

Regulated (Registered) and Unregulated provision

The issue of regulated and unregulated provision for children and young adults has featured widely in news items recently. Rightly, there is concern regarding the growth of unregulated/unregistered 'children's homes' as such resources are, perhaps inevitably, often regarded as being children's homes.

Data collected by some agencies – including the police in most constabulary areas, as far as the ICHA can establish – is not differentiated and this has led to a number of concerns in relation to published figures. We have also received questions from ICHA members, and others who would be members, about the differentiation between the types of resource.

This brief paper is designed to identify some of the concerns and also to provide an easy to use guide to the factors that differentiate the provisions.

At the outset, we should state that there will, almost certainly be some excellent unregulated resources available; equally there may be some in which vulnerable children and young adults are unsafe. We simply don't know!

By definition, we cannot know how many unregulated homes exist, as there is no requirement for such provision to register their existence.

What we know:

1. It has not always been the case that children's homes were required to be registered.
2. Institutional abuse/neglect is not confined to unregistered/unregulated children's homes, but all of the available evidence suggests that it was far more prevalent before the requirement for children's homes, to be independently inspected by the Commission for Social care Inspectorate and subsequently OFSTED.
3. Most bodies and organisations in the children's residential care sector are opposed to the growth in unregulated provision – the exception being the Association of Directors of Children's Services.
4. Most members of the public would, understandably, not recognise the difference between a registered and an unregulated children's home. As such, they are inclined to describe any house that accommodates a number of young people and has evidence of having some staff as being a children's home.
5. The only way in which the number of homes offering unregulated provision for children can be found would be to interrogate Local Authority finance systems as the commissioners of such services are invariably Local Authorities.

6. OfSTED have made it clear that if a home is found to be offering unregulated placements and cannot meet the regulatory requirements to be registered, then the home will be closed and the owner/provider will be liable to prosecution.
7. There is no legal sanction for Local Authorities making placements in unregulated provision.

What, if any, difference does this make?

At a time when the numbers of children coming into care (looked after) has shown a year on year rise there is a shortage of suitable and available¹ placements in England, it would appear that some of the shortfall is being made up by using unregulated provision.

This is, for those who choose to provide such provision, undoubtedly a business opportunity. It is estimated that the cost of setting up a registered children's home in England is approximately £1,000,000. A large proportion of this cost is made up of requirements associated with compliance with the Children's Homes Regulations and Quality Standards 2015. These properly require:

- Minimum levels of staff to be on duty, at all times of the day and night.
- Suitable and identified qualifications for each of those members of staff.
- Standards being met against each of the (many) areas that OfSTED will judge against in regular inspections, which will determine if the home can and should remain open.
- Standards in relation to the fabric and structure of the premises.
- Ensuring that Regulation 5 is fully complied with and that all agencies are communicating and working together in the interest of the child.

Does it matter?

Yes, it does.

For example, there has been a considerable noise from organisations like the Howard League about the criminalisation of Looked After children in children's homes. This is however, not supported by ICHA's own research into criminalisation as supported by OfSTED – both suggesting that there is precious little evidence of children in registered children's homes being criminalised. Both of these views are reflected in Sir Martin Narey's review of Children's Homes in England published in 2016, which also found little or no evidence of children being criminalised.

¹ Some will be aware, but it seems to get lost at times, that the relationship between the number of available beds in 'the system' and the numbers of children requiring a placement are not directly correlated when sufficiency is being considered. For registered provision – or one might think any provision – it is also vital to consider what might be the impact on children already living in a children's home and indeed the child being referred if a placement were to be made. Sometimes this 'risk' is unacceptable and as such the place must remain 'available' and the referred child not placed. This impact assessment is not a requirement in unregulated provision.

Could it be then that those children (apparently) being criminalised are living in unregulated provision? Given what this paper has already suggested in terms of the manner in which the police record their data, this is entirely possible. It is, however, impossible to prove this with the hard evidence that is made available.

It could be the case that other debates such as those relating to 'county lines', child sexual exploitation and indeed other forms of exploitation are similarly skewed by the existence of two types of 'children's residential provision', registered children's homes and unregistered and unregulated children's residential care.

A children's home, whilst primarily available to care for children, i.e. persons under the age of 18, may care for an older person who has been continuously a resident of that children's home. This is permissible only with the consent of OfSTED².

Unregulated provision, naturally, is not subject to this level of scrutiny. It is, therefore, entirely possible that vulnerable children will be placed with adults on a routine basis. What's more, and again because there is no independent inspection or regulation, it is (and apocryphally has been) the case that children can be placed with those who would exploit them and, in a situation, where there is not even a requirement for staff presence or oversight.

The ICHA view is that there should be no unregulated provision for children.

The table clearly identifies the main differences between regulated and unregulated provision. Between if you like, children's homes and other residential provision.

¹Introduction to Children's Homes' OfSTED 2018.

The Care Standards Act 2000 says that 'an establishment is a children's home...if it provides care and accommodation wholly or mainly for children'.

2. The law also says that children are people who are aged under 18 years.² A children's home must mainly care for children. This means that most or all of the people who live or stay there must be children. Young people who are aged 18 and over may live or stay there, but they must be in a minority. You can find further guidance about this in Annex B.

	Regulated provision	Unregulated Provision
Oversight by	OfSTED	Possibly commissioning LA's?
Regulations to be complied with	Children's Homes Regulations 2015 and Quality Standards	None
Manager approved by	OfSTED	Employer
Staff qualifications minimum	As fixed by Regulation/Standards	None
DBS checks as standard	Yes	Not known
Requirement to work in multi-agency partnerships (Reg 5)	Yes	No
Requirement to inform 'Host LA' of admissions	Yes	No
Requirement to conduct impact assessment for all admissions	Yes	No
Requirement to work within identified age limits for residents unless granted permission by OfSTED	Yes	No

The following distinguishing criteria are an adaptation based on 'Annexe A of the 'Introduction to children's homes' - OfSTED 2018

This is a crucial document within the children's residential care sector. OfSTED, in seeking to assist providers and prospective providers of accommodation, have clearly laid out the essential differences between a children's home, which must be registered with the Inspectorate and Supported Accommodation for which, at this time, there is no such requirement although there is a body of opinion, including the ICHA, such services should be subject to a regulatory framework.

Criteria	Care	Supported Accommodation
	If the answer is 'Yes'	If the answer is 'Yes'
Can young people go out of the establishment without staff permission?		✓
Do young people have full control of their own finances?		✓
Do young people have control over what they wear and of the resources to buy clothes?		✓

Are young people in charge of meeting all of their health needs, including such things as arranging GP or specialist health care appointments? Are young people in full control of their medication?		✓
Do staff have any access to any medical records?	✓	
Can young people choose to stay away overnight?		✓
Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult?	✓	
If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions?	✓	
Are there regularly significant periods of time when young people are on the premises with no direct staff supervision?		✓
Do staff have any responsibility for aftercare once a young person has left?	✓	
Does the establishment's literature promise the provision of care or relate to specific care support provided to all residents?	✓	
Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment?	✓	

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