

BECOME.

THE CHARITY FOR CHILDREN IN CARE
AND YOUNG CARE LEAVERS

Submission to the Department for Education's consultation on reforms to unregulated provision for children in care and care leavers

June 2020

Become is the national charity for children in care and young care leavers. We provide help, support, and advice to make sure care-experienced young people can unleash their potential and take control of their lives. We help make the care system work better by ensuring that young people's voices and perspectives shape policy and service provision.

Introduction

Become welcomes the opportunity to contribute to a consultation on the government's proposed reforms to unregulated provision for children in care and care leavers.

Given Become's role, we have responded to the questions most relevant to children in care and young care leavers, drawing on what young people with experience of care (and particularly unregulated settings) tell us about their experiences through our advice, support and participation activity.

Consultation process and timing

Given the enormous value of the expertise held by those with lived experience of care and unregulated settings, we are pleased that the deadline for care-experienced people to respond to the consultation was recently extended to 23 June and that we were able to support with the publication and circulation of a summary version to support care-experienced people to submit their views.

However, we are disappointed that no accessible version of the consultation was published from the outset to support care-experienced young people's involvement, and that the views of those who will be most affected by these proposals were not given the same opportunity to contribute their valuable expertise.

It is important to recognise that the current COVID-19 outbreak is likely to have significantly limited the ability of individual children and young people, the professionals, carers and trusted adults in their lives, and other organisations who work closely with care-experienced people, to have meaningful conversations around the proposals and ensure care-experienced voices are heard. We encourage the government to recognise the impact of the current situation on the breadth and depth of responses to the consultation and to view contributions in this context.

Executive summary

- **We believe it is critical that all children in care receive care up until the age of 18.** This is essential for all children, but particularly those in the care of the state. We strongly disagree with proposals which will continue to deny care to over 6,000 children in care aged 16 and 17 – some of the most vulnerable children in our society. Care-experienced young people tell us that many aspects of the care they receive before the age of 16 should continue when they are 16 and 17 regardless of the setting in which they live.
- **A separate set of national standards will establish a ‘two-tier’ care system for children aged 16 and 17 who enter independent or semi-independent accommodation.** Children in foster care or children’s homes do not experience a change in the care and support they receive at age 16. These proposals contradict the intentions of other recent welcome policy developments– such as Staying Put, Staying Close and the extension of personal adviser support to 25 – to extend care and support to reflect good (corporate) parenting.
- **Urgent action is needed to improve experiences for children in independent and semi-independent accommodation, but these proposals risk continuing to fail thousands of young people in care.** The recent growth in unregulated placements has not been in the best interests of the children living there. It reflects a significant lack of capacity in regulated foster and residential settings, not a conscious choice that they are an appropriate option for most young people. It is a real concern that these proposals do nothing to solve this problem and will further formalise a system which has arisen out of a failure to plan and grow regulated capacity.
- **All places where children in care live should be regulated and inspected.** We believe it is unacceptable to maintain unregulated provision of any kind. We recognise that independent and semi-independent settings can be the right option for some 16 and 17-year olds, but it is critical they can feel safe in the knowledge that where they live is properly regulated and inspected by Ofsted. Modifications to existing children’s homes regulations provide a possible solution.

“All children have the right to be safe, loved and cared for and for these young people this is the responsibility of the government as they are children of the state.”

Care-experienced young person, aged 23.

Our response

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

1. **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.**
 - 1.1. We agree with the proposal to end the use of independent and semi-independent provision for children under the age of 16.
 - 1.2. However, this must be viewed in the context of our overall objection to the premise that children aged 16 and 17 living in independent and semi-independent provision should be denied care, explored in more detail in response to questions 6 and 8.
 - 1.3. Fewer than 100 children in care under the age of 16 live in unregulated settings and we believe the proposed reforms do not go far enough to ensure all of the 6,180 children currently living in independent and semi-independent provision receive both the care and support they deserve.¹
 - 1.4. The question of suitability of this type of accommodation must be considered on an individual basis and informed by the wishes and feelings of every child. However, we agree that it will very rarely be in the best interests of a child under the age of 16 to live in a semi-independent or independent setting given the likely care and support needs of children in this age range.
 - 1.5. We recognise that some young people aged 16 and above may benefit from the more independent lifestyle offered by some semi-independent or independent settings. Some young people have told us they find the additional autonomy to be a positive aspect, particularly where they have found foster care to be too intense a setting or uncomfortable given their experiences of living in a family unit beforehand.
 - 1.6. However, despite this preference amongst some young people for certain kinds of independent or semi-independent settings, we reject the premise that these settings should continue to be unregulated and therefore legally unable to deliver care.
 - 1.7. The government's own guidance for local authorities suggests they should encourage young people to remain in care until they are 18.² One care-experienced young adult told us about the lack of alignment between the proposal to ban these settings for under 16s only and other expectations at this age: *"I can't leave before age 18, so why am I being asked to live independently before then?"*.
 - 1.8. Ending the use of independent and semi-independent settings only for children under the age of 16 introduces the expectation that some 16 and 17 year-olds should live in settings which cannot provide care. This goes against recent policy initiatives which have sought instead to *extend* many positive aspects of care settings to young adults aged 18+, such as Staying Put for those in foster care and Staying Close for those in children's homes.
2. **Please share your examples of good practice here.**

¹ <https://www.gov.uk/government/publications/looked-after-children-in-independent-or-semi-independent-placements>

² <https://www.gov.uk/government/publications/local-offer-guidance>

2.1. n/a

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

3. 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?

3.1. No.

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

- 4.1. Again, our position should be considered in the context of our overall objection to the existence of separate unregulated settings for children in care with distinct processes for liaising with relevant agencies, including the police.
- 4.2. Ensuring the safety of every child is of the utmost importance, and there are clearly additional considerations around safeguarding children's welfare in the context of the increased risk associated with unregulated accommodation and placements outside of local areas.
- 4.3. A recent inquiry from the APPG for Runaway and Missing Children and Adults highlighted how over 70% of police forces who provided evidence stated that placing children out of area increases their risk of exploitation. The vast majority of forces expressed concern about the number of children living in unregulated settings and the additional risks they face as a result.³
- 4.4. Current placement regulations already require local authorities to consult with the area authority where they are considering making a distant placement in order to ensure a thorough assessment of whether or not this is appropriate. In addition, the child's Independent Reviewing Officer (IRO) must be consulted to discuss the arrangement and ensure the child's wishes and feelings have been taken into account. Regulations also specify that the local authority, when considering a placement in a regulated children's home located out of area, must consider the information included within the home's location assessment, which includes measures taken by the home to manage safeguarding concerns arising from the neighbourhood where the home is located.⁴
- 4.5. The Association of Directors of Children's Services, in collaboration with the College of Policing, also encourages local authorities to notify the relevant police force when a child is being placed out of area, based on the needs/risk of the child.⁵
- 4.6. The Children's Homes (England) Regulations 2015 ensure that the registered person reviews the appropriateness and suitability of the location and premises of the home at least once a year so that children are effectively safeguarded. Homes are also expected to develop and maintain effective working relationships with local youth justice and police services, taking into account information in the child's relevant plans and planning for instances where children run away or go missing from the home, or are at risk of doing so.⁶

³ <https://www.childrenssociety.org.uk/sites/default/files/no-place-at-home.pdf>

⁴ <https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review>

⁵ <https://adcs.org.uk/contacts/out-of-area-looked-after-children-notifications-england>

⁶ See Regulations 12 and 46 at <http://www.legislation.gov.uk/ukxi/2015/541/>

- 4.7. Police forces, local authorities and providers of accommodation for children in care should therefore already have strong links and processes to share information to safeguard children living in areas away from their home local authority as part of care planning.
- 4.8. Therefore, we disagree with the need for a separate requirement for unregulated accommodation which asks local authorities to consult with local police forces. This risks establishing a ‘two-tier’ system of safeguarding protocols for children in care, with the tacit assumption that a check with the police balances the additional risk of an out of area placement. This may also – unintentionally – displace some level of decision making around complex care planning and safeguarding considerations to the police.
- 4.9. The safeguarding procedures noted in the paragraphs above which accompany registered homes and out of area placements serve as a stronger set of mechanisms for ensuring the safety of children placed there. If currently unregulated settings were instead expected to register with Ofsted and adhere to an adapted version of the Children’s Homes (England) Regulations 2015 (see response to question 7 below), this would be preferable to the proposed process.

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

5. **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?**
 - 5.1. No.
6. **Please explain your answer, including any positive and/or negative impact you think this change would bring about.**
 - 6.1. We reject the notion that any place a child in care lives should not be able to provide them with care and therefore disagree with proposals to define ‘care’ and clarify the distinction between care and the support offered by unregistered and unregulated provision.
 - 6.2. We understand the ambiguity which local authorities and providers report around what constitutes ‘care’ and therefore the settings which should be registered with Ofsted. However, the solution is not to make this arbitrary and unhelpful distinction clearer and continue to deny care to those living in currently unregulated settings. Instead, we should support all providers to deliver age-appropriate care for every child.
 - 6.3. 29% of children living in currently unregulated settings are the subject of a care order.⁷ This means that a family court has decided the local authority should have parental responsibility for the child and that they are in need of care.
 - 6.4. 37% of children living independently and 39% of children in semi-independent accommodation started living there less than one week after coming into care, disrupting the idea that unregulated accommodation often functions as a ‘stepping-stone’ for a gradual and

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864075/Looked_after_children_in_independent_or_semi-independent_placements_Feb_2020.pdf

supported transition to a more independent way of living.⁸ Children who have only very recently started to be looked after should live somewhere which provides care attuned to their often urgent, changing and unfamiliar needs.

- 6.5. One definition of 'care' is already provided in the context of residential care for looked after children through the Children's Homes (England) Regulations 2015 – specifically 'The quality and purpose of care standard'.⁹ This sets out what is required of the staff and registered person to protect and promote each child's welfare, provide personalised care that meets each child's needs as recorded in individuals' plans, provide to children the physical things they need in order to live there comfortably, and other aspects of what good quality care looks like.
- 6.6. Ofsted sets out criteria to help providers identify whether the service they are providing is 'care' as described by current regulations, or whether they are providing supported accommodation and therefore do not need to register under the Care Standards Act 2000.¹⁰
- 6.7. In speaking with care-experienced young adults about this consultation, we aimed to identify how they think the care or support which young people receive where they live should change at age 16. We found some consistency in their personal experiences and expectations, although there was understandable disagreement around exactly what this kind of 'care' looks like and a recognition it would be dependent on each individual.¹¹
- 6.8. Some responses which reflect what we heard on what the similarities should be in the help children and young people in care when they are under 16 and the help they receive when they are 16 or 17 are included below (emphasis added):
 - *"Living somewhere people care about you where you **feel part of a family** rather than just living somewhere people pop in and do their job and leave again."*
 - *"You should still be somewhere you feel safe and you have **instant support** if you need it."*
 - *"Support with **traveling** for education or work."*
 - On help with **school/college homework**: *"Yes, peers would still receive support from parents if needed. It shouldn't be different just because a young person grew up in care."*
 - *"I don't think 16 or 17 year olds should have the responsibility of **buying food**. Support should be given in terms of giving all an additional budget for a weekly budget so the minimal finances left can help them use this for other things they may need to purchase."*

⁸ Ibid

⁹ <http://www.legislation.gov.uk/ukxi/2015/541/regulation/6/made>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726907/Introduction_to_childrens_homes_180718.pdf

¹¹ The quotes used in response come from written submissions and online conversations members of staff at Become have had with care-experienced young adults involved in our advisory group or engaging with other services. We have encouraged care-experienced young people and young adults to share their views directly as part of the government consultation by 23 June through jointly developing and promoting a summary version of the consultation. For further details see <https://www.becomecharity.org.uk/news-and-opinion/share-your-views-with-the-government-on-placements-in-care/>.

- *“I think both 16 and 17 year old should have support with **making doctors or dentist appointments.**”*
- 6.9. Some responses which reflect what we heard on what should be different about the help children and young people in care when they are under 16 and the help they receive when they are 16 or 17 are included below:
- *“I think no young person should live with limited support under the age of 18. While yes we want the freedom it should be a middle ground. Young people after 16 should be given more freedom and more responsibility e.g. having to cook for themselves some nights and do their own washing (this happens with a lot of young people living at home)... One day someone is buying and preparing your food for you, and the next day you are expected to know how to do it yourself (just because you now get to blow an extra candle out on your cake) even if no one has shown you how to do these things.”*
 - *“I think when we turn 16 we need to learn more skills but this should be done as a smooth transition over a period of time, allowing us to still enjoy these years rather than being forced to count down the days till support drops off.”*
- 6.10. The examples highlighted (in bold) above (e.g. buying and preparing food, managing finances, support with travel, help with education, and ‘family-style’ care with support on offer at all times) reflect examples of what Ofsted defines as care in its guide to registration.¹² Care-experienced people have consistently told us that they want and expect to receive care at age 16 and 17 – regardless of the type of setting in which they live. However, they want this care to be increasingly young person-led, recognising their growing autonomy and developing independent living skills.
- 6.11. Above all and most consistently, we found from care-experienced young people and young adults a strong aversion towards attempts to distinguish between care and support before age 18, as proposed. They said this felt artificial, removed the young person from the discussion and appeared completely devoid of individualised ‘care’, especially when it was defined through very specific and practical terms.
- *“It’s not a definition of care, it’s a definition of control.”*
 - *“We can’t describe what care looks like through these kind of things.”*
 - *“I can pay my bills, and although I might forget sometimes, I can still do it. But practical isn’t the only consideration. Without care, we end up with a bunch of 21 year olds who can’t emotionally deal with things.”*
- 6.12. It is imperative that a ‘two-tier’ system of care and support is not further regularised for young people who move into independent or semi-independent accommodation. The use of currently unregulated settings should be rare, and only when this clearly align with a child’s support needs, wishes and feelings. As one care-experienced young adult told us: *“It’s not called the care until age 16 system. How can someone get to age 17 and we tell them ‘we’re not going to care about you’?”*

¹² Ibid

7. 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.

- 7.1. There has been an 80% increase in the number of children living in independent or semi-independent settings since 2010.¹³ This enormous growth in the use of unregulated accommodation is a symptom of a failure to develop capacity across regulated foster and residential placements.
- 7.2. The solution to this problem is not to further formalise this unintentional divide through new definitions of ‘care’ and the support provided by unregulated settings, but to ensure all places a child might live are able to deliver care under existing regulations and guidance.
- 7.3. We believe that independent and semi-independent settings can be better monitored, inspected and improved through compliance with existing children’s homes regulations with modifications (a model already established with modifications for secure children’s homes and homes providing short break care for disabled children).¹⁴
- 7.4. The average age of a child living in a children’s home is 14.7 years¹⁵ (and this may have increased again more recently given the growing proportion of older children in care¹⁶). Many older children and even young adults over the age of 18 continue to be well cared for and supported in children’s homes through the existing regulations and quality standards.
- 7.5. Modified regulations could allow for adapting the standards so that they better reflect the kind of care appropriate for older children aged 16 and above, recognising the more independent way of living which some teenagers in care will benefit from and want to see reflected in planning for the care and support they receive. A very helpful proposed list of modifications is included in Article 39’s own response to this consultation.¹⁷ Care-experienced children, young people and adults should be meaningfully involved and consulted in the development of these modifications.

National standards for providers

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

- 8.1. We disagree with the proposal to develop a new set of national standards. All places where children live should be able to provide care, and we reject establishing a different set of (minimum) standards for independent and semi-independent settings which will prevent vulnerable 16 and 17 year olds from being provided with the level of care they may need.
- 8.2. A different set of regulations or standards does not exist for children aged 16 and over in foster care or in registered children’s homes. Many older children are cared for well using the flexibility and best judgement of professionals afforded by the regulations and associated guidance. Typical parenting for children outside of the care system does not include an expectation that care will cease to be provided from age 16.

¹³ <https://www.gov.uk/government/publications/looked-after-children-in-independent-or-semi-independent-placements>

¹⁴ <http://www.legislation.gov.uk/ukxi/2015/541/regulation/52/made>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388701/Childrens_Homes_data_pack_Dec_2014.pdf

¹⁶ <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019>

¹⁷ <https://article39.org.uk/2020/04/20/unregulated-provision-consultation-will-be-fundamentally-flawed-without-meaningful-consultation-with-children-and-young-people/>

- 8.3. It is important that poor provision in currently unregulated settings is identified and improvements made with urgency. Young people often tell us about poor experiences in independent and semi-independent accommodation, including unsuitable rooms with broken furniture and appliances, sharing accommodation with other young people and adults who are violent or have visible issues with substance misuse, and staff with very little knowledge around rights and entitlements or who are often absent and not able to provide sufficient support given their level of training.
- 8.4. However, we believe that independent and semi-independent settings can be better monitored, inspected and improved through compliance with existing children's homes regulations with modifications (as outlined in response to question 7 above).

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

9.1. n/a

Status of national standards

10. How effectively do you think either option 1 or 2 would raise the quality of independent and semi-independent provision?

10.1. We believe option 2 (Ofsted registration and inspection) could significantly improve the quality of independent and semi-independent provision.

11. Please explain your answer, including why the options would be particularly effective or ineffective.

11.1. This would help to set out a clear understanding of what good quality care looks like across the sector and the process of registration would support providers in ensuring they meet this.

11.2. However, we disagree with the proposal for monitoring and assessing compliance with a new set of national standards. Ofsted, as the independent and comprehensive inspectorate for children's social care settings, should be responsible for inspecting semi-independent and independent settings once they have been supported to register as appropriate and conform to a modified version of the quality standards for children's homes.

11.3. This would provide consistency across all children's residential care settings, base the support (and care) provided to 16 and 17 year-olds on quality rather than minimum standards, and encourage the sharing of learning from the regulated sector on how these can be adapted for semi-independent and independent settings.

11.4. Although the presence of Ofsted scrutiny cannot eliminate poor practice, the lack of national oversight introduces an unnecessary level of additional risk. It is clear that current arrangements, which require local authorities to ensure the safety and suitability of unregulated settings they use, have been insufficient to protect and safeguard young people. Any option beyond Ofsted registration and inspection would be unsatisfactory.

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

12.1. n/a

Independent Reviewing Officers

13. 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?

13.1. Yes.

14. Please explain your answer.

14.1. We agree that Independent Reviewing Officers (IROs) should be encouraged where possible to visit children in their placement to assess whether it is meeting their needs. Young people often tell us they don't see or hear from their IRO other than at review meetings and don't feel comfortable approaching them when they are struggling to have their voices heard. This process may support stronger relationships and additional independent scrutiny – particularly where they feel their social worker isn't listening to their wishes and feelings.

14.2. Care-experienced young adults spoke to us about this particular proposal:

- *"I strongly agree that IRO should be visiting young people in their supported accommodation to hear their views and how they feel as often most young people placed in their accommodation did not have an alternative choice or are struggling."*
- *"Yes IRO should go and visit these supported houses. No child should live in an unregistered home or a home with no guidelines or checks especially under 18."*

14.3. However, any action to amend statutory guidance to make a visit and report a mandatory duty must involve close consultation with IROs, their professional networks and care-experienced children and young people so that attention isn't diverted from their core role.

14.4. Existing guidance on the role and responsibilities of the IRO is clear on their duties to monitor each child's case, ensure any placement decisions take into account the child's wishes and feelings, and assess the suitability of each placement according to their plan.¹⁸ They should raise any concerns with the local authority and escalate as required to ensure the safety and wellbeing of each child.

14.5. This action must also not act to displace existing professional duties associated with reviewing placements. Social workers should continue to visit children where they live according to care planning and placement regulations to ensure their placement continues to meet their needs.¹⁹

Ofsted powers

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

15.1. Yes

16. Please explain your answer.

16.1. Although we object to the existence of settings which provide accommodation but not care for children under the age of 18, we are supportive of enhancing Ofsted's powers where

¹⁸ <https://www.gov.uk/government/publications/independent-reviewing-officers-handbook>

¹⁹ <https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review>

required to better ensure the safety of and appropriate care for children and young people.
This includes taking action to close, register or prosecute providers.

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