge of Care

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<sup>30</sup> ANON-1B1H-AEZB-E

team work to keep young people at home where safe to do so, supported by the option of an in-house short-break unit.

A hybrid model that combines family and residential care is proposed by one local authority. They see that the investment made by some local authorities in in-house residential provision is logical in view of the success of No Wrong Door (NWD) but want to combine this with their commitment to family-based care. They see the solution as a hybrid of residential and fostering being supported by a network of multi-agency professionals, but recognise the challenges in getting support for this.

For children 16 and over, a local authority sources Host Families or Foyer<sup>31</sup> provision but, to support the sustainability of such placements, offer wrap-around floating support services that are separately contracted. A provider is currently exploring a model by which they would provide 'floating support' to young people over the age of 16 in any location.

One provider offers unregulated provision for over 16-year-olds which, they say, is run on lines as close to regulated provision as possible.

Recruitment of appropriately qualified staff is mentioned as key to good quality provision by a number of respondents, with one example given of provision that is run by ex-social workers and another suggesting that social workers should be retrained for this purpose. Several respondents also commented on the qualities needed by staff which included 'tenaciousness', 'resilience' and 'determination'.

In summation, a representative body<sup>32</sup> commented that:

“Those providers who are 'good' are precisely that because they provide more than mere 'support', but also provide care. It is surely not possible to separate out care from support.”

## **Transition support**

This was a theme in examples provided by 14 respondents in response to question 2.

An Academic argued for a coordinated approach to transition and provided details of work with young people in Romania:

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<sup>31</sup> Foyers provide secure supported housing to young people aged between 16-25. They provide opportunities for personal development and other services that enable young people to reconnect with learning, increase their employability, improve their health and wellbeing, and develop leadership potential.

<sup>32</sup> ANON-1B1H-AENT-M

“This included the introduction, in some areas, of transitional homes for young adults so they could learn life skills and autonomy gradually. The most successful of these homes were connected to schools, which provided continued learning, a hopeful future focus, an attachment figure in the form of a tutor and companionship through classmates. Although never fully realised, this model had great potential and could work well within the UK education system if integrated with health and social care.”<sup>33</sup>

Examples of good practice in this space mentioned by several respondents include practical support such as the teaching of life skills (cooking, budgeting etc.); support from mentors and progression coaches to help young people develop confidence and plan next steps; and the importance of allowing young people to make some mistakes and deal with the consequences.

### **Semi-independent accommodation**

Eight examples were provided of what was viewed as good practice in relation to semi-independent accommodation in response to question 2. These included a foster carer who rented a property next door for two newly arrived Unaccompanied Asylum Seeking Children (UASC); they ate with the family and were provided with support but this arrangement managed any potential risk until proper assessments could take place.

A local authority is keen to explore the possibility of registering providers and properties separately so that they can commission appropriate care for young people placed into available property. Floating support alongside a transitional plan is offered by one provider. Another provider saw comprehensive referral forms and risk assessments from social workers as key to helping them to meet the needs of young people.

### **Taking young people’s views into account**

Fourteen respondents provided examples of taking the views and individual needs of young people into account in response to question 2, seeing this as key to quality provision with a fair degree of overlap between the two themes of quality provision and taking the views of young people into account.

A representative body described good practice in this regard as being rooted in feedback given from those who have experienced care, though found many members of their representative body were unable to offer examples of this in practice. A charity urged the DfE to

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<sup>33</sup> ANON-1B1H-AENU-N

“consult care experienced people about their experiences of being moved in an emergency, and what would have helped them feel safe and cared for.”<sup>34</sup>

For another charity, which emphasised the centrality of young people’s relationships with key adults and peers:

“this requires a change in culture, shifting the emphasis from practical accommodation needs to holistic wellbeing.”<sup>35</sup>

A provider found that, where possible, allowing young people to make their own decisions and face the consequences if outcomes were negative, along with opportunities to take time away from staff and self-regulate, reduced tensions and was more helpful in developing the necessary skills to make a successful transition to independence than would be likely in regulated children’s homes. The importance of an appropriate degree of autonomy was echoed by two other respondents, both describing cases of 17-year-olds wishing to live with their partners (in one case they had a baby) and who, with support, were able to do this successfully.

## Emergency placements

In response to question 2, a local authority noted that they have commissioned a small residential home specifically to provide short-term placements for young people with the most complex needs who have previously been excluded from the regulated sector. Similarly, another local authority has worked with a provider of regulated provision who offers other accommodation as a short-term solution where staff training and processes are the same as for their regulated provision. The respondent argues for the regulation of providers rather than property to allow for more options and that this should also cover

“28 days provision (currently not needing to be regulated).”

Another local authority cited the case of a 15 year-old girl who had suffered numerous placement breakdowns, hospital admissions and rejections in her life and was placed with a new provider in the market at a time of emergency last year and when there were no other options. This very small organisation offered very child-centred care from dedicated and committed staff and the local authority is supporting its efforts to become registered.

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<sup>34</sup> OFF03

<sup>35</sup> ANON-1B1H-AE4E-B

## Liaison between local authorities and police forces

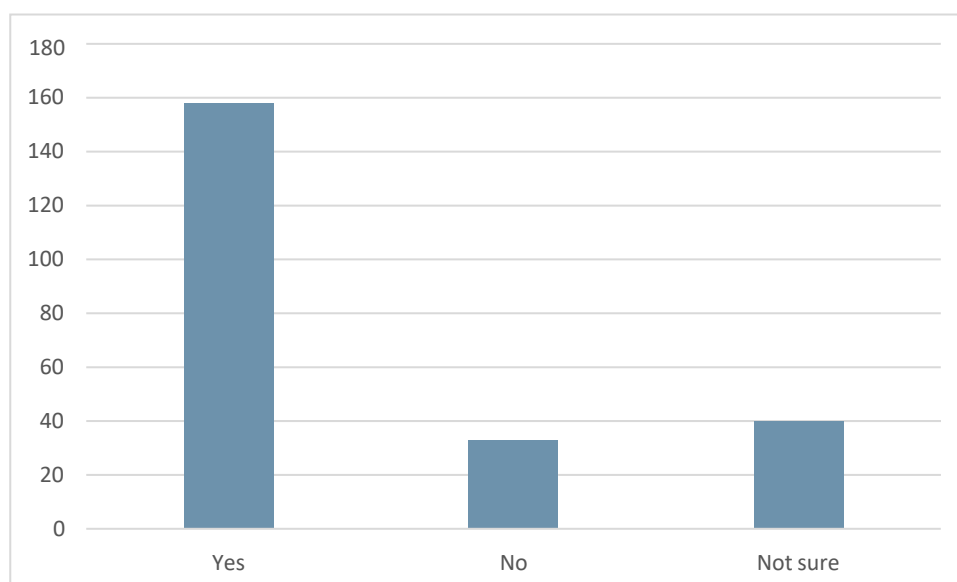
Q3) Do you agree that we should introduce a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in independent and/ or semi- independent provision?

Q4) Please explain your answer, including any positive and/or negative impact you think this change would bring about.

Respondents were asked whether they agreed that the Department should introduce a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in independent and/ or semi-independent provision. (question 3).

Of the 231 respondents who answered question 3, 158 (just under 70 per cent) agreed that the Department should introduce the requirement for local authorities to liaise with relevant local police forces when placing children in out of area unregulated placements. The remaining respondents were divided between those who disagreed (33) and those who were not sure (40).

**Figure 4: Should the Department introduce a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in independent and/or semi-independent provision?**



Source: Responses to question 3; n = 231

There was a high level of agreement with the proposal amongst the police, NHS Trusts and those categorised as Other. In contrast, there was more variation in the responses of local authorities, providers, charities and consultants, although a majority of each of these respondent types agreed with the proposal. (see Annex, Table 4).

Respondents were asked to explain their answer, including any positive and/or negative impact they thought this change would bring about (question 4). Responses to this question were grouped according to whether respondents had indicated in their responses to the previous question (question 3) that they were in favour, against or not sure about the proposed reform and then coded in order to identify key themes.

## Responses of those who were in favour of the reform

Of the 154 respondents who supported the proposed reform concerning liaison between local authorities, 84 believed it would improve out of area placement decisions because the police would be able to provide placing social workers with contextual intelligence relating to criminality that would not be available to host local authorities, as well as intelligence relating to the suitability of providers. It was also noted, however, that it would be important for local authorities to also liaise with host local authorities and other agencies with local knowledge. The respondents who thought the proposed requirement for out of area local authorities to liaise with relevant police forces would have a positive effect on placement decisions included 22 local authorities, 16 police forces, nine providers, eight NHS Trusts, seven representative bodies and six charities.

“Local police forces will often have a lot of soft intelligence regarding the accommodation within the boundaries of its area and potentially those individuals or organisations operating the accommodation. It would be immensely helpful for local authorities to have access to this information to take into consideration particularly when placing children in areas that they are not necessarily as familiar with.” (Other)<sup>36</sup>

“Where out of area placements have to be used (such as to keep a child safe from a known threat of criminal or sexual exploitation), the \* supports a new requirement for local authorities to consult with relevant local police forces. But there should also be a requirement for local authorities to share information with each other as well – too often children are placed into a setting that other local authorities in the area or region would never use as they know the quality of accommodation and support on offer to be poor.” (Charity)<sup>37</sup>

Forty-six of those who supported the proposed reform believed it would improve police safeguarding by enabling them to set up plans to protect vulnerable children from exploitation and support them if do not stay in placement. The three largest groups of

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<sup>36</sup> ANON-1B1H-AEJU-9

<sup>37</sup> ANON-1B1H-AEAB-N

respondents who mentioned police safeguarding were police forces (15), providers (8) and charities (6).

“I think it would be of real benefit for the young person, that the local police service is aware that they are in this situation. I believe that would give the police the foresight to be able to respond in a very supportive way. They may also be able to offer local support through council services or other.” (Foster carer)<sup>38</sup>

“I think it's necessary as many of these children will become known to the police and already having a knowledge of them will be helpful. They could also work with the child from the get go to avoid issues.” (Other)<sup>39</sup>

The coding of the responses to question 4 from those who were in favour of the proposed requirement for local authorities to liaise with the police when using out of area unregulated provision highlighted several issues that they felt would need to be addressed if the reform was implemented. The main themes are presented in the figure below.

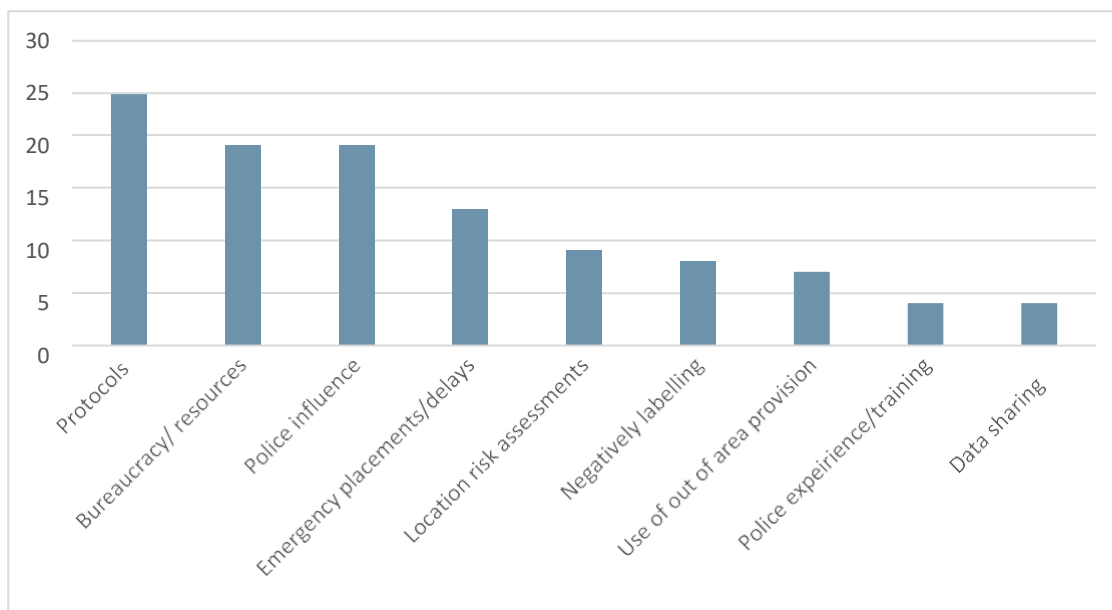
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<sup>38</sup> ANON-1B1H-AED2-8

<sup>39</sup> ANON-1B1H-AEE1-8



**Figure 5: Issues raised by those who support the proposed reform**



Source: Coding of responses to question 4; n=158

Twenty-four respondents, including 11 local authorities and five police, raised the issue of protocols. These respondents suggested that formal mechanisms would be required to facilitate information sharing between different local authorities and the police by specifying what information is required, who is responsible within organisations for holding and sharing this information, details of single points of contact with organisations, and response times.

“This is dependent on police forces having and promoting a single point of contact which in turn relies on effective information gathering, analysis and data handling processes. If the latter is not in place there is a risk of false assurance and time consuming additional burden on both local police and those seeking information from the police.” (Consultant)<sup>40</sup>

“There needs to be clear protocols in place on who to contact within the Police and a quick turn-around for response times. The protocol would need to include what information needs to be supplied to the Police, so they have everything they need to take actions at their end.” (Provider)<sup>41</sup>

Nineteen respondents raised issues around bureaucracy and resources, including 10 from local authorities. Concerns were expressed that the proposed reform could lead to the introduction of an additional layer of bureaucracy that could result in delays in making placements. In particular, it was suggested that the police might find it difficult to fulfil the

<sup>40</sup> ANON-1B1H-AEA6-9

<sup>41</sup> ANON-1B1H-AEBR-6

requirement to liaise with local authorities due to a lack of resources and that it could also be detrimental to their performance of existing tasks. Thirteen respondents, including seven from local authorities, while not specifically referring to bureaucracy and resource issues, were also concerned that the police/local authority liaison process might delay out of area placements and be too slow to inform emergency placements. It is noticeable, however, that none of the respondents from the police service raised these issues.

The possibility that the proposed reform might lead to police having a veto over placement decisions was identified as a concern by 19 respondents, including 12 local authorities and two NHS Trusts. These respondents were clear that the placement decision must remain with social workers.

“My concern is that the police are not experts in care needs and there is a possibility that they may try and block legitimate and appropriate placements due to fears of 'bringing issues to their area'. “(Representative body)<sup>42</sup>

Other issues and suggestions that were raised by respondents who were in favour of requiring local authorities to liaise with police forces when making out of area placements included:

- Steps should be taken to ensure that children are not stigmatised or criminalised and to avoiding the assumption that all children will need police attention (mentioned by eight respondents).
- Out of area placements should not be allowed to become the norm (mentioned by seven respondents from the charitable sector).
- There is a need to be aware of the legal issues surrounding the use of data and of the possibility of data breaches involving highly confidential and sensitive information (mentioned by four respondents).
- Location risk assessments should be introduced for unregulated provision. (mentioned by nine respondents, including five local authorities).

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<sup>42</sup> ANON-1B1H-AEAS-6

## Responses of those who opposed the proposed reform

The 33 respondents who were opposed to the proposal that local authorities should be required to liaise with police forces when making out of area placements cited one or more of the following reasons for being against it:

- Existing measures are sufficient provided they are used effectively (cited by 17 respondents).
- Concerns about excessive bureaucracy and lack of resources (cited by nine respondents).
- The proposed reform would most likely lead to placement delays and would not be workable in the case of emergency placements due to police forces not being in a position to meet the required timescales (cited by seven respondents).
- The process would negatively label children by assuming they need to be brought to the attention of the police (cited by six respondents, including the care leaver).
- All accommodation should be registered and inspected by Ofsted (cited by seven respondents).
- Location risk assessments should be the central mechanism through which local authorities ensure placement quality and safeguarding (cited by six respondents).

## Responses of those who were not sure whether the reform should be introduced

The 13 respondents, including 10 from local authorities, who were not sure about the proposal indicated that they agreed with the proposal in principle but had reservations. The main issues mentioned by these respondents were as follows:

- The likelihood of placement being delayed due to the need for local authorities to await a response from police forces (cited by 11 respondents).
- The introduction of an additional layer of bureaucracy, inadequate resources and the need for protocols (cited by nine respondents).
- Concerns about children being negatively labelled through being brought to the attention of the police (cited by nine respondents)
- The possibility of legal issues or breaches regarding data transfer (cited by nine respondents).
- The possibility of police seeking to veto placements (cited by four respondents).
- Uncertainties around whether the police involved would have knowledge and experience of the issues surrounding looked after children (cited by four respondents).

- Taking the view that location risk reviews should be at the heart of the process cited by four respondents).

## Defining 'care' to clarify the distinction between registered and unregulated provision

Q5) Do you agree that we should amend legislation to define 'care', in order to provide clarity on what amounts to 'other arrangements' i.e. 'unregulated' provision, and what constitutes 'unregistered' provision?

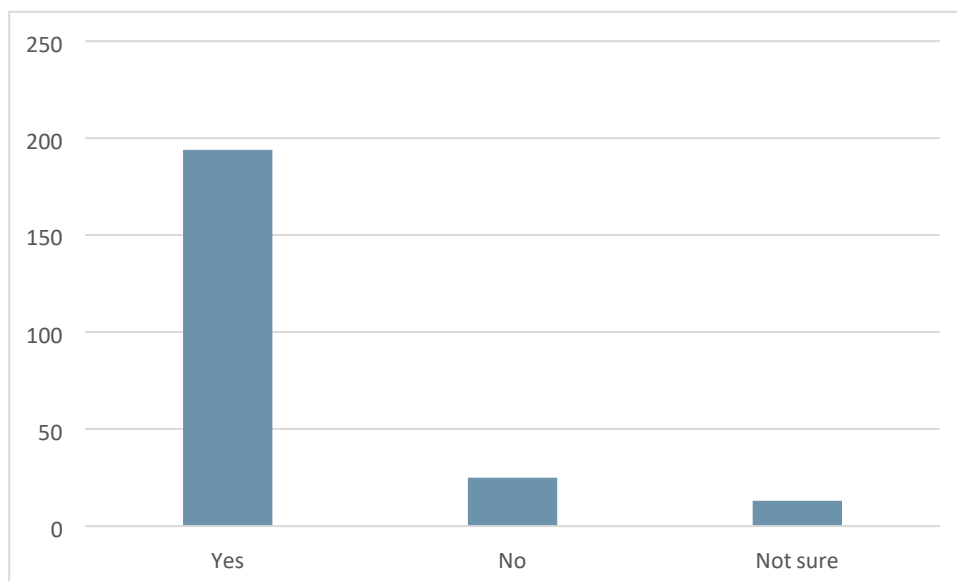
Q6) Please explain your answer, including any positive and/or negative impact you think this change would bring about.

Q7) Do you have any suggestions for areas where we might go further? In making your suggestions, please provide any supporting evidence or information you have.

Respondents were asked whether they agreed that the Department for Education should amend legislation to define 'care' in order to provide clarity on what amounts to 'other arrangements' i.e. 'unregulated' provision, and what constitutes 'unregistered' provision (question 5).

Of the 232 respondents who answered this question, 194 (83 per cent) agreed that legislation and associated statutory guidance should be amended to make it clearer when a setting is providing 'care' and to bring clarity on what the difference between 'unregulated' provision and 'unregistered' provision is. The remaining respondents were divided between those who disagreed (25) and those who were not sure (13),

**Figure 6: Should the Department amend legislation to define 'care' in order to provide clarity on what amounts to 'other arrangements'?**



Source: Responses to question 5; n=232

There were majorities in favour of the reform across all the respondent groups, apart from consultants, providers and charities (see Annex, Table 5).

Respondents were asked to explain their answer, including any positive and/or negative impact they thought this change would bring about (question 6). Responses to question 6 were grouped according to whether respondents answered 'yes', 'no' or 'not sure' to question 5 and coded in order to identify key themes.

## **Responses of those who were in favour of the redefinition of 'care'**

There was a broad consensus amongst respondents who supported the redefinition of care that the proposed reform would have a positive impact in terms of clarifying the distinction between care and support and enabling stakeholders across the country to consistently recognise arrangements that do and do not need to be registered with Ofsted.

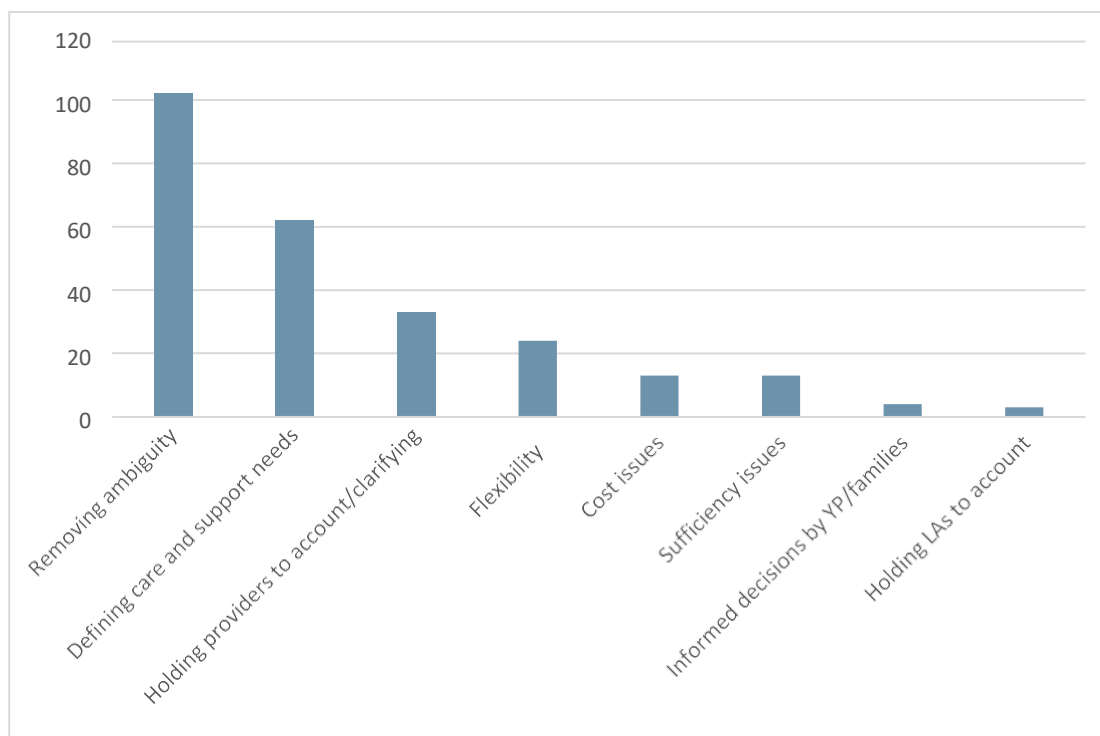
“A definition of 'care' would enable a common understanding of the term across the sector. Most standard semi-independent providers would already be operating within the proposed framework, e.g. the definition of care should not change their placement offer. Where appropriate, a definition of care would enable clear guidelines for semi-independent providers to either register as a children's home or change their support offer. For commissioners having a clear definition of 'care' will assist with tendering the right type of service and being able to establish smart contractual arrangements with providers based on definitions and minimum standards.” (Local authority)<sup>43</sup>

In expanding on their views of the proposed reform, respondents referred to seven themes. Figure 7 shows the number of respondents that referred to each of these themes.

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<sup>43</sup> ANON-1B1H-AEBF-T

**Figure 7: Themes identified by respondents who supported the proposed redefinition of ‘care’ to clarify the distinction between registered and unregulated provision**



Source: Coding of responses to question 6 by those who agreed with the proposed reform; n= 194

The main findings in relation to these seven themes are as follows:

- Of the 194 respondents in favour of re-defining ‘care’, 102 regarded this as important on the grounds that it would remove ambiguity. Local authorities, police, providers and, to lesser extent, charities were the main drivers of this response.
- Sixty two of those who were in favour of re-defining ‘care’, thought that a clear definition of care would be key in terms of defining the care and support needs of children and, in particular, determining what providers were able to offer. This theme was prevalent amongst local authorities, providers and the police.
- Thirty three of the respondents in favour of re-defining ‘care’ believed that a clear definition of care would give providers clarity and prevent them unintentionally operating unregistered provision, as well as enabling local authorities, police and others to hold them to account. Once again, this theme was especially prevalent amongst local authorities, providers and (in particular) the police.
- According to four respondents, a clear definition of care would have a positive impact in terms of allowing children and their families to make informed decisions.
- Three of the respondents thought that the proposed reform would allow local authorities to be held to account for their actions/placement decisions.
- Thirteen of the respondents in favour of the proposed reform were concerned that it could reduce the availability of placements and drive up the cost of provision.

The largest group of respondents that expressed this opinion was local authorities (6).

## **Responses of those who were opposed to the redefinition of 'care'**

Of the 25 respondents who disagreed with the proposed reform, 15 suggested that an appropriate definition already exists in terms of legislation for children's homes or Ofsted guidance. These respondents comprised charities (6), consultants (2), local authorities (2), Other (2), representative bodies (2) and a provider and charity (1).

Some of the respondents felt that attempting to distinguish care and support was not necessary because in their opinion all children should receive care up to the age of 18. Respondents who expressed this view comprised six charities, three representative bodies, one academic and one consultant.

Other issues raised were as follows:

- Five respondents expressed the view that all settings should be registered with Ofsted.
- Two local authorities were concerned that the proposed redefinition of care might lead some providers to exit the market, which would have a detrimental effect on the availability of placements

## **Responses of those who were not sure whether 'care' should be redefined**

Generally speaking, respondents who were not sure about the reform highlighted issues concerning the general context within it would operate, such as shortages of suitable registered placements, the need for transformative change in the care sector, difficulties associated with registering with Ofsted for exceptional cases, the need for a holistic review of the care system and the need for effective planning and provision.

One respondent (a consultant) thought that care was already defined, while two others (both consultants) pointed out that definitions of care vary depending on the age, needs and past experiences of children. Four respondents believed that all children require care until they reach 18 years of age.

## **Areas to consider**

Respondents were asked whether they had any suggestions of areas where the Department might go further in relation to redefining 'care' in order to clarify what amounts to 'unregulated' provision and 'unregistered' provision (question 7). The



responses to this question were coded in order to identify the areas that were highlighted by the respondents.

The majority of the 147 respondents who provided an answer to question 7 offered their views on a range of other issues covered by the consultation and these have been taken into account in our broader analysis. In this section we consider comments that were specifically focussed on the definition of care.

A charity argued that, if the decision is taken to redefine 'care' in legislation, the Department should not seek to define unregulated services through the lack of 'care' because this would not be legally or professionally justified:

“Care must be provided to all children in care and care leavers. Developing a legal definition of care for the purpose of legitimising its absence in ‘other arrangements’ is not legally or professionally justified. (...) Article 20 of the UNCRC entitles all children separated from their families to special protection and assistance from the state. (...) Section 22 of the Children Act 1989 provides the same overarching duty in respect of all looked after children (whether they are the subject of a care order or accommodated) – to safeguard and promote their welfare. This continues to apply when a child is placed in ‘other arrangements’. (...) Legally defining and legitimising the absence of care for children in care would be a seriously retrograde step. We do not believe this would be compatible with Articles 8 and 14 of the European Convention on Human Rights / Human Rights Act.” (Charity)

A respondent from a local authority argued that rather than attempting to distinguish between ‘care settings’ and ‘support settings’, the Department should consider developing a distinction that allows for children in unregulated settings temporarily receiving care:

“Providers have fed back that there needs to be some acknowledgement that all children exist on a continuum of need, and that place on the continuum rarely stays static. It is therefore quite possible that a child or young person who only needs ‘support’ when placed may, due to a change in circumstances, be in need for a temporary period of care. If a young person is struggling with their mental health, they may need extra help accessing and attending counselling or therapy, which some may consider to be “medical” services which they may need help in accessing. Under the current guidance OFSTED have issued, some providers may worry this breaches the definition of support. I think any definition of care needs to be clear that a “care setting” is one that routinely undertakes regulated

activity on an ongoing basis, rather than a setting that provides it occasionally, for maybe a period of a few weeks.” (Local authority) <sup>44</sup>

This chimes with the views of a respondent who argues that a word other than ‘care’ is needed to describe what distinguishes unregulated provision from registered provision:

“Beyond defining what is currently meant by ‘care’, we need to adopt a new, more suitable word other than ‘care’ to describe what it is registered settings provide which sets them apart from unregulated settings because the word is too multi-faceted and its social work use is confusingly different to its lay or ordinary use.

It is concerning to think that a looked after child might receive a level of support but not receive what is, in lay terms, thought of as ‘care’ because of the many affective/emotive uses of that word. Indeed ‘caring’ always connotes emotional engagement. Whilst there are some uses/synonyms of care which need not be emotive such as ‘watchful attention’, ‘meticulousness’ and ‘supervision’, in the ordinary use of the English language, it is almost always the case that care is given to another person with a degree of concern for the recipient’s welfare and not simply as a dispassionate discharge of responsibility.

The answer to the question, ‘does the young person receive care’ should always be ‘yes’. Indeed a common criticism of the care system is that children and young people within it do not feel ‘cared for’.

If the meaning of the very commonly used word ‘care’ is defined in legislation in such a way that it bears little resemblance or connotation to its lay use, this increases the opacity of the law for most people rather than its clarity.” (Other) <sup>45</sup>

A charity also called for a change in the language used to describe and distinguish registered and unregulated settings:

“(W)e recognise that the two categories of ‘support’ and ‘care’ are unnecessarily discrete and fixed and yet, particularly in the category of ‘support’, there exists huge variation in the type of provision available. For example, within ‘support’, which covers both independent and semi-independent accommodation, provision ranges from Supported Lodgings placements where a young person is in a family home, surrounded by adults who are committed to investing in them and guiding them on a daily basis, to a young person being placed by themselves in a flat with a visiting social worker. In addition, we recognise that these discrete, fixed categories hinder a truly child-centred approach to decision making as decisions

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<sup>44</sup> ANON-1B1H-AEB4-8

<sup>45</sup> ANON-1B1H-AEW4-W

become focused on whether a child fits into the category of needing 'support' or 'care' and then which provision is available for these categories. Decisions should rather be made on a case-by-case basis, focusing on the needs of each child and thus ascertaining whether a provision is able to meet their needs.

As such, \* recommends that the Department for Education should consider moving away from using the terminology of 'support' and 'care' and instead use language based around 'needs'. This would enable a greater number of categories to be created (high needs, medium needs, low needs, etc.), which would result in better matching to the wide range of provision that exists within the system. It could be established that all children under the age of 16 are automatically classified as having 'high needs' (based on their age), whereas older children would have a needs assessment and be given a classification based on their circumstances. Decisions on the degree of regulation needed would then be based on the needs of a young person and could thus demonstrate greater variation rather than assigning regulatory levels for two broad categories. In addition, this change in terminology would represent a more child-focused approach, recognising that every child is unique with varying needs, and will not necessarily fit within a static category. We would also suggest that the level of need becomes easier to define and identify for social workers, as opposed to whether a young person needs 'support' or 'care'. Rather than two discrete categories of provision (one offering support and the other offering care), we would instead have a continuum of care. Furthermore, it would be beneficial to ensure that young people are meaningfully included in discussions determining their level of need; this could be done by requiring young people to fill out a self-assessment form as part of the decision-making process." (Charity)<sup>46</sup>

Other respondents take a different view. Another charity<sup>47</sup>, for example stated that:

"A clear distinction between what constitutes 'care' and what constitutes 'support' will be invaluable to placing authorities/Trusts and the providers themselves".

Moreover, a number of providers stressed that they are looking for clear and prescriptive guidelines and definitions of 'care':

"Be definitive, give providers a clearly defined commissioning requirement and be binary about the requirements of a service to constitute the delivery of care and its evidence. (...) Take positives from the limitations of other areas of government intervention. One example would be the Regulatory Reform Order and fire safety within residential properties. Be more prescriptive, outline clearly the requirements

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<sup>46</sup> ANON-1B1H-AE4E-B

<sup>47</sup> ANON-1B1H-AEBJ-X

you expect of a provider of a certain type of service. Leave no area of interpretation remaining.” (Provider)<sup>48</sup>

“All unregulated provisions should be provided with clear guidelines and definitions of 'care'. This is inclusive of service delivery, expectation, practices, young person’s voice and future vision (areas of improvement). Again, this will clarify the expectations of each unregulated provision.” (Provider)<sup>49</sup>

Given the difficulties around defining 'care', a provider<sup>50</sup> suggested that a further consultation is required “with further training for Ofsted inspectors and providers alike.” A charity and an NHS Trust also suggested that any definition of care should be developed in consultation with local authorities and Trusts.

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<sup>48</sup> ANON-1B1H-AE1Z-W

<sup>49</sup> ANON-1B1H-AE2M-H

<sup>50</sup> ANON-1B1H-AE9F-H

## Introducing national standards

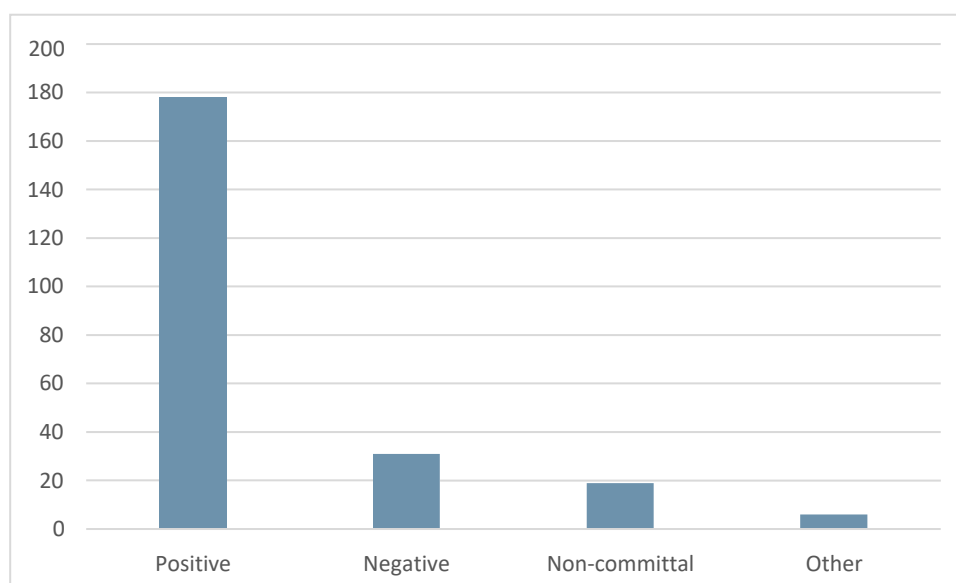
Q8) Please set out any positive and/or negative impact the introduction of new national standards would have

Q9) Please set out any other areas you think should be covered in the new national standards

Respondents were asked to set out any positive and/or negative impact the introduction of new national standards would have (question 8). Responses to this question were coded in order to identify whether respondents were positive, negative or non-committal about the impact the introduction of national standards would have and why.

Of the 234 respondents who answered this question, 177 (approximately three-quarters of all responses) were positive about the introduction of national standards, while 31 were negative and 19 were non-committal. Six respondents provided answers that could not be categorised as positive, negative or non-committal.

**Figure 8: Perceptions of the impact the introduction of national standards would have**



Source: coding of responses to question 8; (n=237)

Those who were positive indicated that the introduction of national standards would improve provision across the country and lead to greater consistency and improved outcomes for children.

“The introduction of new national standards is a positive step in providing the Framework Local Authority’s need to quality assure provider offering services in this placement category, whilst simultaneously offering clarity for providers on minimum expectations and standards when providing accommodation and support to young people. Positive points arising from this should lead to improved

outcomes for young people and a shared understanding of standards and quality across the sector.” (Local authority)<sup>51</sup>

Those who were negative were largely of the opinion that care should remain a part of provision for 16- and 17-year olds. The majority of these respondents were (amongst) those who felt that the proposed ban of unregulated placements for children under the age of 16 should be extended to cover children under 18.

“For the reasons outlined in our response to question 7, the \* does not support the development of standards which do not include the provision of care to 16 and 17 year-olds. There should be one set of standards for children’s residential care. Unaccompanied children of all ages need both care and support. Standards must ensure that all children’s individual vulnerabilities and needs, including the impact of trauma, are identified and addressed.” (Charity)<sup>52</sup>

The respondents as a whole highlighted several issues that they felt should be addressed if standards are introduced. The four most common themes by far were costs (cited by 32 respondents), sufficiency (cited by 29), monitoring and enforcement (cited by 26) and flexibility (cited by 15).

Two thirds of those who drew attention to the likelihood of increased costs were local authorities, with the next largest group being providers, followed by police (2) and representative bodies (2). These respondents thought that providers would deem it necessary to increase the cost of provision in order to cover the costs they incurred in meeting the standards.

“Standards may drive costs due to increased inspection and these costs will be borne by local authorities who are already struggling with increasing costs and numbers of children in care.” (Local authority)<sup>53</sup>

The second most commonly mentioned issue was a lack of placements and resultant increases in costs and pressure on local authority budgets. Once again sizeable numbers of local authorities (15) and providers (6) raised this issue:

“A possible negative affect of introducing the standards is that they could reduce the supply of accommodation. Existing providers could cease to provide accommodation as they are unwilling or unable to make the additional expenditure and adjustments needed to meet the standards.” (Provider)<sup>54</sup>

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<sup>51</sup> ANON-1B1H-AEJV-J

<sup>52</sup> OFF11

<sup>53</sup> ANON-1B1H-AE4H-E

<sup>54</sup> ANON-181H-AENS-P

Twenty six respondents referred to the importance of ensuring that national standards, if introduced, are robustly monitored and enforced. The largest groups were once again local authorities (8) and providers (5).

“I think the proposal is positive but will need to have a robust inspectorate process to monitor adherence. This needs initially to be universal and then tapered to a more proportionate risk based approach. The negative aspect of the proposal will be the introduction of the standards but no monitoring process in place to reinforce the expectations.” (Local authority)<sup>55</sup>

Fifteen respondents were concerned that the standards would debar local authorities from using bespoke and innovative arrangements to meet the needs of children in exceptional circumstance; while 14 raised what can be loosely described as implementation issues, such as the need for training to improve services, appropriate remuneration of staff and a grace/transition period to give providers and local authorities time to adjust to the new arrangements.

## Other ideas

Respondents were asked to set out any other areas they thought should be covered in the new national standards (question 9).

Several respondents stated that any new standards should be based on the nine quality standards for children's homes, which they believed could be modified to reflect semi and independent accommodation services.

““Modifications already exist in the children’s homes standards for two types of care – short breaks (for disabled children) and secure (where children are detained for their own welfare or following remand or sentencing by a criminal court). Following this precedent, modifications could be made for children’s homes specifically looking after teenagers aged 16+ – recognising their need for growing autonomy while still providing care and support. As with short breaks and secure care, there is no reason why this type of children’s home couldn’t have a more appropriate name / description which would be more appealing, and carry less stigma, for teenagers.” (Charity)<sup>56</sup>

A respondent from a local authority suggested that the standards should cover minimum qualifications for support staff. They reported that they had conducted a consultation with

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<sup>55</sup> ANON-1B1H-AE3J-F

<sup>56</sup> ANON-1B1H-AEAG-T

a group of care leavers who felt strongly that support staff should be suitably qualified to perform their role. At the very minimum they felt this should be a diploma in youth work.

A provider stressed that a new system could not function within the looked-after children / care leaver system alone. It would be required to work across the housing pathway too, given that 16- and 17-year olds accommodated under by the Children Act and the Housing Act may be placed in the same accommodation. According to the provider, it is essential that the Department and the Ministry of Housing, Communities and Local Government develop the approach together and roll it out across all provision for young people.

A respondent (categorised as Other) drew attention to a research paper that showed there were some children with SEN living in unregulated accommodation. They suggested that further research should be carried out to consider whether these children/young adults need specific standards and referencing.

A provider noted that some local authorities have developed their own quality standards for young people over the age of 16. When designing the new standards, they would urge the Department to look at areas of best practice to consult with, and learn from, those authorities that are already delivering and commissioning these services.

A provider and a charity felt that if the Government decided to review all of the standards, it would be essential to involve young people and care leavers in their development, as they are best placed to advise what standards would have the biggest impact. Their views and insights need to be at the heart of any new developments.

A provider said it would be helpful if the government could invest in providing accredited training for providers, commissioners/placements teams, the police and others as part of the roll-out of the standards, as this will enable the standards to be understood and applied consistently across the children's system.

Another provider suggested that each supported accommodation setting should have a named manager, equivalent to a registered manager in a children's home, so there is responsibility and accountability for delivery.



## How the standards should be monitored

Q10) Which option, 1 (Changing the regulations, to make the standards mandatory for Local Authorities) or 2 (Legislating to introduce a new quality and inspection regime (Ofsted)), do you think would most effectively raise the quality of independent and semi-independent provision?

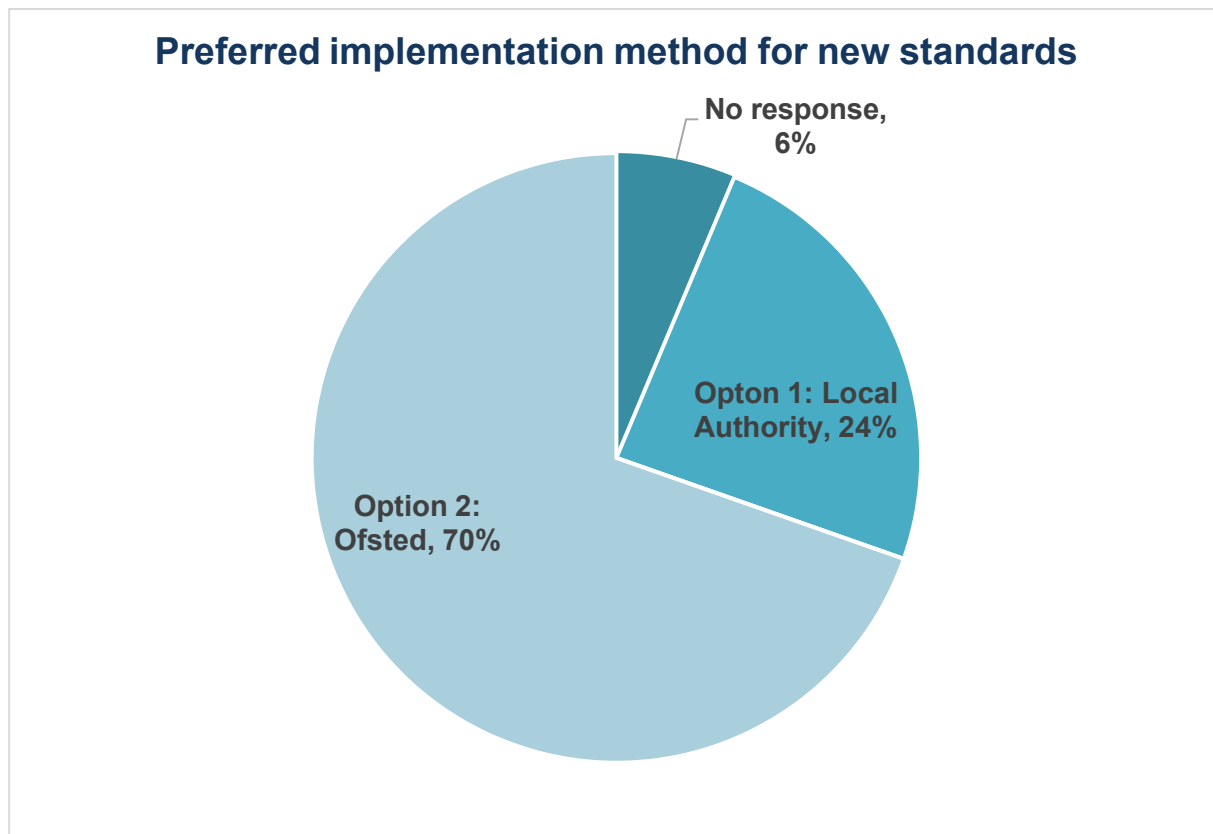
Q11) Please set out the consequences and implementation challenges that should be considered when introducing new standards.

The consultation invited views on how the new standards should be implemented through respondents selecting one of two options (although some chose to leave this blank, presumably because they did not have a preference or because they supported neither option):

- Option 1: Changing the regulations, to make the standards mandatory for local authorities. Local authorities would be required to only place children in provision that meets the standards. This would enable Ofsted to assess local authorities on their use of independent and semi-independent provision, and compliance with the requirement to only place with providers who uphold the standards, under the Inspection of Local Authority Children's Services Framework. Under this option, Ofsted would not register and inspect providers.
- Option 2: Legislating to introduce a new quality and inspection regime. This would require all providers of independent and semi-independent provision to register with Ofsted and be inspected against the new standards, and these could be established, through legislation, as National Minimum Standards, as defined under section 23 of the Care Standards Act 2000. The framework and associated standards would differ from the ones in place for children's homes, reflecting that the nature of this provision is different, though the regime for registration and inspection would be similar. Local authorities would be required to place children in provision which is registered with Ofsted, and Ofsted could take enforcement action against providers that do not meet the standards.

The majority of respondents (70 per cent) chose option 2 which would introduce a new Ofsted quality and inspection regime, with only just under a quarter preferring the requirement that local authorities should be responsible for ensuring that young people are only placed in providers that meet the standards.

**Figure 9: Preferred monitoring method for new national quality standards to improve the quality and security of placements**



Source: response to question 10

In reviewing responses by organisation type, there was no respondent group that preferred option 1, although the extent of support for option 2 varied. For providers, 20 out of 33 responses preferred option 2, with a slightly higher proportion of local authorities (45 out of 67) also preferring option 2. Support for option 2 was even more emphatic across charities, NHS Trusts and police respondents. Amongst representative bodies, while the majority of those who chose an option selected Ofsted, an equal number did not respond to the question, perhaps reflecting divided opinions amongst their members. For a full breakdown of responses by organisation type, see Annex, Table 7.

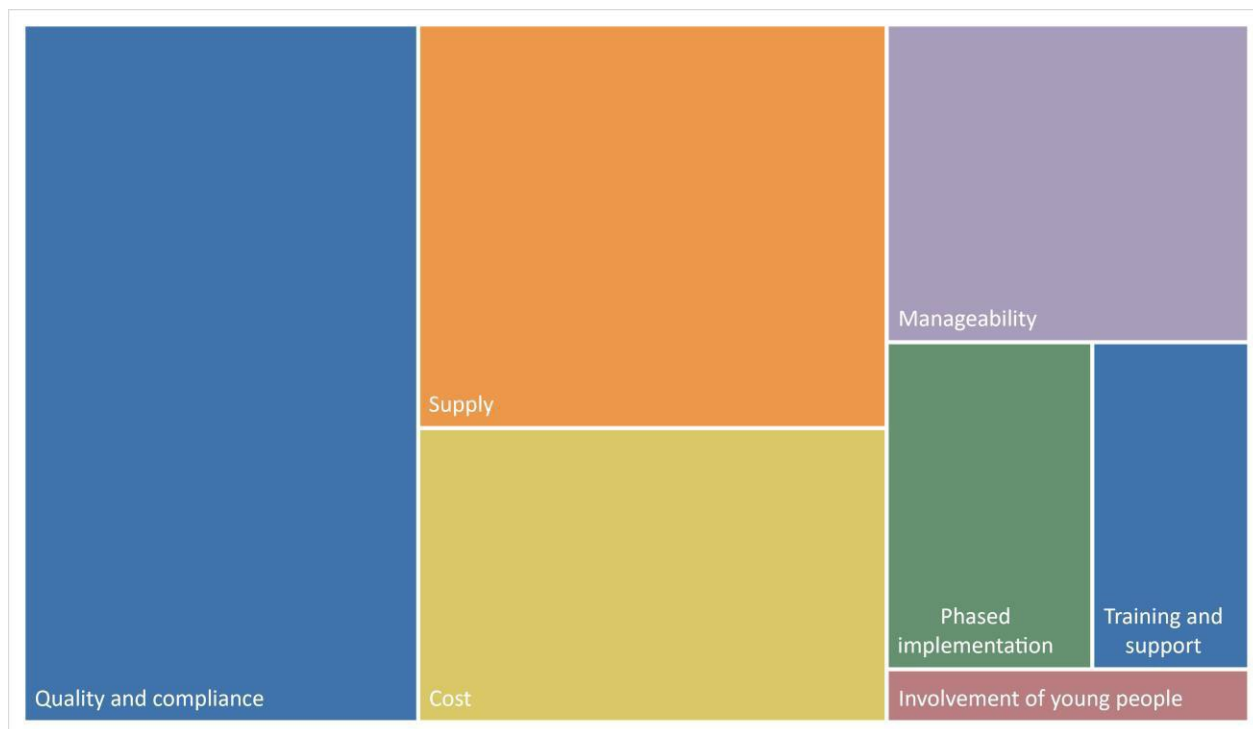
The subsequent question (question 11) was an open question which asked respondents to set out the consequences and implementation challenges they foresaw when introducing new standards; however, many respondents also chose to use this space to explain their choice of option.

The predominant reasons for the majority preference for Ofsted to monitor the standards directly were that a national regulator was likely to be more consistent in the interpretation of the standards and would not be under pressure to find placements or have close working relationships with providers, as local authorities would, which could affect the impartiality of judgements.

For those preferring that the standards be made mandatory for local authorities, this same relationship with providers was seen as an advantage in that they would have more information and local knowledge on which to base judgements.

The open responses to question 11 were coded by theme, each of which is explored in more detail below. Figure 10 below represents the themes reflected in the responses:

**Figure 10: Themes identified in respondents' views of the consequences and implementation challenges that should be considered when introducing national quality standards to improve the quality and security of placements**



Source: coding of question 11

The following sections explore the issues raised under each theme by respondents choosing either of the two options or none.

## Quality and compliance

Comments related to this theme were the most common for those selecting option 2; for those choosing option 1, concerns relating to the supply of provision were most frequently mentioned, with quality and compliance the second most commonly raised issue.

For those selecting option 1 (making standards regulatory for local authorities), the reason for doing so was often because respondents felt that this was a role that effective local authorities were performing already. Consistent standards and the enhanced role of Ofsted to ensure local authorities were applying the standards would raise the quality of provision, according to one charity, while avoiding potential 'unintended consequences'

from moving to a more novel system. A consultant felt that local authorities would be in a better position than Ofsted to share more nuanced local information that would also support the driving up of quality, perhaps through the setting up of regional commissioning consortia. Other respondents also noted the importance of local knowledge; one provided commented:

“Local Authorities will be the ones placing young people with providers and this is where we need the local knowledge to be best understood. This is also how the current system is set up and so is less of a transition. A national regulator of multiple, drastically varying sized providers is not an efficient way of working and leads to a “tick box” regulation mostly reviewed on paper rather than by site visit and inspection.”<sup>57</sup>

The importance of inter-authority cooperation to make the proposals effective was raised by several respondents selecting option 1.

The main reason offered by respondents for selecting option 2 (Ofsted regulation of providers directly) as their preference was the need for a nationally consistent approach to monitoring the new standards to ensure compliance and drive up the quality of provision. Many of those selecting option 2 also made the point that local authorities already have a role in ensuring the quality of provision in which they place children and young people, but this had been insufficient to ensure universal high quality and argued that a national approach to regulation from an organisation with fewer conflicting priorities than local authorities would best secure quality and compliance. Many commented that local authorities, facing an urgent need to place children if a provider was deemed inadequate, might not have the same impartiality in enforcing compliance than would a national regulator. A number made the point that local authorities, under option 1, would be judged by Ofsted but would not necessarily have the powers or the resources for continued monitoring of provision. One local authority argued:

“Local authorities should not be the ones who are monitored on this but the providers themselves should be responsible for the care they provide. Local authorities need a clear understanding of what the accommodation has been rated as so an informed decision can be made.”<sup>58</sup>

However, many of those choosing option 2 recognised the challenges involved in this option. One local authority, acknowledging the importance of local information that had led some respondents to select option 1 as their preference, suggested that a risk-based approach to monitoring, supported by a process that included gathering local intelligence so that higher risk providers could be identified, would need to be put in place by Ofsted.

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<sup>57</sup> ANON-1B1H-AENK-B

<sup>58</sup> ANON-1B1H-AE3C-8

Others raised questions around the frequency of inspections and the timeframes for compliance with inspection findings.

## Supply

Around a quarter of all respondents raised concerns about the impact of either option on the availability of provision should providers decide that they are unable to comply with the new standards or be forced into closure as a result of inspection. Some of those who chose option 1 commented that they did so as they felt local authorities would be more flexible than Ofsted and, therefore, this option would perhaps have a less adverse effect on the availability of provision. Local authorities were the most likely of the organisation types to raise this as a concern.

One provider felt that option 2 would erase some of the good practice taking place, although this was on the assumption that inspection requirements would be the same as those currently applying to registered provision. This concern was echoed by a number of respondents selecting option 1 who, while often acknowledging that there were providers whose quality was such that they should be forced to close, were concerned that an over-rigid framework could inadvertently lead to the closure of good quality provision or impact adversely on providers' ability to respond to needs:

“Option 1 is also more likely to protect innovation and flexibility in the market, if there is national agreement of approach from local authorities, than Option 2 where providers are more likely to be focused on jumping the regulatory hurdles and minimum standards.”<sup>59</sup> (Provider)

“The consequences of introducing option 2 for example would probably be a lot of providers being established as unsuitable. This would put a strain on the placements team as I am aware of how there are not enough provisions available for young people at this moment in time without regulation in place. Despite this I believe it is an essential measure that will make sure post-16 young people are given adequate care.”<sup>60</sup> (Local authority)

A charity suggested that it would be important to consider how providers could be supported and incentivised to raise their standards rather than move out of the market.

A number of respondents, like the example below, were also concerned about the impact on particularly challenging children and young people should a new approach lead to providers refusing to accept them out of concern for their rating:

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<sup>59</sup> ANON-1B1H-AEA1-4

<sup>60</sup> ANON-1B1H-AEVB-A

“Furthermore, requiring inspections of individual settings and providers could lead to an exacerbation of the current placement shortages as providers refuse to accept children and young people with complex needs for fear of negatively affecting their rating. With this in mind, we were interested in suggestions regarding “exceptional circumstances,” where Ofsted could reassure providers that their ratings would not be impacted by negative events or behaviours involving children taken on through urgent placements. Such a measure would need further investigation during the Independent Care Review but could go some way to addressing fears regarding a reduction in the number of placements following greater regulation.”<sup>61</sup> (Charity)

Previous research with local authorities (Greatbatch and Tate, 2020) also uncovered the view of many local authorities that registered children’s homes are becoming increasingly reluctant to accept children with highly complex needs and challenging behaviours. The local authorities interviewed for that research 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).

## Cost

For respondents selecting either of the two options, challenges around cost were the third most cited issue, raised by 43 respondents. Local authorities were most likely to raise concerns about the impact of changes on the cost of provision. Again, this echoes the findings of previous research with local authorities (Greatbatch and Tate, 2020).

Respondents saw raised charges from providers as a potential implementation challenge whichever option was chosen. Costs, they suggested, would be likely to rise as a result of providers defraying the cost of compliance, raising standards of provision and the likely need for better trained and better paid staff. Most assumed that these additional costs would be passed on to local authorities in the form of higher fees. This concern led to

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<sup>61</sup> ANON-1B1H-AEBN-2

pleas from some respondents that the cost impact of any proposals should be considered carefully to achieve an appropriate balance between quality and sustainability:

“Where standards require upgrading an establishment, the cost of this is likely to be reflected in placement fees. Therefore, an impact assessment of the standards should be carried out to ensure that the new standards do not inadvertently either prohibit already effective providers from continuing their services and/or to ensure that local authorities are not burdened further financially.”<sup>62</sup> (Provider)

Again, this resonates with previous research findings (Greatbatch and Tate, 2020) where local authorities felt that regulation would need to be light touch in order to avoid exacerbating current budgetary pressures because of the cost of compliance being passed on through higher placement fees.

One police respondent suggested that government should cap the cost of a placement. A charity suggested costs of upgrading provision should be met by a central fund:

“In the case of private providers, who run over three quarters of relevant independent or semi-independent unregulated accommodation, this should not come from the Department for Education (DfE) or children’s services. In May 2019, the Housing, Communities and Local Government Committee said that Children's Services were at "breaking point" and that current funding levels were unsustainable. Instead, we suggest that the Department for Business, Energy and Industrial Strategy (BEIS) might offer a one-off, short-term central fund, and could even recoup some costs with an appropriate registration fee in the future. The fund could operate as a loan or one-off grant. The recent Government response to COVID-19 has demonstrated how quickly and simply businesses can apply for support when needed.”<sup>63</sup>

In addition to higher placement fees, the resources needed for additional inspection and monitoring for local authorities already operating under budgetary constraint was cited by some as an additional cost should option 1 be selected as the way forward, with suggestions that additional funding for local authorities would be needed. Three respondents commented that, regardless of the chosen option, Ofsted would need additional resources to meet the new requirements without having an adverse effect on existing inspections and frameworks.

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<sup>62</sup> ANON-1B1H-AE5J-H

<sup>63</sup> ANON-1B1H-AEAG-T

## Manageability

This was a concern raised by 36 of respondents.

Ofsted's ability to manage the additional inspections was raised by eight respondents who preferred option 1 (local authority implementation). A charity felt that different standards and frameworks would need to be applied to different types of provision and this would be a challenge for the regulator, with two other respondents concerned that a uniform approach to try and make the task manageable would reduce the flexibility necessary to meeting varying needs. One respondent (Other) highlighted the additional staff recruitment and training needed to implement the proposals. Others simply commented that Ofsted lacked the resources to manage direct inspections in the proposed timescales.

Amongst respondents preferring option 2, a charity gave their view that local authorities lacked resource and capacity to undertake the role as the main reason for preferring Ofsted to undertake inspections of provision directly, a view that was echoed by two providers, two local authorities and a respondent from the police. However, 15 respondents across organisation types observed that Ofsted would need time and resources to ensure that they had the capacity and suitably trained staff to undertake the role.

## Other issues and challenges

Under both proposals, there would be a grace period to enable providers and local authorities to prepare for any new regime coming into effect. This was noted and welcomed by 21 respondents. Some noted that a period of time was necessary for Ofsted to register provision if option 2 was chosen, which they felt could be a lengthy process. Others saw the grace period as necessary for providers to prepare to operate to the new standards, while commenting that they will need considerable support and guidance during this time. A respondent from the police suggested that Ofsted should undertake inspections during the implementation period but the results should not be published, giving providers time to make necessary improvements.

While most did not offer an opinion on the required length of the implementation phase, one respondent (Other) felt that it should be no longer than 12 months, with consequences for any non-compliance after this time being immediate closure and a ban on operating future provision for owners and directors. More commonly, respondents expressed concern about what would happen to residents if their provision was lost at the end of the grace period. One local authority suggested sufficient implementation time was needed to source and develop alternative provision should changes cause some suppliers to exit the market.

The need for support and guidance was raised by 16 respondents. For the most part, this was support and guidance for providers to be offered during the implementation period to



enable them to meet the new requirements. Most respondents did not state where this guidance should come from, but two suggested it would be the role of the local authority to work with providers. A small number of respondents also suggested that local authorities would themselves need additional support to understand their responsibilities, especially if option 1 was selected.

Six respondents called for more involvement of young people and care leavers in proposed changes. For most, this was about seeking their viewpoint in the development of the standards, but two respondents felt that more feedback from young people should have been sought during this consultation.

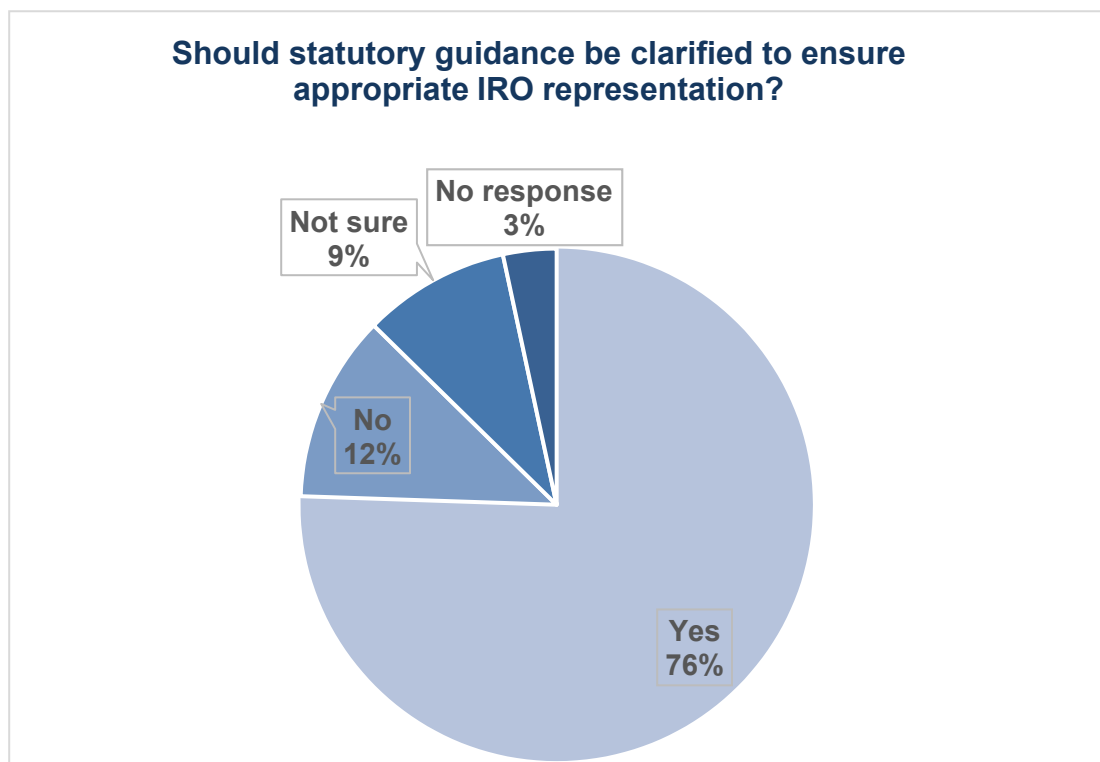
## Ensuring appropriate Independent Reviewing Officer representation

Q12) Do you agree that we should clarify statutory guidance, to ensure that IROs undertake visits to a placement to be able to assess whether it is meeting the needs of the child or young person and that they must send a report to the local authority to inform their decision making process about next steps for the individual child or young person?

Q13) Please explain your answer

Respondents were asked (question 12) whether they agreed that statutory guidance should be clarified to ensure that IROs undertake visits to a placement to be able to assess whether it is meeting the needs of the child or young person and that they must send a report to the local authority to inform their decision making process about next steps for the individual child or young person.

**Figure 11: Should statutory guidance be clarified to ensure appropriate IRO representation?**



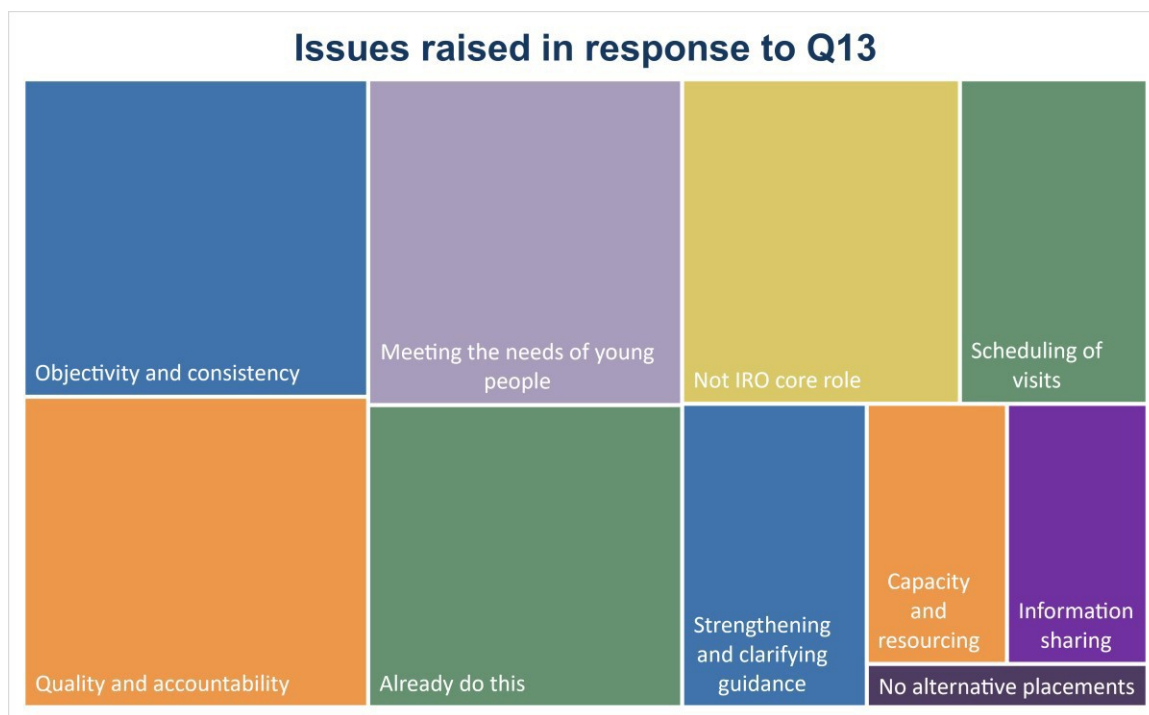
Source: Response to question 12

As Figure 11 above shows, just over three quarters of respondents agreed with the proposal, with only 12 per cent disagreeing. The remaining 12 per cent were either unsure or offered no response.

The one IRO who responded to the consultation disagreed with the proposal and the four respondents from education were equally split between the options. All other groups showed a majority of respondents in favour, although this was less marked in local authorities where just over a third of respondents were equally divided between ‘No’ and ‘Not sure’ In contrast, all 24 police respondents were in favour of the proposal, as were around three-quarters of providers and charities. (See Annex, Table 8)

The following question (question 13) asked respondents to explain their answer. Figure 12 below sets out the responses thematically following coding of the open question. Amongst those agreeing with the proposal, the most commonly referenced reasons were those to do with improving quality and accountability and the belief that the IRO, as an independent voice, provides more objective evaluations of placements than local authority employees. Amongst those disagreeing with the proposals, the most common reasons given were the somewhat contradictory arguments that IROs already do this so the changes are unnecessary or, alternatively, that the proposals go beyond the IRO role. Linked to the latter point, a number of respondents raised concerns about the scheduling of visits and the capacity of IROs to meet new demands.

**Figure 12: Question 13: Issues raised by respondents when asked to explain their response to question 12**



Source: Coding of responses to question 13

The section below looks at each of the themes in more detail.

## Objectivity and consistency

Comments linked to this theme were offered by 45 respondents. A number commented that the proposed guidance should provide a greater consistency of approach between IROs with many seeing as a benefit their independence from local authority placement teams, giving their views of placements more objectivity. For example, a local authority commented that this approach would provide further independent validation of a placement's suitability; another commented:

“As IROs are independent, there would be no reason for them to provide anything other than an unbiased assessment of the placement and its ability to meet the child's needs. It would provide further assurance the placement is meeting need and help the local authority to address any issues identified.<sup>64</sup>” (Local authority)

Similar points were raised by respondents from charities, representative bodies, police and providers.

“IROs have an independent position from the care management of the child and are specifically focused on ensuring that the care needs of the child are being met. Thus, they also have no financial or resourcing pressures that would impact on their decision making. They would purely be focused on ensuring that the placement was appropriate for the child.<sup>65</sup>” (Charity)

However, an NHS Trust, while agreeing with the proposal, was less convinced about the independence of IROs than the majority of respondents:

“Most IRO Services are managed within Children's Services which creates a conflict of interest and limits their ability to challenge. IRO are rarely independent. It would make more sense for IRO teams to sit within the local integrated commissioning function which generally sits within CCGs as this is the most neutral place within the health and social care system.<sup>66</sup>” (NHS trust)

A representative body also expressed doubts about the genuine independence of IROs and suggested that they may be swayed by pressure from the local authority trying to find placements.

Overall, however, most respondents who offered relevant comments saw the independence of the IRO with their focus on the needs of the child as bringing an

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<sup>64</sup> ANON-1B1H-AEAC-P

<sup>65</sup> ANON-1B1H-AEBJ-X

<sup>66</sup> ANON-1B1H-AERC-7

important perspective to placement decisions and the proposed changes as bringing a welcome degree of consistency to the role.

## Quality and accountability

The relevance of the IRO role to improving quality was mentioned by 44 respondents, with all but three of the respondents whose comments linked to this theme supporting the proposals. Of the latter, one disagreed with the proposals and two were unsure. While they all saw the IRO role as important to driving up quality, one felt this was already sufficiently covered in the guidance and was concerned about over-prescriptiveness. One 'not sure' was from a representative body who commented that some members of their organisation supported the proposal but others felt that the role described was not, and should not, be limited to IROs. The other 'not sure' (a local authority) felt the proposal would improve the quality of placements by enabling local authorities to better identify unsuitable provision so it is not clear why they do not support the proposal.

For those respondents who agreed with the proposals and saw them as a way of improving the quality and suitability of provision, and ensuring that IROs' views were taken into account, their reasons were typified by this response from a respondent from the police:

“Often social workers due to demand place children without full assessments of suitability. IRO inspections would ensure a level of LA scrutiny and accountability to ensure placements were suitable.<sup>67</sup>”

## Meeting the needs of young people

The focus of the IRO in ensuring that children and young people's needs were being met and their views taken into account was referred to by 42 respondents.

One local authority commented that placements are assessed by the commissioning service but the IRO, with a focus on how the placement meets the needs of the child in relation to their care plan, is helpful additional oversight. Another wondered what would happen if the child/young person did not want the IRO to visit them. A charity commented that:

“social workers and residential staff come and go, get promoted, leave etc, often the IRO offers some form of continuity, by nature of their role, they offer independence and have a holistic view of the young person's family history, needs

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<sup>67</sup> ANON-1B1H-AE26-T

and aspiration therefore are well placed to judge whether or not a placement meets the young person's needs.<sup>68</sup>

Similar points were raised by two providers. A different charity felt that not all IROs had established such meaningful relationships with young people and saw the proposal as encouraging this; an NHS Trust echoed this view.

Overall, most respondents felt that the proposals emphasised the importance of the IRO in providing an holistic view of the placement rooted in the needs of the young person.

Seven respondents, who were either against the proposal or unsure, made comments related to the needs of young people. Most commented that this was already central to the IRO role and so guidance needed no change in this respect. One local authority felt that an IRO visit was not required in all situations and children in care sometimes feel that there are already too many people in their lives. An academic, a provider and a local authority all felt that there should not be an expectation that an IRO should assess the suitability of the placement but that they should monitor the local authority's performance in relation to the needs of the child and ensuring that his/her views were represented.

## Not a core role for the IRO

As noted above, this concern is largely to the extent to which the IRO should be influencing placement decisions and was raised by 37 respondents, 22 of whom were either against the proposals or unsure. An IRO felt the proposals implied that IROs were inspection and registration officers and it was unacceptable to expect IROs to take on this role. More typically, respondents were concerned that IROs should be focused on the care plan rather than the overall suitability of the accommodation and this wider responsibility could dilute their effectiveness in their primary role. Others felt that regular quality and monitoring visits were already being conducted by placement and commissioning teams and additional scheduled visits were unnecessary. A local authority commented:

“The placing social worker should undertake this task. IROs should consider placement suitability through their normal Statutory Reviewing Role, extending their role to report on this outside of their Statutory Reviewing role extends unnecessarily their role and remit.<sup>69</sup>”

A charity agreed, arguing that:

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<sup>68</sup> ANON-1B1H-AE4P-P

<sup>69</sup> ANON-1B1H-AEN8-R

“The IRO role is not to assess the suitability of a placement but to monitor the local authority’s performance in relation to the individual child; participate in any review of the child’s care; and ensure the child’s wishes and feelings are given due consideration by the local authority (Section 25B Children Act 1989).<sup>70</sup>”

Those who agreed with the proposals but commented on this theme often expressed reservations about the assumption that an IRO would be the person best placed to make placement decisions. For example, a local authority observed:

“IROs already assess how well a placement is meeting a child’s needs in line with the Care Plan, so this is not a huge shift. However, the framing of the new expectations is important – it should not set the IRO as an inspector of provision per se. The focus should be how well the placement is able to meet need. The proposed changes in the statutory guidance for IROs (in respect of IRO visits to assess the suitability of the placement for children and young people) are significantly different expectations than currently in relation to an IRO visit to a child.<sup>71</sup>”

## **IROs already do this**

While, as can be seen above, some respondents argued that the proposals described a role that was not core to, and possibly even contrary to the purpose of, the IRO, 39 felt that IROs were doing this already. Of these, 23 agreed with the proposed changes and 11 disagreed, with five unsure.

One local authority that was against the proposal commented that:

“Essentially, in a good reviewing service within an LA this would be happening anyway as the statutory guidance for the role of the IRO is clearly prescribed and already allows for this. Creating further guidance would be over prescriptive as an effective reviewing service would already be monitoring and scrutinising whether the needs of the child or young person are met, be aware of planned moves and review/report on them at the child’s review. The current IRO Handbook covers this.”<sup>72</sup>

This view was agreed with by others who were against the proposed change, with many citing the IRO handbook and the availability of escalation processes where an IRO has concerns about a placement as sufficient, with one local authority maintaining the

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<sup>70</sup> ANON-1B1H-AENF-6

<sup>71</sup> ANON-1B1H-AEPF-8

<sup>72</sup> ANON-1B1H-AER7-U

proposals were already covered by the Placement and Care Planning Regulations 2015 and the Children's Act 1989 (as amended 2004).

Of those who supported the proposed change, most referring to this theme also said that, in their experience, this was happening anyway but, if this was not universal, then the guidance should be strengthened and clarified accordingly. This response from a provider typified this group:

“However, as a long-term social worker in the field my understanding and experience is that this happens. My experience is that IROs HAVE to visit the child/ young person in their placement prior to the LAC review taking place.”<sup>73</sup>

## **Scheduling of visits**

This issue was raised by 25 respondents, all but one of whom were in favour of the proposals.

Several respondents commented that placements often happen at short notice so a pre-placement visit from the IRO might not be practical but agreed that placement visits should take place as soon as possible. A charity proposed that the IRO should be required to visit any new placement, unless ‘previously sanctioned’ within seven days. A number of respondents thought that visits should be regular and not just happen at placement and review points. A charity responded that the guidance should be specific about the expected frequency of visits as well as the IRO’s remit, the limits of their responsibilities and the nature of the feedback they should provide. Many saw the proposal as a useful additional layer of quality assurance but cautioned that it should not replace existing quality and compliance visits.

## **No alternative placements**

This was raised by a small number (five) of respondents: two local authorities, two representative bodies and one Other. In each case this was expressed as a query – what would happen if an IRO deemed a placement unsuitable but no other provision was available?

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<sup>73</sup> ANON-1B1H-AESX-W



## Capacity and resourcing

This was raised by ten respondents, one of whom (an NHS Trust) was not sure about the proposal, the remainder being in favour. Those that commented under this theme noted that IROs are often overstretched and their current caseloads would need to be reduced to enable them to carry out the expectations. This, in turn, would lead to resourcing challenges.

## Information sharing

This was raised by 15 respondents. Mainly, respondents wanted the guidance to be clear about what should be reported by IROs and how that information should be shared. One Other and one charity asked that IRO reports be made available to the provider to support continuous improvement. A respondent from the police felt that reports should be shared with police. Conversely, another police respondent felt that the IRO should be the conduit for any concerns the police might have about a placement. Another respondent (Other) thought that the IRO report should be shared with local authorities more widely than the home/placing authority as placements are often out of area.

## Strengthening and clarifying the guidance

This theme relates to the 23 respondents who identified this as an issue distinct from the other areas above (where comments may have included the respondent's views on strengthening or clarifying the guidance in that particular area).

Some respondents simply stated that the guidance or handbook needed updating and strengthening to protect young people and provide greater consistency, without going into specifics. An IRO thought the "so-called IRO handbook" should be revised, updated and have a title that made it clear its provisions applied to everyone in the Looked After Reviewing process. A local authority felt the guidance should provide further clarity on what constitutes 'care' as opposed to 'support.' Similarly, three other respondents felt that clarification was needed on the type of provision that would be subject to the new arrangements. Several argued that the need was for the strengthening of statutory duties, whereas one respondent (Education) argued for guidance with key principles rather than over-prescriptive requirements.

## Legal powers for Ofsted to act against illegal providers

Q14) Do you agree that we should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions?

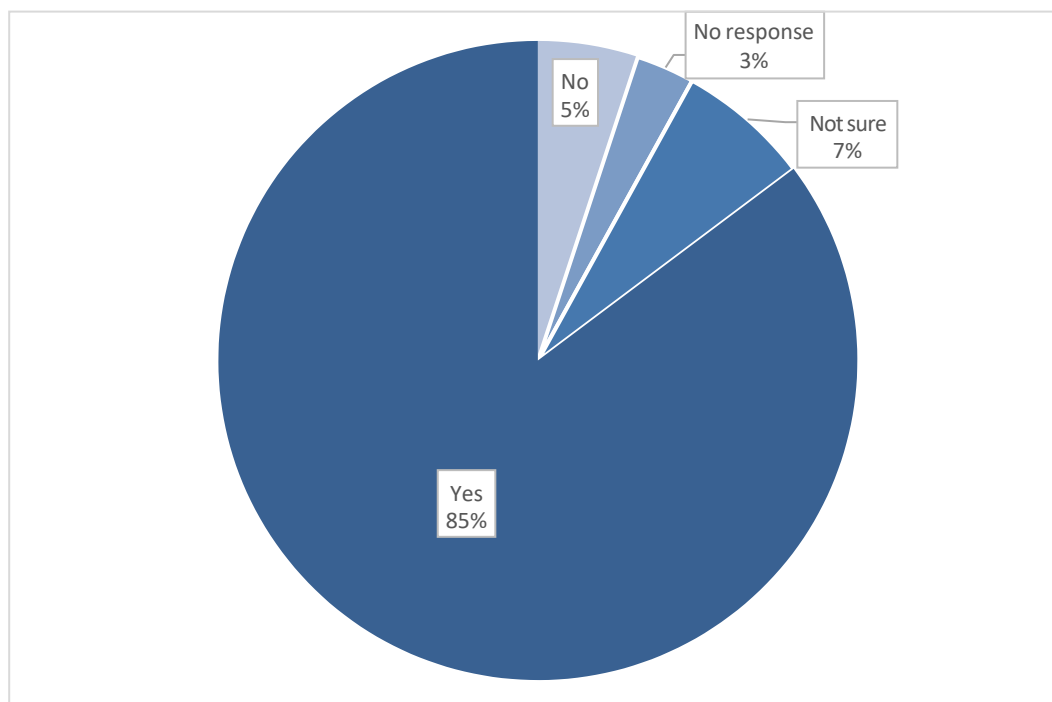
Q15) Please explain your answer

The consultation document noted that some independent and semi-independent providers are operating settings illegally, but currently Ofsted's powers are limited to prosecuting providers, and they have no powers for earlier intervention. The proposal is to amend legislation so that Ofsted have a legal step before prosecution to issue enforcement notices, replacing their existing 'cease and desist' letters, so that their action has more bite. This should see illegal providers being either forced to close quickly, register their service, or face some form of penalty, as well as reducing the appeal of setting up such provision. Ofsted would retain their power to prosecute providers.

Question 14 asked respondents whether they agreed that the Government should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions.

As can be seen from Figure 13 below, an overwhelming majority agreed with the proposal:

**Figure 13: Should Ofsted be given powers to issue enforcement notices?**



Source: Count of responses to question 14

The majority of representatives from all organisation types were in favour of the proposal, with respondents from the police, NHS Trusts, local authorities and charities overwhelmingly in support of the proposal. Providers and representative bodies were less positive, but still around three-quarters were in favour. The respondents from education were less sure with two of the four respondents agreeing with the proposal, one disagreeing, and the other unsure. A breakdown of responses by organisation type can be found in the Annex, Table 9.

The subsequent question (question 15) asked respondents to explain their answer through an open question. Responses were analysed and coded according to the reasons(s) respondents gave.

The twelve respondents who were against giving Ofsted additional legal powers gave a variety of reasons for their views:

- Eight felt that the approach would be overly bureaucratic or rigid and some worried that the move could lead to the loss of good providers. A respondent from a charity was concerned that the measures might lead to providers refusing to accept more challenging children because of a potential impact on their Ofsted rating. One local authority urged that developmental rather than punitive strategies be used and another felt that the Ofsted approach would lead to an unacceptable delay in removing bad providers without further explanation of why this might be so.
- Two respondents thought that better use of existing powers should be a first step.
- One respondent was concerned that Ofsted were unaccountable and responsibility should lie with democratically elected local authorities.
- One, from education, felt that the Ofsted approach to regulation is ineffective and outdated.

Of those responding 'not sure', some commented that they had insufficient experience of Ofsted to know whether this was an appropriate measure, some offered no comment at all and a small number urged a more supportive approach.

Of the 202 respondents who agreed with the proposal, the most common reason given (by 68 of those who agreed) was the view that this would act as a deterrent to poor providers; 53 raised the issue of providers having an opportunity to meet the requirements; 35 commented on the need to act swiftly when provision is substandard; and 30 had concerns about the possible effect on the availability and sufficiency of provision. These are explored in more detail below.

## **Deterrent**

Many respondents commented that strengthening legislation and the very real threat of prosecution was necessary to ensure poor providers ceased to operate or were deterred

from setting up in the first place. Many noted that existing powers are insufficiently robust and have allowed poor provision to continue. Some respondents commented that fines would need to be sufficiently large to act as a deterrent, while others cautioned that there would need to be mechanisms to ensure providers did not simply set up in another part of the country under a different name. One respondent suggested that registered managers and companies subjected to prosecution should be barred from setting up any new homes.

## Opportunity to meet requirements

Respondents welcomed the opportunity for those providers who were capable to meet the required standards and apply for registration. This was felt to be often in the best interests of children as it would reduce disruption and maintain supply as well as help drive up standards. As one charity put it:

“It enables providers to come "on side" avoiding the need for prosecution & allows improvement of provision.”<sup>74</sup>

This view was also taken by many providers; a typical response was:

“At this stage this would seem a sensible approach in order to deal with those offering care illegally. It allows providers the opportunity to comply within a time frame prior to proceeding the prosecutions. It allows young people’s placements and homes not to be withdrawn with little or no planning.”<sup>75</sup>

A respondent from the police argued that there needs to be an effort to distinguish between the better providers and the more unscrupulous ones, with Ofsted and local authorities working with the former to support them to achieve registration.

One charity felt the opportunity to work towards registration was particularly important when providers might inadvertently be operating illegally:

“Under the current system, some providers tip into providing care and becoming an unregistered children’s home because they are not clear on the distinction between care and support, and the requirements associated with care. Moving away from a distinction between care for children in children’s homes and support for 16-17-year olds in semi-independent or independent provision will deliver

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<sup>74</sup> ANON-1B1H-AE7U-X

<sup>75</sup> ANON-1B1H-AEA1-4

greater clarity to providers: if they have any children below 18, they will need to register as a children's home."<sup>76</sup>

Comments in relation to this theme came from 16 local authorities, many noting that they already work to support providers to set up provision and meet requirements and the importance of retaining 'good' providers. One local authority noted that:

"This would be of benefit as it would give providers an opportunity to register their service and continue to accommodate young people (where it is safe to do so). By notifying placing Authorities these authorities can closely monitor the provider whilst doing so."<sup>77</sup>

However, the same local authority noted the importance of clarifying the definition of care in the Care Standards Act (2000) as Ofsted "would be likely to face challenges around this by providers."

## Speed of response

Most respondents commenting under this theme noted the importance of acting swiftly where provision is inadequate in order to protect the interests of children and young people. A provider commented:

"This legislation is long overdue. The current system is ineffective and too slow to respond to issues and safeguarding concerns. Ofsted have little authority to intervene except to issue "Cease and Desist letters" which act as a warning but appear to carry little weight. Also the letters pertain to a property and not a provider. Providers are able to continue operating and will simply change addresses that they operate from."<sup>78</sup>

This theme of needing to deal swiftly with providers and to prevent them setting up elsewhere was echoed by another respondent:

"We believe these should be able to proceed straight to prosecution to avoid providers setting up in a new, unknown location once they have received enforcement notices, continuing the cycle in another area. All places used to accommodate children should be regulated by Ofsted and subject to the same

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<sup>76</sup> ANON-1B1H-AEAB-N

<sup>77</sup> ANON-1B1H-AEBQ-5

<sup>78</sup> ANON-1B1H-AEBR-6

sanctions as Secure Children's Homes when they don't meet the required standard."<sup>79</sup> (Other)

Several local authorities also welcomed a speedier response to illegal provision commenting that it would act as an early warning system and allow them to intervene earlier. One, as well as welcoming greater speed of action, also cautioned that providers could simply set up elsewhere:

"Although they will just set up under different names. Calling the powers something different makes no odds it's a sellers' market. Close them quicker. We have a child who was in unregistered provision before age 16 for seven months and we knew in month 2 that she would have to move, we were just waiting for Ofsted to catch up with us. Enforcement needs to be much quicker as you can imagine a quick move is better than one where you have had months to settle in and then we still move you on the hoof to a completely different setting. Notices should all have mandatory time limit for action of one month."<sup>80</sup>

## Type and sufficiency of provision

While most of the comments made in response to question 15 concerned the reasons respondents were for or against the proposal, a number wished to draw attention to concerns about good providers leaving the market or the nature of provision becoming less flexible. For many, this was ameliorated through the opportunity to work with currently unregistered providers to support their registration – though here some respondents expressed concern about the time it takes to register and hoped that this could be speeded up. However, some expressed concerns about sufficiency of places as a result of the changes when using unregulated or unregistered provision was often a last resort in any case. A local authority commented:

"However, we would express extreme caution around the quick closure provision, the approach needs to be measured one, with Ofsted and the Council working in partnership. As detailed throughout this response the context as to why the placement in unregulated has been made in the first instance which undoubtedly [sic] will be as a result of an inability to secure Ofsted registered provision, in these instances an Ofsted registered search is still ongoing whilst an unavoidable unregistered place has been sourced as an interim emergency measure, a sudden closure response does bring greater risk and detriment to the young person."<sup>81</sup>

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<sup>79</sup> ANON-1B1H-AEUBU-9

<sup>80</sup> ANON-1B1H-AE5T-U

<sup>81</sup> ANON-1B1H-AE8U-Y

A respondent from the police made a similar observation:

“We cannot go straight to cease and desist letters. Some unregulated accommodation providers are actually providing a good level of care and local authorities are completely dependent on them. If they were all closed down, this would lead to an increased number of vulnerable children being placed in completely unsuitable accommodation. Ofsted and Local Authorities have to work closely with some of these better accommodation providers to work towards registration.”<sup>82</sup>

The issue of demand for registered places outstripping supply 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.

Others raised the issue of confusion about when support becomes care and felt this area needed additional clarification. A provider who supported the proposal noted:

“however, it is prudent to note that the difference between care and support is very unclear and misleading in parts.”<sup>83</sup>

A local authority argued that there should be no such thing as an unregistered setting as

“all settings looking after/caring for/supporting children will fluctuate between care and support dependent on age and stage up to adulthood.”<sup>84</sup>

Two charities also responded that they did not support the concept of providers offering accommodation but not care for under 18s at all, whereas a provider asked for assurance that Ofsted would understand

“the need for 16+ provision which is distinct to children's homes and under 16 provision and appropriately provides support and accommodation and coordinated services and not care.”<sup>85</sup>

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<sup>82</sup> ANON-1B1H-AEA5-8

<sup>83</sup> ANON-1B1H-AE8S-W

<sup>84</sup> ANON-1B1H-AEAF-S

<sup>85</sup> ANON-1B1H-AEDR-8

A local authority felt that, for the plans to work, effort would be needed to grow the number of providers and to develop new types of provision for children with the most complex needs.

Previous interviews with local authorities (Greatbatch and Tate, 2020) also suggested a degree of confusion and uncertainty amongst local authorities about the distinction between unregulated or unregistered provision. For example, some 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. Other local authorities 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.



## Conclusions

The majority of respondents were in favour of all the proposals set out in the consultation, recognising that more action is needed to identify and remove, or improve, provision that is not meeting the needs of children and young people. Positive responses ranged from 85 per cent for the proposal that the Government should legislate to give Ofsted powers to issue enforcement notices to illegal unregistered providers before proceeding with prosecutions to just under 70 per cent for the proposal that local authorities should be required to liaise with police forces when making out of area placements.

Across the consultation, respondents identified some recurring implementation challenges. In particular, there were concerns about the impact greater regulation might have on the sufficiency of supply, which is already a challenge for placing authorities, if some providers exited the market as a result. This issue was prominent, for example, in relation to the proposal that the practice of using unregulated provision for children under the age of 16 should be banned. Although over three quarters of respondents were in favour a ban, half of these thought it would be unworkable unless additional measures were introduced to alleviate shortages of suitable registered placements.

While most respondents were clear that any provision that was failing to protect the interests of the children and young people placed there should be closed down and were pleased about proposals that speeded up the closing down of such accommodation. Nonetheless, they felt there was other provision that was good, despite being unregistered, and were concerned about these providers leaving the market. That said, many commented on the implementation period being an opportunity to work supportively with such providers to enable them to make any changes necessary to meet the new standards and register and to help them understand the regulatory regime that would apply to them as there still seems to be some confusion as to when 'support' becomes 'care'.

A connected concern was that such provision is often used for hard to place young people with a frequent view that registered providers sometimes refuse complex cases for fear of negatively impacting their Ofsted rating. Another challenge frequently mentioned was about costs, including those related to capacity and resourcing. Some respondents felt that providers would raise their placement fees in order to defray the additional costs of regulation. This may be the case, but previous research with local authorities (Greatbatch and Tate, 2020) uncovered a very large variation between the costs of registered provision and unregistered/unregulated between providers and it was by no means clear that registered provision was consistently more expensive than unregistered or unregulated, despite the former bearing the costs of compliance. Many respondents also commented on resourcing and capacity challenges for local authorities in supporting providers through the changes and coping with the loss of some forms of provision.

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## Annex A: Tables

**Table 1: The number of respondents from each organisation type that supported, opposed or did not explicitly express a view on the proposed ban on the use of unregulated provision for under 16s**

	In favour of ban	Opposed to ban	Other	Total
Academic	7			7
Care leaver	2			2
Charity	26		2	28
Consultant	7		2	9
Education	2		1	3
Foster Carer	1			1
IRO	1			1
Local Authorities	54	5	8	67
NHS Trust	17	1	1	19
Ofsted	1			1
Other	16	1	5	22
Police	14		9	23
Provider	27		7	34
Provider and Charity	1			1
Representative Body	12	2	1	13
Total	188	9	36	233

Source: Coding of Responses to question 1

**Table 2: The number of respondents from each organisation type who supported different approaches to implementing a ban on the use of unregulated provision for under 16s.**

	<b>As proposed</b>	<b>With additional measures</b>	<b>With exceptions to the rule in special circumstances</b>	<b>With extension to include 16-year olds in Year 11</b>	<b>With extension to include 16 and 17 year olds</b>
Academic	2	1			4
Care leaver	1				1
Charity	8	2	3		13
Consultant	6				1
Education	1		1		
Foster Carer	1				
IRO					1
Local Authorities	21	19	8	4	2
NHS Trust	7	2	1		7
Ofsted		1			
Other	7	3			6
Police	12	1			1
Provider	22	1	1	2	1
Provider and Charity	1				
Representative Body	5	4			3
<b>Total</b>	<b>94</b>	<b>34</b>	<b>14</b>	<b>6</b>	<b>40</b>

Source: Coding of Responses to question 1

**Table 3: The number of respondents from each organisation type who offered an example of what they believed to be good practice in respect of unregulated provision in response to question 2**

	Did not offer an example	Offered an example	Total
Academic	4	3	7
Care Leaver	1	1	2
Charity	10	18	28
Consultant	4	6	10
Education	2	2	4
Foster Carer	1		1
IRO		1	1
Local Authority	13	54	67
NHS Trust	11	8	19
Ofsted		1	1
Other	13	9	22
Police	15	9	24
Provider	9	24	33
Provider & Charity		2	2
Representative Body	10	6	16
Total	93	144	237

Source: Coding of responses to question 2

**Table 4: The number of respondents from each organisation type who agreed, disagreed or were not sure whether the Department should introduce a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in independent and/ or semi-independent provision.**

	Yes	No	Not sure	Total
Academic	4	3		7
Care leaver	1	1		2
Charity	16	8	4	28
Consultant	5	2	3	10
Education	1		2	3
Foster Carer	1			1
IRO	1			1
Local Authorities	37	14	15	66
NHS Trust	15		4	19
Ofsted		1		1
Other	20	1	1	22
Police	24			24
Provider	21	2	10	33
Provider and Charity	2			2
Representative Body	10	1	1	12
Total	158	33	40	231

Source: Responses to question 3, a multiple-choice question

**Table 5: The number of respondents from each organisation type who agreed, disagreed or were not sure whether the Department amend legislation to define 'care', in order to provide clarity on what amounts to 'other arrangements'?**

	Yes	No	Not sure	Total
Academic	5	2		7
Care leaver	2			2
Charity	15	10	2	27
Consultant	4	2	4	10
Education	3			3
Foster Carer	1			1
IRO	1			1
Local Authorities	61	5		66
NHS Trust	18		1	19
Ofsted	1			1
Other	17	2	3	22
Police	23		1	24
Provider	31		2	33
Provider and Charity	1	1		2
Representative Body	11	3		14
Total	194	25	13	232

Responses to question 5; n=232

**Table 6: Response by organisation type to question 10: Which option, 1 (Changing the regulations, to make the standards mandatory for Local Authorities) or 2 (Legislating to introduce a new quality and inspection regime (Ofsted)), do you think would most effectively raise the quality of independent and semi-independent provision?**

	No response	Option 1	Option 2	Total
Academic			7	7
Care Leaver			2	2
Charity	1	4	23	28
Consultant		2	8	10
Education	1	1	2	4
Foster Carer			1	1
IRO			1	1
Local Authority	4	18	45	67
NHS Trust		2	17	19
Ofsted		1		1
Other		9	13	22
Police		5	19	24
Provider		13	20	33
Provider & Charity	2			2
Representative Body	7	2	7	16
Total	15	57	165	237

Source: Responses to question 10; n=237



**Table 7: Response by organisation type to Q12: Should statutory guidance be clarified to ensure appropriate IRO representation?**

	Yes	No	Not sure	No response	Total
Academic	6	1			7
Care Leaver	2				2
Charity	21	5	1	1	28
Consultant	6	4			10
Education	1	1	1	1	4
Foster Carer	1				1
IRO		1			1
Local Authority	42	12	12	1	67
NHS Trust	18		1		19
Ofsted	1				1
Other	21		1		22
Police	24				24
Provider	24	4	5		33
Provider & Charity	2				2
Representative Body	10		1	5	16
Total	179	28	22	8	237

Source: Responses to question 12; n=237

**Table 8: Response by organisation type to Q14: Should statutory guidance be clarified to ensure appropriate IRO representation?**

	Yes	No	Not sure	No response	Total
Academic	6		1		7
Care Leaver	2				2
Charity	24	1	2	1	28
Consultant	8	1	1		10
Education	2	1		1	4
Foster Carer	1				1
IRO	1				1
Local Authority	60	3	4		67
NHS Trust	18		1		19
Ofsted	1				1
Other	19	3			22
Police	23		1		24
Provider	25	3	5		33
Provider & Charity	1		1		2
Representative Body	11		1	5	16
<b>Total</b>	<b>202</b>	<b>12</b>	<b>16</b>	<b>7</b>	<b>237</b>

Source: Responses to question 14; n=237



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