

Consultation Response

CCN/ACCE Response to Provision Consultation – April 2020

This consultation was conducted online by the Department for Education. The below contains the response submitted electronically by the County Councils Network (CCN) in conjunction with the Association of County Chief Executives (ACCE).

Please set out any positive and/ or negative impact you think this change would bring about, and the areas we should consider to ensure it is effectively implemented.

The reality is that local authorities are presently struggling with a 'perfect storm' of rising demand alongside declining funding. Unpublished research for the County Councils Network (CCN) has shown that Total Core Grant Funding for children's services in England's local authorities (LAs) has reduced by nearly a third since 2015/6 – and nearly 40% across CCN Member Authorities. At the same time the number of children being looked after over this time has risen by 12% - and 15% for CCN Member Authorities. Analysis by PwC for CCN, published in May 2019, projected that the Estimated Spending Need for Children's Services will rise by 21% by 2024/5. This is a higher increase than any other local authority service – including Adult Social Care.

It is important that Government understands this context that LA Children's Services are operating under. The pressure on services means that the market is struggling to meet demand – partly a consequence of it being a monopsony with LAs being the only customer. No LA chooses independent or semi-independent provision as an ideal scenario for under-16s – but in a distinct minority of cases it has been used as a short-term means of last resort.

It is uncertain what the Government believes LAs should do if no other placement can be found? This is a question already being highlighted as the Covid 19 crisis threatens to bring many additional children into the system who will need keeping safe, albeit temporarily, during the period of this unprecedented public health emergency – not to mention other young people needing to change existing placements at short notice if their carer is struck down with virus.

This is an issue which our member authorities would welcome being addressed. But an effective and workable solution will only be found by looking at the broader context of the wider system of children's social care embracing other dependent factors including:

- Levels of funding in children's services – it is worth noting that despite the large public discussion of pressure on Adult Social Care, the Temporary Grant Funding allocated in this area since 2017/8 has largely maintained funding levels unlike Children's Social Care which has not benefitted from such support.
- The stability of the market – in particular the balance of profit-making provision in the private sector.

- The Ofsted Inspection Framework can act as a disincentive for some care homes to accept the most challenging young people for fear of the impact it may have on their inspection judgement.
- How Prevention/Early Intervention services designed to prevent children coming into the care system can be maintained effectively as more resource is diverted to the increase in demand for statutory services. A recent internal survey completed by two-thirds of CCN Member Authorities showed 78% of our members believed that the decline in preventative services was contributing to the rise in demand for statutory services.

Whilst outlawing unregulated provision being used by under-16s is a simple solution to a perceived problem, it may cause a number of unintended consequences which must be addressed. These include the propensity for LAs to be unable to place children, as well as significant cost implications for LAs as the market significantly tightens with less available places.

Do you agree that we should introduce a new requirement for local authorities to consult with relevant local police forces when they place a child out of area in independent and/ or semi- independent provision?

“Not sure”

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

In principle this requirement would be of value in providing additional intelligence for local authorities to make decisions about placements. However, its success will depend on measures surrounding its implementation.

Decisions regarding placements often have to be made extremely quickly so it is imperative that clear contact details are made available by police forces to ensure that LA requests are not only responded to but also prioritised as urgent to be of value. Also it must be clear that whether or not to proceed with the placement is not a joint decision between the two agencies but one that LAs must retain as they have ultimate responsibility for the child’s best interests.

Do you agree that we should amend legislation to define ‘care’, in order to provide clarity on what amounts to ‘other arrangements’ i.e. ‘unregulated’ provision, and what constitutes ‘unregistered’ provision?

“Yes” – the greater clarity which Government can give both LAs and Providers in terms of what constitutes acceptable ‘other arrangements’ would be welcome, although it must be recognised this may restrict the scope of local authorities to innovate.

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

Our members wish to work within clear boundaries to ensure that children receive the most suitable placement. For some children this is independent or semi-independent provision, but the lines which define where ‘care’ starts and stops can be subject to interpretation – by both LAs and Providers. Firmer boundaries will support LAs in their ability to ensure there is a clear expectation on providers as to what is expected from a placement.

However, it is important to reiterate that changes in regulation cannot be viewed in isolation of the wider factors in the market – particularly as the market varies in different parts of the country.

**Please set out any positive and/or negative impact the introduction of new national standards would have
Please give your views**

CCN's member LAs would welcome the introduction of national standards to ensure that all provision is guaranteed to meet the minimum levels which we expect for the young people they look after. However, it is important to understand the consequences of this. It is likely that the standards will increase the cost of provision – which will inevitably impact on the public purse at some point. Many CCN Member Authorities will have existing quality assurance frameworks which may be helpful in informing the development of such standards.

Conversely such a move may lead to some providers leaving the market. This may be welcome if these providers are not willing to provide high quality of care which is obviously the main intent of introducing standards. However, Government must recognise that this will potentially destabilise the market in residential care and a dearth of available places will also drive up costs. The suggested transition period is therefore crucial and LAs should be provided with the means to help drive improvement and quality across the sector in their area before the standards become mandatory.

**Please set out any other areas you think should be covered in the new national standards
Please provide your views**

The three areas set out in the consultation – Quality of Accommodation Standard; The Support Standard; and The Protection of Children and Young People Standard – feel like they have the propensity to cover the most necessary issues. However, in terms of emphasis it is felt that The Protection of Children and Young People Standard should be placed first and foremost in any communication about national standards, making clear this should be the number one concern of everyone working with children and young people.

Which option, 1 or 2, do you think would most effectively raise the quality of independent and semi-independent provision?

“Option 1” (Changing the regulations, to make the standards mandatory for local authorities)

Do you agree that we should clarify statutory guidance, to ensure that IROs undertake visits to a placement to be able to assess whether it is meeting the needs of the child or young person and that they must send a report to the local authority to inform their decision making process about next steps for the individual child or young person?

“Not sure”

Please explain your answer.

IROs are an important means to help children and young people have agency over their placements. In many ways this would be a sensible move and would provide more help to

local authorities for them to better identify unsafe or unsuitable providers as quickly as possible and take necessary steps.

However, again this move must be seen in the broader context of what is reasonably practicable. The guidelines that the IROs should work to must be very clear in what should and shouldn't be in scope in terms of what "meets the needs of the child". A child not liking their placement at the point the IRO visits, even where the provision is found to be safe and meeting all the national standards outlined in this consultation, may not be ideal and should be addressed. But with a lack of flexibility in some markets LAs may not be able to immediately prioritise a move whilst trying to balance the more urgent needs of other vulnerable children coming into the system.

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

"Yes"

Please explain your answer

More enforcement powers for Ofsted will be welcome as it will help in holding to account rogue providers which consistently flout the rules. However, there are risks to this approach which the Government must bear in mind. For instance it could be counter-productive where the ultimate measure which could be applied at this point would be a fine - which, if large, is likely to be passed on to the LA by the provider in increased costs or, if smaller, would be meaningless in the context of the fees they are recouping from LAs.