



BRIEFING PAPER

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Looked after children: out of area, unregulated and unregistered accommodation (England)

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Summary

This briefing provides information on two separate but related topics concerning looked after children in England:

- Sections one to three cover out of area and distant placements
- Sections four to six cover unregulated and unregistered accommodation.

Current position on out of area placements

Under the *Children Act 1989*, as amended, accommodation provided by local authorities for children in their care must be “within the local authority’s area” unless this is “not reasonably practicable.” The Act additionally requires local authorities to ensure, as far as is reasonably practicable, that accommodation for looked after children is “within the authority’s area.”

There is, however, no provision in legislation that prohibits a local authority from placing a child out of its area (an “out of area” placement).

The general duties of local authorities towards looked-after children apply to all placements, including those that are out of the responsible authority’s area. [Guidance published by the Department for Education](#) also sets out some additional requirements for out of area placements.

Increase in the number of out of area placements

The number and proportion of looked after children placed outside their home local authority has increased in recent years. The number and proportion of looked after children living in residential homes more than 20 miles from their home has also increased.

When questioned about the increase in out of area placements the Government has stated that they should be “a last resort, unless it is in the child’s best interests”. This can be the case, the Government has said, if the child is at risk of exploitation or needs specialist provision.

Independent review of children’s residential care

In the [report](#) of his review of independent residential care, published in July 2016, Sir Martin Narey, argued that the issue of out of area placements is not “remotely as straightforward as often suggested.” Local authorities should, he said, “be cautious about following any hard and fast rule about placement distance and...recognise that the right placement for a child is more important than location.” The goal, Sir Martin said, should be “to have the right home and situated reasonably close to a child’s home.”

Noting the disparity in the location of homes, the report stated that there seemed to little evidence of market management and recommended that more should be done to “to influence the development of the market for children’s homes.”

Recent concerns about out of area placements

Recent reports by Ofsted, the Children’s Commissioner for England, and the APPG for Runaway and Missing Children and Adults have raised concerns about the increase in the number of out of area placements. The concerns raised include:

- Children are being placed out of area because of a lack of suitable provision closer to home.
- That being placed so far away can be traumatic for children who already have had difficult upbringings.
- The vulnerability of children living far away from home means that they are at greater risk of going missing.

- When children placed out of area do go missing they are at risk of criminal and sexual exploitation, including by criminal gangs who are expanding drugs markets through 'county lines'.
- Children are not being consulted before being placed out of area.
- Children can feel isolated and often do not see loved ones often enough when placed out of area.

Unregulated and unregistered accommodation

In order to meet their responsibilities to provide accommodation for a looked after child, a local authority can place them in one of a number of settings, including a residential children's home.

The *Care Standards Act 2000*, as amended, states that "an establishment in England is a children's home [subject to some additional provisions] if it provides care and accommodation wholly or mainly for children" (children are defined as people aged under 18). Unless they meet criteria for an exemption, all children's homes in England must register with Ofsted.

Some types of residential accommodation for looked after children are not classed as children's homes and are not required to register with Ofsted. These are referred to as "unregulated settings" or "other arrangements." They may include, for example, accommodation where children (usually aged 16 or 17) are provided with support to live independently rather than full-time care.

It is the responsibility of local authorities to make sure any placements in unregulated accommodation are safe and suitable for the child concerned.

Unregistered provision is when an establishment is providing some form of care to a child as well as accommodation but they are not registered with Ofsted as a children's home. This is illegal – it is an offence to run a children's home without the appropriate registration.

Concerns have been expressed about an apparent increase in the number of children, including some under the age of 16, being placed in unregulated, and unregistered accommodation.

Government consultation on unregulated provision

In February 2020, the Government published a [consultation on unregulated provision](#), which made a number of proposals for change, including:

- Banning the use of independent and semi-independent placements for children under the age of 16.
- Introducing a new requirement on local authorities to consult with local police forces when they place a child out of area in unregulated provision.
- Amending legislation to define 'care' in order to provide clarity on the distinction between unregulated and unregistered provision.
- Introducing new national standards for providers of unregulated provision. The consultation seeks views on how the standards should be introduced and enforced.
- Legislate to increase Ofsted's enforcement powers "so that robust action can be taken quickly where providers are found to be acting illegally."

The consultation closes on 8 April 2020, following which the Government will publish a response that will include "a timetable for any reforms that will be taken forward."

1. Out of area placements

1.1 Current legislation

Under section 22A of the *Children Act 1989*, as amended, local authorities are under a duty to provide children in their care with accommodation. Section 22C of the Act provides that the accommodation must be “within the local authority’s area” unless that is “not reasonably practicable”.¹

Section 22C of the Act further requires that, when determining the most appropriate placement for a child in their care, local authorities must, “so far as is reasonably practicable in all the circumstances of the [child’s] case”, ensure that the placement:

- Allows the child to live near their home
- Does not disrupt their education or training
- Allows the child to live together with a sibling whom the local authority is also providing accommodation for
- Is suitable to their particular needs if they are disabled.²

Section 22G of the *Children Act 1989* additionally requires local authorities to ensure that accommodation for looked after children is “so far as is reasonably practicable...within the authority’s area...and meets the needs of those children.”

Box 1: The definition of a “looked after child”

Under the *Children Act 1989*, a child is classed as a “looked after child” in the following two circumstances:

- They are in the care of a local authority pursuant to a section 31 care order made by a court. A local authority has (often shared) parental responsibility for the child and a “right and duty to provide accommodation.”
- They have been provided with accommodation by a local authority under section 20 of the 1989 Act for a continuous period of more than 24 hours (with the voluntary agreement of the child’s parents – no court order is required). The child is not in care and the local authority does not have parental responsibility for them. The authority “may, and sometimes must, provide accommodation but, save in certain circumstances, has no right to do so.”³

There is no provision in legislation that prohibits a local authority from placing a child in an “out of area” placement or a “distant” placement (see box 2 below). The local authority that takes a child into care is responsible for supporting them, whether they are placed in that authority or outside it.⁴

Chapter three of statutory guidance published by the Department for Education (DfE), [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), last updated in June 2015, provides further information on the placement of looked after children. Among other things, the guidance states that an out of area placement may

¹ *Children Act 1989*, sections 22C(7) and 22C(9)

² As above, sections 22C(7) and 22C(8)

³ Hershman and McFarlane, *Children Law and Practice*, para F146

⁴ [PQ261236](#), 13 June 2019

sometimes be most appropriate, but that such placements require effective planning:

There will be circumstances where a distant placement will be the most suitable for a child, such as where the child concerned has complex treatment needs that cannot be met by services within the area of the responsible authority. There will also be children who require an out of authority placement to ensure they can be effectively safeguarded. Such placements will require effective planning, engagement and information sharing with the services likely to be responsible for meeting the child's needs in the future.⁵

Box 2: "Out of area" and "distant placements"

Where a child is placed in a home outside the local authority's area it is called an "out of area placement". In addition, *Children Homes and Looked after Children (England) Regulations 2010*, as amended, define a "distant placement" as "a placement outside the area of the responsible authority and not within the area of any adjoining local authority."⁶ The definition of a distant placement was introduced following a [consultation](#) in 2013.⁷ The change came into force on 27 January 2014.⁸ Any references in this briefing to out of area placements should be taken to include distant placements.

1.2 Process for arranging out of area placements

The general duties of local authorities towards looked-after children apply to all placements, including those that are out of the responsible authority's area.

There are, however, a number of additional requirements relating to out of area placements. These are set out in the *Care Planning, Placement and Case Review (England) Regulations 2010*, as amended by the *Children's Homes and Looked after Children (Miscellaneous Amendments) (England) Regulations 2013*. Further guidance is included in the DfE's statutory guidance on the *Children Act 1989*.

As the DfE's guidance explains, the additional requirements for out of area placements include (but are not limited to):

- A decision to place a child "out of area" must be approved by a nominated officer. "Distant placements" must be approved by the Director of Children's Services. These requirements do not apply where the placement is with the parent, a connected person or a foster carer approved by the local authority.
- Where the responsible authority is considering making a distant placement, it must consult with the authority for the area of the proposed placement and provide a copy of the child's care plan. (This does not mean that the authority where the child is to be placed has a veto).

⁵ Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, para 3.31

⁶ *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959) as amended, regulation 11(5)

⁷ Department of Education, [Improving safeguarding for looked-after children](#), June 2013

⁸ [Children's Homes and Looked after Children \(Miscellaneous Amendments\) \(England\) Regulations 2013](#), SI 2013/3239, regulation 18

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- The child's wishes and feelings should be taken into account and, where appropriate, the child's relatives or parents should be consulted.
- The responsible authority must make sure that the appropriate persons and services in the receiving authority area are notified.⁹

Emergency placements

An emergency placement occurs when a placement is necessary without any forewarning. This can happen, for example, where the placement of a child must be arranged urgently (for example to protect a child from gang involvement). The statutory guidance notes that in such circumstances it will not be possible to complete all the prescribed actions. However, as a minimum, the nominated officer/Director of Children's Services must be satisfied of the following before approving a decision:

- The child's wishes and feelings have been ascertained and given due consideration.
- The placement is the most appropriate available consistent with the care plan.

The remaining requirements to consult the area authority etc must be undertaken within five working days.¹⁰

Placements in Wales

The statutory guidance notes concerns from the Welsh Government about the "high number of children from England placed in out of authority placements in Wales." It adds that the "evidence suggests that many of these placements lack effective planning and information sharing to determine the availability of local education, health, social and other services to meet the child's needs." A protocol has been developed by the Welsh Government for notifying the local authority and the local health board when a child has been placed there from outside the area. This is attached as an annex the statutory guidance.¹¹

Placements outside England and Wales

A local authority may only arrange for a child in care to live outside England and Wales with the approval of a court.¹² This may only be given if the court is satisfied that:

- Living there would be in the child's best interests

⁹ *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959) as amended, regulations 11 and 9; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.31-3.40

¹⁰ *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959) as amended, regulations 11 and 9; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.41-3.45

¹¹ Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp56–57, paras 3.46-3.47

¹² For a child whom the local authority is providing accommodation under a voluntary agreement, they may arrange accommodation outside England and Wales with the approval of every person who has parental responsibility for the child

- Suitable arrangements have been made for the reception and welfare of the child in the new country
- The child, if they have sufficient understanding, has consented to living in the new country
- Every person who has parental responsibility for the child has consented.¹³

When placing a child outside England and Wales, the responsible authority must take steps to ensure that requirements equivalent to those under the *Care Planning, Placement and Case Review (England) Regulations 2010* have been met (the regulations do not apply outside England and Wales).¹⁴

Box 3: Placing children in secure children's homes in Scotland

There have been reports of English children in care being placed in secure children's homes in Scotland.¹⁵ In its 2018-19 annual report, published in January 2020, Ofsted stated that the national capacity of secure children's homes "remains a significant concern" and noted that approximately 20 children "are placed in Scottish secure units."¹⁶ In response to the reports, the Association of Directors of Children's Services stated that secure placements are often needed at short notice and "as there are only 14 secure children's homes in England, demand for beds is high meaning long distances are frequently involved." The statement added that the ADCS was in "ongoing discussions with the UK government about investment in, and boosting the capacity of, secure children's homes..."¹⁷

1.3 Number of out of area placements

As shown in the table opposite, the number and proportion of looked after children placed outside their home local authority has increased in recent years. For example, between 2010 and 2019, the proportion of children in children's homes who were living outside their local authority increased from 48% to 64%.

As shown in the table on the next page, the number and proportion of looked after children living in residential homes more than 20 miles from their home has also increased. The figures in the table include children's homes, as well as other accommodation settings such as secure units and semi-independent living accommodation.

In its 2018-19 annual report, Ofsted reported that, as at 31 March 2018, children living outside their home local authority lived on average 53 miles from their home compared with 10 miles for children living within their

Number of looked after children in England in residential children's homes As at 31 March				
	Inside council boundary	Outside council boundary	Total	Proportion outside council boundary
2010	2,650	2,400	5,050	48%
2011	2,630	2,380	5,010	48%
2012	2,670	2,530	5,200	49%
2013	2,630	2,810	5,440	52%
2014	2,600	3,170	5,770	55%
2015	2,450	3,410	5,860	58%
2016	2,470	3,600	6,070	59%
2017	2,410	3,760	6,170	61%
2018	2,380	4,050	6,430	63%
2019	2,340	4,230	6,570	64%

Source: Department for Education, Children looked after in England including adoption, various years

¹³ *Children Act 1989*, Schedule 2, paragraph 19

¹⁴ Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, para 3.49

¹⁵ [English councils send children in care to Scotland](#), The Times, 19 January 2020

¹⁶ Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19](#), January 2020, p17

¹⁷ [Placing English children in Scottish children's homes](#), ADCS, 21 January 2020

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local authority. Around 9% of children (570) were placed 100 or more miles from their original home, seventy of which were placed more than 200 miles away. This was more likely for children from London or the South West.¹⁸

In response to a parliamentary question in January 2020 regarding the increasing number of out of area placements, the Minister, Michelle Donelan, stated that “moving a child out of placement is a last resort, unless it is in the child’s best interests.” She added, however, that “out of area placements can be in a child’s best interests if they are at risk of exploitation or they need specialist provision.”¹⁹

Looked after children in England by distance between home and residential care placement

Secure units, children's homes and semi-independent living accommodation

As at 31 March	20 miles or less from home			20 miles or more from home			Not known or unrecorded
	Inside LA boundary	Outside LA boundary	Total	Inside LA boundary	Outside LA boundary	Total	
2011							
number of placements	2,630	1,000	3,630	320	1,550	1,870	230
% of placements	45%	17%	62%	5%	26%	32%	7%
2012							
number of placements	2,730	960	3,680	300	1,650	1,950	300
% of placements	46%	16%	62%	5%	28%	33%	5%
2013							
number of placements	2,690	1,020	3,710	320	1,720	2,030	260
% of placements	45%	17%	62%	5%	29%	34%	4%
2014							
number of placements	2,670	1,090	3,760	330	2,030	2,360	250
% of placements	42%	17%	59%	5%	32%	37%	4%
2015							
number of placements	2,670	1,100	3,770	310	2,150	2,460	340
% of placements	41%	17%	57%	5%	33%	37%	5%
2016							
number of placements	2,630	1,330	3,960	370	2,690	3,060	580
% of placements	35%	17%	52%	5%	35%	40%	8%
2017							
number of placements	2,620	1,370	3,990	370	2,890	3,260	640
% of placements	33%	17%	51%	5%	37%	41%	8%
2018							
number of placements	2,710	1,610	4,320	390	3,130	3,520	700
% of placements	32%	19%	51%	5%	37%	41%	8%
2019							
number of placements	2,900	1,770	4,670	400	3,360	3,750	1,070
% of placements	31%	19%	49%	4%	35%	40%	11%

Source: Department for Education, Children looked after in England including adoption, various years

¹⁸ Ofsted, [The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19](#), January 2020, pp40-1

¹⁹ [HC Deb 20 January 2020](#), cc2-3

2. Independent review of children’s residential care

2.1 Announcement

In October 2015, the then Prime Minister, David Cameron, announced that he had asked Sir Martin Narey, the former chief executive of Barnardo’s, to conduct an independent review of children’s residential care.²⁰ The terms of reference of the review were “to explore”:

- the role of children’s homes within the spectrum of placement options, exploring when and for which children residential care settings of all types should be used
- what works within residential care settings, and how to improve outcomes for the young people placed in them
- what improvements could be made to the way that residential care provision is commissioned, delivered, regulated and inspected to improve outcomes
- any other issues which might contribute to better outcomes for children in care.²¹

2.2 Report

The [report of the review](#) was published in July 2016. In his report, Sir Martin stated that a number of those who provided evidence to the review had “stressed the importance of a child in residential care being located close to their home.” He also noted that in 2014 the Education Committee had stated that they could “see the attraction of adopting a rule which prohibits the placement of children more than twenty miles from home unless there is a proven need to do so” (see box five below). However, while noting the increase in the proportion of children living out of area, Sir Martin said that that he was “not at all convinced of the practicality, or the desirability, of imposing a geographical limit on a child’s placement (whether of 20 miles or a greater distance).”²²

While acknowledging that closeness to home “will carry some advantage” in a large number of cases, the report concluded that the location of the home should be secondary to ensuring that a child is placed in the home that can best care for them:

There will be particular cases when remaining close to home is genuinely vital. And in a larger number of cases, closeness to home will carry some advantage, when, for example, a child is preparing to leave care when local authority influence over services such as housing, health, education, adult and mental health services may be key to a successful transition to adulthood. But, generally speaking, and after visiting homes, talking to staff, to children and to care

²⁰ [HC Deb 28 October 2015, c343](#)

²¹ Department for Education, [A review of children’s residential care: terms of reference](#), 2015, p1

²² [Residential Care in England: Report of Sir Martin Narey’s independent review of children’s residential care](#), July 2016, pp24-5

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leavers, I have concluded that the priority should be getting a child in the home that can best care for them, with the location of that home being a secondary consideration.²³

While location does matter, the issue is not, the report stated, “remotely as straightforward as often suggested.” It added that “most of those who commission places know this and search for the right home before the right location.” The report recommended that local authorities should “be cautious about following any hard and fast rule about placement distance and to recognise that the right placement for a child is more important than location.”

The goal, however, the report said, should be “to have the right home and situated reasonably close to a child’s home.” Noting the disparity in the location of homes, with an over-supply in the north-west and an under-supply in the south-east, Sir Martin stated that he “saw very little evidence of market management, that is commissioners encouraging or persuading providers to set up the right type of home in the right location.” More should be done, he said, “to influence the development of the market for children’s homes.” The report recommended that local planning authorities should include a clear statement in their Local Plans “of the housing need for children in children’s homes, so providers understand whether or not additional homes are required.”²⁴

Box 4: Education Committee report on residential children’s homes

In its March 2014 report, [Residential Children's Homes](#), the Education Committee said that it could “see the attraction of adopting a rule which prohibits the placement of children more than 20 miles from home unless there is a proven need to do so”. While acknowledging this could be a “blunt instrument” – because of the need to sometimes place in specialist accommodation some way away – the Committee recommended that “the Government commissions a study, assessing the impact of a rule prohibiting local authorities from placing a child more than 20 miles from home, unless there is a proven need to do so”.²⁵

In its [response to the report](#), the Government said that it understood the Committee’s concerns but did “not believe that conducting a separate study on the implications of a 20-mile radius cap, in isolation from other factors, would help to resolve the core issues affecting the quality of local authority placement commissioning and social work support”. Instead, it said, “the solution we and the sector continue to work towards is ensuring sufficient local provision to accommodate the needs of the children in care”.²⁶

2.3 Government response

The then Government responded to the independent review in December 2016. The response did not explicitly refer to the report’s doubt about the desirability of imposing a geographical limit on a child’s placement.

Regarding the commissioning of care more broadly, the Government stated that it was committed to using the [Children’s Social Care Innovation Programme](#) “to support local areas to develop commissioning

²³ [Residential Care in England: Report of Sir Martin Narey’s independent review of children’s residential care](#), July 2016, p25

²⁴ As above, pp26-7

²⁵ Education Committee, [Residential Children's Homes](#), 2013–14 HC 716, 12 March 2014, pp25–26, paras 77–82

²⁶ Education Committee, [Residential Children's Homes: Government Response to the Committee's Sixth Report of Session 2013–14](#), 2014–15 HC 305, 16 June 2014, pp9–10

arrangements that could lead to significant savings, wider placement choice and better outcomes for children.” The Government was, it said, welcoming bids for funding via the Innovation Programme which “trial the formation of new regional consortia and those that blend the use of residential care with other placements and services to better support children.”²⁷

The response also stated that the DfE would work with the then Department for Communities and Local Government “to consider how planning practices can support effective local planning for children’s homes.”²⁸

²⁷ Department for Education, [Government response to Sir Martin Narey’s Independent Review of Residential Care](#), December 2016, pp17-8.

²⁸ As above, p18.

3. Subsequent reports on out of area placements

This section provides brief information on recent reports relevant to the issue of out of area placements, following the publication of the Narey Report.

3.1 Ofsted annual report 2018-19 (January 2020)

In its [2018-19 annual report](#), published in January 2020, Ofsted noted that the number of children's homes "continues to rise" but that the increases "are not spread evenly across the country." The north west of England, for example, saw an increase of 60 homes over the year, while the south east saw a decrease of nine homes. The report stated that this "uneven distribution of children's homes around England can mean that some children are placed in children's homes far from their original home." For some, the report said, this can be "wholly appropriate as part of the child's care plan", but for others "it is an area of concern."²⁹

In her commentary on the report, Amanda Spielman, the Chief Inspector of Education, Children's Services and Skills, stated that there are "not enough children's homes in the right places across the county." She added that "without purposeful planning and an injection of capacity into the system, the children's home market will continue to grow in a way that does not necessarily meet children's needs."³⁰

3.2 Children's Commissioner for England report on out of area placements (December 2019)

In December 2019 the Children's Commissioner for England, Anne Longfield, published a report on out of area placements: [Pass the Parcel: children posted around the care system](#).

Noting the increase in out of area placements, the report stated that "children entering the care system today are having to live further away from their hometowns and loved ones than ever before."³¹ While acknowledging that out of area placements can happen for legitimate reasons, including the need to be kept safe from criminal gangs or sexual predators, the report stated that children are often placed out of area "because there is nowhere suitable for them to live locally." "Many children", it said, "end up going to live in children's homes run by private companies, often operating in cheaper and less 'desirable' parts of the country."

The report stated that children placed out of area are more likely to have complicated and fragmented histories, and more likely to have experienced multiple moves. Being so far away from their hometowns can, it said "be

²⁹ Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19](#), 21 January 2020, pp39-40

³⁰ As above, pp16-7

³¹ Children's Commissioner for England, [Pass the parcel: children posted around the care system](#), December 2019, p7

another trauma for children who have already had difficult upbringings.” This trauma could, the report suggested, be why children living far away from home are “at much higher risk of going missing.”

The vulnerability of children living far away from home also, the report stated, means that they are “easy targets for exploitation for criminal gangs, who are expanding drugs markets though ‘county lines’ activity into semi-rural areas.” This exploitation and the fact that many go missing means, the report said, that these children can pose challenges for services – “the difficulties for the police, health and education services of having a constant flux of very vulnerable children concentrated in one area.”³²

What is missing from the narrative, the report argued, is the experiences of the children involved. Based on visits to fifteen children’s homes, the report noted ten things highlighted by the children:

- 1 They are moving home too often.
- 2 They want to feel like normal children, but often they do not. This is sometimes because they are living in children’s homes, which is more common for out of area children.
- 3 They feel isolated and often do not see loved ones enough.
- 4 They feel they have no voice, no choice and no freedom.
- 5 Some children believe that being placed far away from home is a form of punishment for past misdemeanours.
- 6 They don’t feel social workers are there for them, finding them largely unreliable and unresponsive to their wishes and feelings.
- 7 They are often waiting weeks and months for school after moving homes.
- 8 Some children in need of therapy are not getting it, with some losing their place on long CAMHS waiting lists when they moved.
- 9 The complaints are not universal. Some children recognise the advantages of being placed away from home.
- 10 Some children are getting the right help, but this seemed more common for younger children.³³

Recommendations

The report concluded that “too many children in care are sent away from loved ones to unfamiliar places around the country and moved too frequently.” It made a number of recommendations, including:

- The Government should make children in care outside of their local areas a specific subject in its upcoming review of the care system (see box 3).
- The DfE should:
 - “Urgently review the current proficiency of the residential care market for children.”

³² Children’s Commissioner, [Pass the parcel: children posted around the care system](#), December 2019, pp2-3

³³ As above, pp3-4

- Provide “a capital injection for future commissioning arrangements and consider financial incentives for local authorities which place children locally.”
- Put in place a range of measures aimed at ensuring that children can “easily relay their views and wishes about their care arrangements.”
- Ofsted should ensure that children’s services inspections “effectively capture the experiences of children living away from their hometowns.”³⁴

3.3 APPG report on children who go missing from out of area placements (September 2019)

In September 2019, the All Party Parliamentary Group (APPG) for Runaway and Missing Children and Adults published [No Place at Home](#), the final report of its inquiry into the risks facing children and young people who go missing from out of area placements.

The report noted that previous inquiries carried out by the APPG, in 2012 and 2016, had raised concerns that “children who go missing from care were not receiving the support they need to keep them safe.” One of the biggest concerns highlighted by the earlier inquiries, it said, “was about the high number of vulnerable children placed outside their local authorities.”

Despite changes to national policy and guidance since the earlier inquiries, the report stated, “the evidence suggests children going missing from care and in particular children going missing from out of area placements remains an issue of great concern.”

The report’s key findings included:

- The number of children placed outside their local authorities continues to grow.
- Children continue to be placed out of area “due to a lack of suitable local provision and the uneven distribution of children’s homes across the country.”
- Data suggests that the number of children going missing from out of area placements continues to increase.
- Factors that make children and young people vulnerable to going missing from out of area placements are not addressed and when they do go missing they are at risk of sexual and criminal exploitation.
- Children are not consulted before out of area placements, which causes additional stress and can contribute to why they go missing.

The APPG recommended that the DfE should develop “an Emergency Action Plan to significantly reduce the number of out of area placements.” The plan, it said, should be backed by funding and “should address the supply and the distribution of children’s homes nationally.” The report added that the Government “must take responsibility for ensuring that

³⁴ Children’s Commissioner, [Pass the parcel: children posted around the care system](#), December 2019, pp5-6

there are sufficient local placements to meet the needs of looked after children.”

The APPG’s other recommendations included:

- Every out of area placement decision must be supported by evidence to demonstrate that the decision to place a child at a distance will keep that child safe and will meet their long term needs.
- A new requirement should be placed on children’s services to demonstrate that children and young people have been consulted and informed in advance and supported to prepare for any out of area moves. Contact with family and friends must be supported and planned for.
- The Department for Education and the Home Office should develop a cross departmental strategy on tackling child criminal exploitation and County Lines, specifically focusing on the risks to looked after children placed out of area.³⁵

A [Westminster Hall debate](#) on the report, focused on the exploitation of missing looked after children, was held on 23 October 2019. On the issue of out of area placements, the then Minister, Michelle Donelan, stated:

No child should be placed outside their area when that is not in their best interests, and I am grateful to hon. Members for their sustained interest in that issue. Moving a child away from their home is not a decision that any authority takes lightly, and we have strengthened legislative safeguards regarding children who are placed outside their local area.

Directors of children’s services are required to sign off each individual decision, and Ofsted can challenge them if it believes that an incorrect decision has been made. It can sometimes be right to place a child outside their local area if there is the risk of sexual exploitation, trafficking or gang violence, but those are the only circumstances in which local authorities should consider such a move. Similarly, such a decision could be made to access provision for children who have complex needs, if such provision is not available locally. The welfare of the child must lie at the heart of this issue, and I am sure hon. Members agree that the child’s needs and future must always come first. The needs of the child are paramount, and I will continue working to ensure that our decision-making is based on that.³⁶

In response, Anne Coffey, then chair of the APPG on runaway and missing children and adults, stated that a lack of places was preventing local authorities from basing their decisions on the best interests of the child, and urged the Government to take a lead on the issue:

...as I said there are not enough places to allow local authorities to make a choice about what is in the best interests of the child. They are placing children in placements hundreds of miles away because they have no option. That is why we are urging the Department to

³⁵ APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, pp5-10

³⁶ [HC Deb 23 October 2019, cc48-9WH](#).

take a lead responsibility, not only by putting more money into preventing children from entering the care system, which is important, but by dealing with the care needs of existing children in the care system, so that they have the choice of staying nearer home. That choice should not be dictated by the market.³⁷

4. Unregulated and unregistered accommodation

4.1 Background

In order to meet their responsibilities to provide accommodation, a local authority can place a child in one of a number of settings, including a residential children's home. The *Children's Homes (England) Regulations 2015* prescribe nine quality standards which must be met by children's homes.³⁸

The *Care Standards Act 2000*, as amended, states that "an establishment in England is a children's home [subject to some additional provisions] if it provides care and accommodation wholly or mainly for children" (children are defined as people aged under 18).³⁹

The 2000 Act specifies certain types of accommodation that are not children's homes. This includes, for example, a place where children live with their parents, relatives or foster carers; schools (unless they provide accommodation for more than 295 days a year); hospitals; and further education colleges.

Unless they meet criteria for an exemption, settings that provide both care and accommodation for children in England must register with Ofsted.⁴⁰

Unregulated provision

Although not specifically listed in the legislation, some other types of establishments are not classed as children's homes and are not required to register with Ofsted. These are known as "unregulated settings" or as "other arrangements" under the *Care Planning, Placement and Review (England) Regulations 2010*.⁴¹ This includes:

- Accommodation for children (usually over the age of 16) who need support to live independently rather than full time care. This comprises:
 - 'Independent living' (e.g. a flat, bedsit or with friends) with or without formal support

³⁷ [HC Deb 23 October 2019, c49WH](#).

³⁸ Department for Education, [Children's homes regulations, including quality standards: guide](#), 6 March 2015.

³⁹ *Care Standards Act 2000*, section 1; *Children Act 1989*, section 105(1)

⁴⁰ As above, section 11. For more information, see Ofsted, [Introduction to children's homes: A children's social care guide to registration](#), July 2018

⁴¹ *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959) as amended, regulation 27; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp74-5

- ‘Semi-independent living accommodation’ (e.g. hostels, foyers and YMCAs lodgings). Such accommodation is not subject to the children’s homes regulations but staff are specifically employed to provide advice and support to residents (they do not have to live in the premises)
- Temporary care and accommodation for children in mobile settings (e.g. boats, holiday cottages or static caravans). This exemption from registration is for leisure, cultural or educational activities and is about the purpose/intent of the placement.⁴²

It is the responsibility of local authorities to make sure any placements in unregulated accommodation are safe and suitable for the child concerned.⁴³ DfE guidance on the *Children Act 1989* and regulations explains that suitable accommodation is accommodation:

- which, so far as reasonably practicable, is suitable for the child in light of his/her needs, including his/her health needs;
- in respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider;
- which complies with health and safety requirements related to rented accommodation; and
 - in respect of which the responsible authority has, so far as reasonably
 - practicable, taken into account the child’s:
 - wishes and feelings; and
 - education, training or employment needs.⁴⁴

Unregistered provision

An establishment which meets the definition of providing care and accommodation to a child under the *Care Standards Act 2000* but is not registered with Ofsted is referred to as unregistered provision. This is illegal – it is an offence to operate a children’s home without the appropriate registration. A blog published by Ofsted in July 2019 provided some further discussion of what ‘care’, which is not defined in law, means in this context:

What does ‘care’ mean? It is not defined in law. It is not just about the age of the child, although that’s a factor. It is about a child’s vulnerability and the level of help that they need. If a child does need care, then the service they’re getting is very likely to need registration as a children’s home. Certainly, if children are under constant supervision then this is likely to be ‘care’.

⁴² Department for Education, [Use of unregulated and unregistered provision for children in care: Research report](#), February 2020, p5; [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children’s social care blog, 8 July 2019

⁴³ [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children’s social care blog, 8 July 2019; Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, pp74-5

⁴⁴ Department for Education, [The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review](#), June 2015, para 3.119

It's also not about how long the child lives there. There is an all too common myth that if you only provide care for 28 days you do not need to register – this is not true! It does not matter how long you provide accommodation for. If you're providing care as well as accommodation, then you need to register.⁴⁵

In in 2018-19 annual report, Ofsted provided information on its work investigating potentially unregistered children's homes:

In 2018/19, we investigated more than 150 potentially unregistered children's homes. Around 15 of these homes were not required to register, usually due to them being unregulated homes – that is, accommodation without care, usually for children over the age of 16. Most of the remaining homes (around 100) should have been registered. Of these, many were short-term and ended naturally. Others ceased operating when they realised they had made a mistake, or applied to register as children's homes with Ofsted. Some of our enquiries are continuing.

Alongside these homes, we believe that a small number of companies are purposely setting up short-term arrangements as a way to avoid registering as children's homes. This may be a form of deliberate 'gaming', and these are some of the settings that we continue to address.⁴⁶

4.2 Number of children in unregulated settings

The number of looked-after children living in unregulated accommodation increased by 80% between the end of March 2010 and the end of March 2019, from 3,430 to 6,190.⁴⁷ The proportion of looked-after children in these settings has also increased; between 31 March 2015 and 31 March 2019, the proportion of looked-after children in semi-independent accommodation increased from 2% to 4%.⁴⁸

In February 2020, the DfE published an ad hoc analysis of the characteristics of children living in independent and semi-independent living accommodation in England. The key points included:

- A higher proportion of children in independent or semi-independent accommodation at 31 March 2019 were unaccompanied asylum-seeking children (43% and 36% respectively) compared to all looked-after children (6%).
- The vast majority of children in unregulated accommodation are aged 16 and over (98% at 31 March 2019 respectively). However, at 31 March 2019 there were 100 children aged under 16 in unregulated accommodation.
- The majority of children living independently or in semi-independent accommodation were in a voluntary agreement under section 20 of the *Children Act 1989* (72% living independently and 70% in semi-

⁴⁵ [Unregistered and unregulated provision - what's the difference?](#), Ofsted: developments in children's social care blog, 8 July 2019

⁴⁶ Ofsted, [The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2018/19](#), 21 January 2020, p41

⁴⁷ Department for Education, [Children looked after in England including adoption: 2018 to 2019](#), 15 January 2020; Department for Education, [Looked-after children in independent or semi-independent placements](#), 12 February 2020, p4

⁴⁸ Department for Education, [Use of unregulated and unregistered provision for children in care](#), February 2020, p6.

independent accommodation compared to 18% of all looked-after children at 31 March 2019).

- The proportion of children placed inside the local authority boundary is slightly higher for children living independently (62% at 31 March 2019) compared to all looked after children (58%). The proportion is slightly lower for children living in semi-independent accommodation (55%). The proportion of children living independently placed within the local authority boundary has decreased since 2010 (from 68%).
- A high proportion of looked-after children at 31 March 2019 moved into unregulated placements within one week of being looked after (37% of those living independently and 39% for those in semi-independent accommodation). This indicates that the placements could be temporary and may be the child's first placement.
- The East of England and London were responsible for the highest proportion of looked after children aged 16 and over living in unregulated accommodation at 31 March 2019.⁴⁹

⁴⁹ Department for Education, [Looked-after children in independent or semi-independent placements](#), 12 February 2020, pp4-14.

5. Reports and debates

This section provides brief information on recent reports and debates relevant to the issue of unregulated and unregistered accommodation.

5.1 APPG report on children going missing from out of area placements

In its September 2019 report on children who go missing from out of area placements (see section 3.3 above), the APPG on Runaway and Missing Children and Adults cited evidence of an increasing number of children being placed in unregulated accommodation out of area:

- Responses to parliamentary questions indicated a 97% increase in the number of looked-after children living in independent or semi-independent accommodation out of area between 2014 and 2018.
- Responses to freedom of information requests from 42 local authorities suggested that the number of children placed in unregulated out of area accommodation almost doubled between 2016 and 2019.
- Three quarters of the 41 police forces who submitted evidence to the inquiry “expressed concern about the increasing numbers of children being sent to live in these placements out of area and the risks that they face.”⁵⁰

The report set out a number of concerns that had been raised with the inquiry regarding unregulated accommodation, including around the quality of care and the lack of oversight of such settings.⁵¹ It recommended that “the law must be changed to ensure that unregulated semi-independent accommodation for children is regulated and inspected.”⁵²

5.2 Adjournment debate on unregulated accommodation, 15 October 2019

On 15 October 2019, Andrew Selous led an adjournment debate on unregulated accommodation for 16 and 17 year olds. In a briefing prepared for the debate, the Local Government Association (LGA) set out its key messages on the issue, including:

- “Where unregulated provision is of high quality, it can provide important flexibility and support young people towards independence.” It must not be confused with illegal unregistered provision.
- “While unregulated settings are the right accommodation for some young people, rising use is partly driven by shortfalls in places in

⁵⁰ APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, pp16-7 & 7

⁵¹ As above, pp17-8

⁵² APPG for Runaway and Missing Children and Adults, [No Place at Home: Risks facing children and young people who go missing from out of area placements](#), September 2019, p10.

registered children’s homes, often for young people with more complex needs.”

- Financial pressures are “limiting councils’ efforts to develop and maintain the right provision locally. It can mean they are forced to place children out of area or in placements that are not best suited to their needs.”
- The LGA is “concerned by recent reports around some unregulated provision, in particular increasing issues about the vulnerability of young people in unregulated accommodation to organised crime, including county lines.”⁵³

Box 5: County lines

The National Crime Agency describes County Lines as a term used “when drug gangs from big cities expand their operations to smaller towns, often using violence to drive out local dealers and exploiting children and vulnerable people to sell drugs. These dealers will use dedicated mobile phone lines, known as ‘deal lines’, to take orders from drug users. Heroin, cocaine and crack cocaine are the most common drugs being supplied and ordered. In most instances, the users or customers will live in a different area to where the dealers and networks are based, so drug runners are needed to transport the drugs and collect payment.”⁵⁴

In response to the adjournment debate, Michelle Donelan, the then Parliamentary Under-Secretary of State for Education, stated that she shared the “concerns and fears about the current state of affairs” and that “it is completely unacceptable for a child to be placed in a setting that does not meet their needs and keep them safe.” She was, she said, considering the checks and inspections needed.”

While there is a place for unregulated provision, the Minister said, not all provision of this type is being used correctly and “the quality across the board is simply not good enough.” She added that the DfE had received reports about some younger children living in unregulated, semi-independent provision. She did not, she said, “want children under the age of 16 to be living in an environment without care.”

Noting that some local authorities “are genuinely unclear about what is permissible in relation to the use of unregulated an unregistered provision”, Ms Donelan stated that she was working to “ensure that there is new statutory guidance so that everyone involved in providing care to looked-after-children and care leavers is absolutely clear about what is required of them.”⁵⁵

5.3 Government research report on unregulated and unregistered provision

On 12 February 2020, the DfE published the report of research it had commissioned to better understand the increase in the use of unregulated and unregistered provision, and concerns about quality. The research was based on a review of DfE statistics on looked-after children (see section 4.2 above) and in-depth telephone interviews with Ofsted and local authorities.

⁵³ Local Government Association, [Local Government Association Briefing 16-17 year olds in unregulated accommodation House of Commons](#), 15 October 2019

⁵⁴ [County Lines](#), National Crime Agency, last accessed 19 February 2020.

⁵⁵ [HC Deb 15 October 2019, cc266-8](#)

The key findings from interviews with local authorities included:

- All local authorities involved in the research used unregulated provision and for most it was used as a positive choice to support young people transition to independence.
- Several local authorities use unregulated providers with bespoke packages designed to cater for young people with multiple issues, often as a short-term measure while suitable registered provision is found.
- Some local authorities were not clear on the distinction between unregulated and unregistered provision. As a result, provision described by some local authorities as unregulated may, in fact, be unregistered.
- The growth in the use of unregulated and unregistered provision is driven by two factors:
 - Demand for registered places is outstripping supply
 - Registered children's homes becoming increasingly reluctant to accept children with highly complex needs and challenging behaviours because of the impact it may have on their Ofsted rating.
- A majority of local authorities felt that the quality of unregulated provision is highly variable, with some expressing concerns about the ease with which providers could set up.
- A majority of local authorities believed that some form of regulation is required to ensure the quality of unregulated provision. But this regulation would have to be light touch.⁵⁶

⁵⁶ Department for Education, [Use of unregulated and unregistered provision for children in care: Research report](#), February 2020, pp7-10.

6. Government review and consultation

6.1 Review of the care system

The Conservative Party manifesto for the 2019 general election included a commitment to “review the care system to make sure that all care placements and settings are providing children and young adults with the support they need.” It added that “stable, loving placements – adoption where possible or foster parents recruited by the local authority” will be prioritised.⁵⁷

In a written statement on 12 February 2020 the Education Secretary provided some information on the scope of the review, which he said the Government was committed to undertaking “at the earliest opportunity.” He added, however, that the Government would take time to get it right:

The importance of children’s social care was signalled in the Government manifesto. We must challenge ourselves to do all we can in making sure every child who needs a social worker and who enters care has the best possible chance to succeed in life, realising the benefit to individuals and society of overcoming such adversity in childhood.

That is why we are committed to undertaking a review at the earliest opportunity. I can confirm that this review will be bold and broad, taking a fundamental look across children’s social care, with the aim of better supporting, protecting and improving the outcomes of vulnerable children and young people.

I can confirm that we are moving forward with plans for this review, and that it will be independently led. We will ensure the review reflects the experiences of those who have needed a social worker and been in care, putting children, young people and their families at its centre. We will set out further details in due course.

The review will allow for careful consideration of challenges faced across children’s social care, and while it is an early priority, we will take time to get this right.⁵⁸

6.2 Consultation on unregulated provision

In his written statement on 12 February 2020, after providing information on the forthcoming review of the care system (see above), the Education Secretary stated that unregulated provision was an issue “that cannot wait and require[s] immediate action.” He would, he said, publish a consultation that day “on a set of new measures to ensure appropriate use of these placements.”⁵⁹

⁵⁷ Conservative Party, [Get Brexit Done: Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019](#), p14

⁵⁸ [HCWS110](#), 12 February 2020.

⁵⁹ As above.

The introduction to the consultation document, published on 12 February 2020, provided more information on why the Government was looking into the issue of unregulated provision:

A growing number of children, particularly older children and Unaccompanied Asylum-Seeking Children, are being placed in independent and semi-independent settings, which are not registered or inspected by Ofsted.

These placements form a vital part of the care system in meeting the needs of older children who are ready to live with an increased level of independence. However, we are concerned that independent and semi-independent settings are not always good enough, and that some children are being placed at risk and/or in settings that cannot meet their needs. We are particularly concerned that increasing numbers of children under the age of 16 are being placed in situations where either the provider is only offering support and not care, or care is being provided but the provider is operating illegally (an unregistered setting). It is unacceptable for any child or young person to be placed in a setting that does not meet their needs and keep them safe, for any amount of time.

Whilst there is a place for independent and semi-independent provision in the care system, to support young people to transition to living independently, it is clear that reform is needed to ensure it is being used appropriately and meets the needs of the young people placed there.⁶⁰

The consultation set out a number of proposed changes, including:

- Banning the use of independent and semi-independent placements for children under the age of 16.
- Introducing a new requirement on local authorities to consult with local police forces when they place a child out of area in unregulated provision.
- Amending legislation to define 'care' in order to provide clarity on the distinction between unregulated and unregistered provision.
- Introducing new national standards for providers of unregulated provision. The consultation seeks views on how the standards should be introduced and enforced.
- Legislate to increase Ofsted's enforcement powers "so that robust action can be taken quickly where providers are found to be acting illegally."⁶¹

The consultation closes on 8 April 2020., following which the Government will publish a response that will include "a timetable for any reforms that will be taken forward."⁶²

⁶⁰ Department for Education, [Reforms to unregulated provision for children in care and care leavers: Government consultation](#), 12 February 2020, p3.

⁶¹ As above, pp8-19.

⁶² As above, 12 February 2020, p20.

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