

## **Kent Guidance on the use of Unregulated and Unregistered provision**

**Unregulated Provision:** The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 [The Care Planning, Placement and Case Review \(England\) \(Amendment\) Regulations 2021 - Explanatory Memorandum \(legislation.gov.uk\)](#) came into force on 9 September 2021. The relevant statutory guidance is The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review [Children Act 1989: care planning, placement and case review - GOV.UK \(www.gov.uk\)](#). This has been updated to reflect the 2021 amendment regulations. The aim of the amendment to regulations is to ensure that the majority of looked-after children under the age of 16 are placed in foster care or regulated children's homes. It is unlawful to place children under 16 years in unregulated provision.

**Unregistered** provision is when a child who is being provided with some form of 'care' is living somewhere that is not registered with Ofsted. This is illegal. Once a provider delivers a care element as well as accommodation, they must register as a children's home. It's an offence not to. It is a breach of regulation to place children aged 16 years or 17 years in an unregulated setting where they are in receipt of care and not support as the provision should be registered.

### **Unregulated Placements**

All possible placement searches for regulated provision must have been undertaken, and exceptionally, when no other accommodation is available, the following steps must be adhered to.

#### ***Authorisation to search***

A search for an unregulated placement can only be authorised in writing by the relevant Director of Integrated Children's Services (ICS) or Director Special Educational Needs/Disability (SEND) – referred to as Director throughout. When the social work team are requesting authorisation, they will provide the Director with a summary of the child and their needs and an overview of placement searches by the Placement Finding Team (PFT) which includes the provider/carers reasons for declining to offer a placement.

### **Searches**

Once authorised the PFT will contact unregulated providers via secure e mail being clear that if they offer a placement, it will be unlawful. Further asking the provider to respond to the following questions \*:

- Are you applying for registration of the provision where the child will be resident and if you are, is this with Ofsted or the Care Quality Commission and the status of the application?
- If you have not applied for registration with either Ofsted or CQC, can you please advise if you will be doing so within the next 7 days?
- If you are not applying for registration with either Ofsted or CQC the reasons why?

Any placement offers will be put to the social work team for consideration who will advise the PFT of the placement choice completing the necessary documents.

### ***Placement Authorisation***

The placement finding team will e mail the Director with the 'Director Authorisation' request to be agreed or declined. The placement cannot go ahead until the written confirmation is received. The placement finding team will notify the provider and social work team once this has been agreed. The social work team and provider will liaise to make arrangements for the child's arrival.

The social work team will undertake checks to ensure that the premises and support being provided are safe and suitable for the child accommodated and that these are regularly reviewed.

The PFT will continue to search for a regulated placement for the child. Aside of any offers of placements, which will be expedited to the social work team for consideration, the PFT will provide weekly written updates to the social work team of searches and outcomes in order that this can be shared with the Director.

### ***Ofsted Notification of Use of Unlawful Unregulated Accommodation***

The responsible Director will notify Ofsted of the placement of the child in unregulated accommodation.

### ***Legal Application***

It would be highly exceptional that the use of unregulated provision for a child under 16 was being considered where either a Deprivation of Liberty Order (DOLs) or a Secure Order was not being sought. Even if neither of these is being sought, it is likely that approval will be needed for the individual unregulated placement. The court will be asked in every case to consider the care plan for the child and, where this includes the use of unregulated provision, it is likely that it will need to endorse the specific placement that the Local Authority proposes, even if temporarily.

The application would include a declaration that the local authority has used its best endeavours to find a registered placement but that there is no alternative other than to continue the current unregistered placement pending continuing searches.

When making the application the social work team should provide the following:

1. Ensure that the views and wishes of the child/their parents/ significant others including the Children's Guardian (where appointed) and the IRO are recorded in relation to the unregulated placement. Specifically, establishing if there is informed consent to the care plan and the placement and whether everyone agrees that it meets the welfare needs of the child according to their care plan but for the lack of registration by Ofsted
2. Obtain reasons from the provider about why they are not registered/seeking registration (\*as above) and any delays in doing so. If the placement is refusing to register, it is unlikely that it will be deemed by the Court longer term to be in the best interests of the child or young person, though it is possible to obtain authorisation for a few hours or days if need be. If an

application for registration is being made, the Court will normally require this to be done within seven working days from the making of an order and to be satisfied within ten working days that the application has been received and is able to be processed with any necessary fee having been paid.

3. Confirmation that the placement has confirmed that it can meet the needs of the child / young person.
4. Where an application for registration has been submitted to Ofsted, the court should be made aware of the exact status of that application.
5. That checks to ensure that the premises and support being provided are safe and suitable for the child accommodated have been completed and are reviewed.
6. The court should also be informed by the local authority of the steps the local authority is taking in the meantime to assure itself that the premises, those working at the premises and the care being given are safe and suitable for the accommodated child.
7. Where the use of restraint is envisaged, documentary evidence that staff are appropriately trained in this area.
8. That Ofsted have been informed of the unregulated placement.

In almost every case, such an application will entail notice to the parents and to the Guardian, though there may be exceptional circumstances where doing so would raise an immediate safeguarding issue; legal advice should always be sought if this is proposed.

In connection with the above, reference should be made to best practice contained in the President's Guidance of 12 November 2021<sup>9</sup> entitled "Placements in unregistered children's homes in England or unregistered care home services in Wales" and its addendum of December 2020. The Court is not, however, prevented from making an order because the Local Authority is unable to comply in full with the same; it may well, however make a short term order and adjourn for further information to be provided.

### ***Provider Registration***

The Children's Commissioning Team will work with the provider to encourage and support registration of the provision with Ofsted or CQC and provide the social work team and PFT with regular updates on progress.

### ***Out of Hours***

Where the Out of Hours (OOH) Service have been unable to identify a regulated placement for a child, they will require Director authorisation to search for unregulated provision. Once identified they will require authorisation from Director to commence the placement. Children's Commissioning will provide Out of Hours with a list of approved semi-independent and other relevant providers to contact advising of any embargos that are in place as and when they arise. Adults Commissioning provide similar lists for Adult Social Care provision.

Written confirmation and details of the placement must be provided by the OOH service within 12 hours to the PFT service manager and to the generic placement team's e mail in order that the relevant actions detailed above can be undertaken.

### ***Data regarding unregulated placements for under 16 year olds***

MII will provide weekly data to the Corporate Director of Children's Services regarding any placements that are deemed unlawful in unregulated or unregistered provision.

### **Unregistered Placement for 16 and 17 year olds**

#### **Searches**

When undertaking searches for young people aged 16yrs and 17yrs when there are no options within Kent Supported Homes, Young Peoples Supported Accommodation and Floating Support and Shared Accommodation, or there is a decision by the social work team that these options are not appropriate, exploration of unregulated semi-independent provision is undertaken. This requires permission from the relevant Area Service Manager of the Service Manager of TPS.

Any placement offers will be put to the social work team for consideration. Where options are identified the social work team are provided with, and asked to consider, the Ofsted Annex A Care vs Support document and determine if it is care or support that is being requested for the young person. If it is deemed that care will be provided and not support the PFT will contact the provider offering the placement being clear that the placement they are offering is to provide care and not support and if they offer a placement, it will be unlawful as such provision is required to be registered. Further asking the provider to respond to the following questions \*:

- Are you applying for registration of the provision where the child will be resident and if you are, is this with Ofsted or the Care Quality Commission and the status of the application?
- If you have not applied for registration with either Ofsted or CQC, can you please advise if you will be doing so within the next 7 days?
- If you are not applying for registration with either Ofsted or CQC the reasons why?

If the provider wishes to progress the offer, use of the provision will require Director authorisation.

The social work team will provide the Director with a summary of the child and their needs and an overview of placement searches by the Placement Finding Team (PFT) which includes the provider/carers reasons for declining to offer a placement.

#### ***Placement Authorisation***

When agreement from the Director to progress the placement has been received the social work team will complete all relevant documentation. The placement finding team will e mail the Director with the 'Director Authorisation' request to be agreed or declined. The placement cannot go ahead until the written confirmation is received. The placement finding team will notify the provider and social work team once this has been agreed. The social work team and provider will liaise to make arrangements for the child's arrival.

The social work team will undertake checks to ensure that the premises and support being provided are safe and suitable for the child accommodated and that these are regularly reviewed.

The PFT will continue to search for a regulated placement for the child. Aside of any offers of placements, which will be expedited to the social work team for consideration, the PFT will provide weekly written updates to the social work team of searches and outcomes in order that this can be shared with the Director by the social work team.

***Ofsted Notification of Use of unregistered accommodation***

The responsible Director will notify Ofsted of the placement of the child in unregistered accommodation.

***Provider Registration***

The Children's Commissioning Team will work with the provider to encourage and support registration of the provision with Ofsted or CQC and provide the social work team and PFT with regular updates on progress.

***Data regarding unregistered placements for 16 and 17 year olds***

MII will provide weekly data to the Corporate Director of Children's Services regarding any placements that are deemed unlawful in unregulated or unregistered provision.

*NB: the Placement Finding Team is a generic term to include; Total Placement Service, Adult Placement Finding Service and those commissioning placements for disabled children and young people including packages of care.*

**Checklist for use of Unregulated Accommodation for under 16**

<b>Activity</b>	<b>Supporting documentation</b>	<b>Provided by</b>	<b>Authorised by or overseen by</b>	<b>Date of Authorisation or completion</b>
Permission to search for unregulated provision	Placement search audit and outcomes, child summary	SW team	Director ICS/SEND	
Placement Authorisation	Provider: offer including costs, meeting needs, registration status. social work choice.	Placement Finding Team SW team	Director ICS/SEND	
Ofsted Notification	As above	SW team Placement Finding Team	Director ICS/SEND	
Checks on suitability of provision	Health and safety checklist and QA property visit forms	SW team	Assistant Director	
Court application		SW team	Assistant Director	
Provider Registration	Regular updates to SW team in place	Children's Commissioning Team	Head of Strategic Commissioning (Children's)	
Provision of data	Weekly data unlawful unregulated and unregistered placements	Management Information and Intelligence	Service Manager, Management Information & Intelligence	

**Checklist for use of Unregistered Accommodation for those aged 16 and 17**

<b>Activity</b>	<b>Supporting documentation</b>	<b>Provided by</b>	<b>Authorised by or overseen by</b>	<b>Date of Authorisation or completion</b>
Permission to search for unregulated provision	Placement search audit and outcomes, child summary	SW team PFT	Service Manager PFT and/or Area Service Manager	
Placement Authorisation	Provider: offer including costs, meeting needs, registration status. social work choice.	Placement Finding Team SW team	Director ICS/SEND	
Ofsted Notification	As above	SW team Placement Finding Team	Director ICS/SEND	
Checks on suitability of provision	Health and safety checklist and QA property visit forms	SW team	Assistant Director	
Provider Registration	Regular updates to SW team in place	Children's Commissioning Team	Head of Strategic Commissioning (Children's)	
Provision of data	Weekly data unlawful unregulated and unregistered placements	Management Information and Intelligence	Service Manager, Management Information & Intelligence	