

4 May 2017

To: Directors of Children's Services

Dear Colleague

Unregulated and unregistered settings

1. This letter clarifies the position of unregulated and unregistered settings. It takes into account the 2015 Children's Homes (England) Regulations and the Department for Education's (DfE) innovation projects.
2. Local authorities place children in a range of settings and usually select a placement which is either regulated or inspected by Ofsted.
3. Under the Children Act 1989 guidance and regulations, Volume: Care planning, placement and case review' (June 2015), local authorities can place children in situations known as other arrangements. This means that the responsibility for assessing the quality and suitability of these services for individual children lies completely with the placing authority and not Ofsted.

Unregulated settings

4. Ofsted is no longer registering some settings that usually offer a short-term placement. These settings can and will continue to operate. This is the change you need to be aware of.
5. In the past, Ofsted and the previous regulatory bodies have granted registration under part II of the Care Standards Act 2000 to children's homes that are not 'premises based'. These types of children's homes so registered fall broadly into the two following categories:
 - mobile settings: Ofsted (and CSCI previously) has registered providers as children's homes where the providers provide care and accommodation to children using non-static accommodation that is able to move between locations. Examples include registered providers who provide care and accommodation using barges, boats, touring caravans, camper vans and tents

- letting arrangements: Ofsted has also granted registration to a provider who was not required to specify the location of the premises, which could be rented at short notice. This has included holiday cottages, static caravans, bunk barns, bothies and lodges where the provider entered into a 'short-term letting arrangement'.

6. Many of these providers care for and accommodate children who require a placement away from their home surroundings, and one that can help a reintroduction back into the normal routines of life. We know that some of these services have worked successfully with young people who present with these challenges and we do not wish to stifle innovation or prevent these services from operating. However, Ofsted will no longer register these types of settings because our legal advice is that, as they are not premises-based, they do not fall under part II of the Care Standards Act 2000 and do not require registration. They usually offer a short-term placement of intensive work, including adventurous activities.

7. These are now categorised as **unregulated** settings. They will and can continue to operate, and as result there may be some growth in this type of service. However, the responsibility for ensuring that the placement is suitable remains with placing authority and the provider should not indicate that the placement is regulated or inspected by Ofsted.

Unregistered provision

8. Premises that do fall under part II of the Care Standards Act 2000 must be registered with Ofsted. These are premises offering **care and accommodation** to children under 16 years old, that do not fall into the type of service stated above, that generally have a staff group with a manager, and operate a permanent service with a statement of purpose. If this type of service operates without registration, the provider is operating an **unregistered** setting and operating illegally. Whilst authorities can use this type of service, they should be aware that if Ofsted become aware we would seek to take action against the provider for operating an unregistered setting. If we become aware of a service such as this we would request that the service stopped operating immediately and therefore a local authority would need to find an alternative placement at short notice.

Accommodation for young people aged over 16

9. This remains an area of challenge and fluidity. A provider can provide accommodation for young people over the age of 16 without registration. If they provide **care and accommodation** then they should be registered. However, the level of care provided is not specified in the Care Standards Act and clearly some young people as they move into independent living require some level of support in order to make the transition. This level of care usually reduces over time and does not include the provision of meals, medication, personal care etc. The young people are free to come and go as they wish. Staff may be present for parts of the day and

even overnight for security reasons but are not providing direct care. These are **unregulated** settings and can operate without registration. However, providers who accommodate young people under the age of 16 are then operating an **unregistered** setting and therefore operating illegally.

10. If the young person cannot live independently and probably would be unable to do so even into adulthood, due to their level of need, disability, emotional or mental health or the risks they pose to themselves or others and therefore requires full-time care, then the service should be **registered**. To operate such a service for young people over the age of 16 requires registration, with either Ofsted or some cases dependent on the type of care with the Care Quality Commission.

11. The challenge is that it is the needs of the young people which determines the requirement of registration and not the model, and therefore it is not possible to define with any certainty that a setting will never require registration.

12. When a local authority comes across any setting which they believe may require registration Ofsted will be interested to know the details. Information or requests for further clarification can be sent to: socialcare@ofsted.gov.uk.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Lisa Pascoe", followed by a horizontal line.

Lisa Pascoe
Deputy Director, Social Care Policy