**Wiltshire Council**

**Families and Children’s Services**

**Unregulated Provision Placement Guidance**

This guidance helps to define what an unregulated placement is and the circumstances in which these may be used for children aged 16 and 17 years. It outlines the process to be undertaken when considering such placements and the permissions that must be sought before the placement can commence. For clarity **an unregulated setting will never to be used for a child aged under 16.**

**What type of placement is deemed an unregulated placement?**

* Some establishments and types of accommodation are not required to register with Ofsted. These are known as ‘unregulated settings’.
* A service where the accommodation is **not permanent** (such as a tent) or is **constantly moving** (such as a boat, narrow boat or motorised caravan), or has **no permanent base** is unlikely to meet the definition of a children’s home or care placement and **will not be required to register with Ofsted**. This type of provision would therefore be deemed unregulated. Children will not be placed in this type of accommodation unless it is deemed to be a holiday placement (for example PGL or a holiday with carers). In these circumstances the placement is for a defined period (usually no longer than 14 days, never longer than 28 days) and the child retains their full-time/permanent placement, the purpose of the placement is for the child to have a holiday.
* Where a service is providing **accommodation and care** for a child under the age of 18 in a **static** placement, this service must be registered by Ofsted, most commonly as a children’s home. Failure to do so results in the placement being unregistered and therefore illegal. These providers are liable to be prosecuted by Ofsted.
* **Supported** accommodation is **not currently** Ofsted registered and is therefore deemed an unregulated setting. Supported accommodation is commonly provided to children over the age of 16 and younger adults where their care or pathway plan indicates they require greater freedom and flexibility than they would experience living in a children’s home or other registered setting. Many children (16 and 17 yrs) are placed very successfully within this type of placement. These young people will have a level of independence skills that enable them to care for themselves successfully, while they may require support at times or with specific tasks, they do not require ‘care’ to be provided. It is important to be clear when deciding the level of support required for each young person. If the level of support is high then Ofsted may conclude that this amounts to a care package and the service will require registration. Placement of any child (under 18) in a Supported Setting where the level of support is so high that it can be considered to be ‘care’ is illegal unless the setting is registered with Ofsted. Therefore, such placements need to be carefully planned and scrutinised. Wherever a particularly high package is in place the Director, Families and Children, must be informed.

**How to determine whether an unregulated ‘support’ placement requires registration**

Ofsted has published guidance to support LA’s in determining whether a support package in place for a child amounts to a care package. The questions in the table below should be considered carefully prior to a placement being; these are the areas which Ofsted consider to be critical.

There is no legal definition of what constitutes care and so this will always be open to interpretation. As a Council we need to consider each support package separately and carefully. All children aged 16 -17 will require some level of support to live independently, whether the level of support constitutes care is our responsibility to assess. So for example, in one case staff may be on-site 24/7, this is commonly the case in a setting where there are a number of children living, here staff supervise the group and ensure good order is maintained but don’t provide a significant level of individual care; this arrangement would not be registerable. In another scenario 24/7 staffing might be indicative of a care regime; for example in a small or solo setting, high levels of staffing are only likely to be provided where the child requires a high level of individual supervision and support, in this case the service should be registered.

For every post-16 placement the placing social worker must complete the checklist below before placement and use this to assist them in deciding whether the placement requires registration.

Table A: Level of care checklist: unregulated settings

| **Criteria** | **Yes/No** | **Commentary** |
| --- | --- | --- |
| Can young people go out of the establishment without staff permission? | No suggests care is being provided. |  |
| Do young people have full control of their own finances? | No suggests care is being provided. |  |
| Do young people have control over what they wear and of the resources to buy clothes? | No suggests care is being provided. |  |
| 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? | No suggests care is being provided (note that young people may ask for advice and help on their health, but if decisions rest with the young person, the establishment is not providing care.) |  |
| Do staff have any access to any medical records? | Yes suggests care is being provided. |  |
| Can young people choose to stay away overnight? | No suggests care is being provided (note that being expected to tell someone if they are going to be away overnight does not indicate providing care, but needing to ask someone’s permission does.) |  |
| Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult? | Yes suggests care is being provided. |  |
| If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions? | Yes suggests care is being provided. |  |
| Are there regularly significant periods of time when young people are on the premises with no direct staff supervision? | No suggests care is being provided. |  |
| Do staff have any responsibility for aftercare once a young person has left? | Yes suggests care is being provided (note that some supported accommodation services will offer some support to help young people get established in their next accommodation − this is not care.) |  |
| Does the establishment’s literature promise the provision of care or relate to specific care support provided to all residents? | Yes suggests care is being provided. |  |
| Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment? | Yes suggests care is being provided. |  |
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**3. Obtaining the Placement**

It is likely that an option of an unregulated placement will arise from an existing placement search made via referral to Children’s Services Buyers (CSB) in the usual way.

Children’s Service Buyers will notify the child’s Social Worker, and others as appropriate, of the outcome of a placement search, indicating which identified options, if any, are unregulated. In doing this CSB will provide:

* + Contact details for the provider, setting, manager
	+ Cost details
	+ The support package that is available and applicable to the child
	+ Details that can be used to obtain references
	+ Any regulatory body rating (if applicable)
	+ Statement of purpose or equivalent
	+ Any other relevant information

The Social Worker will need to determine whether the unregulated placement is the preferred option. Where this is the case:

* The child’s Social Worker will prepare information for the appropriate Head of Service indicating why this is the preferred option; how it will meet the needs of the child or young person, a risk assessment, the views of the Social Worker, manager, IRO, child or young person and parents (if applicable) and anyone else involved with the child. The child’s social worker will complete Table A : Level of Care Checklist: Unregulated Settings.
* If the request is **not** for an **immediate** placement, the matter should be referred to the next Placement Panel through CSB or OCSSMT Admin. This will allow for full consideration of the option, set against other options and can lead to approval for the placement to go ahead from Head of Service as chair of Placement Panel.
* If the placement is required **immediately** or before the next Placement Panel, permission to place must be obtained from the appropriate Head of Service or, in their absence, the Director, Families and Children.
* **Any placement that is initiated at a high level of direct support in excess of 16 hours a week or where one area on the Level of Care Checklist: Unregulated Settings indicates a care package is being commissioned, must be referred to the Director, Families and Children.**

**4. Review of the Placement**

The primary mechanism for reviewing the placement is via Placement Panel during the early stages of establishing the arrangement. Panel will determine the frequency of review and when it may be “stepped down” from Panel review.

When agreed by Placement Panel, the matter can be reviewed through the usual review processes for external provision; the child’s reviews the annual Single Assessment and so on.

Any concerns identified during operational visits about the quality of provision or appropriateness of support being offered by providers will be flagged within 1 working day with the children’s services buyers, and the Families and Children Commissioning team, for inclusion in the monthly risk rating outlined below.

Any concern about the delivery of the placement and the agreed support arrangements should initially be raised with CSB who monitor compliance of the contract for the placement.

CSB will advise, in consultation with the appropriate Service Manager or Head of Service, whether the matter then needs to be referred back to Placement Panel. Reasons for this may be:

* A high support arrangement that requires review to determine the future level of support
* A high cost arrangement
* Whether the placement continues to meet the needs of the child
* Concerns about the provider arising from other sources

Social work visits will be more frequent in an unregulated setting either for the duration of the short dedicated timescale for the placement, or in the initial stages of the placement:

* First visit to be within two days of the commencement of the placement
* Subsequent visits weekly until the first LAC review.
* Subsequent visits to be agreed within the review and in alignment with Practice Standards and statutory requirements

**Note : No young person who is in an unregulated setting will be subject to Light Touch arrangements.**

**5. Monitoring**

Data regarding the use of unregulated settings for young people will be part of the Safeguarding dataset and will be reported to the Performance and Outcome Board on a quarterly basis.

The Head of Service for Children’s Commissioning will monitor the appropriateness of all arrangements.

The Children’s Commissioning team will monitor the quality of live unregulated placements using:

* Robust procurement processes including continued development of the South West Framework for Supported Accommodation (led by South Gloucestershire Council).
* A bespoke internal process for the spot purchasing of Supported Accommodation placements.
* An on-going contract management programme.

**Framework Placements**

All providers part of the South Gloucestershire Council Dynamic Purchasing System would have undertaken a procurement process whereby they have submitted a completed Supplier Selection Questionnaire, along with financial evidence to support their case, references and quality questions with regards to their provision. Each application would have been reviewed by the South West commissioners and signed off where the provider meets all the criteria required. Each provider would have signed up to the Framework Terms and Conditions.

When a framework placement is identified, and placement has been made, provider will be tiered by commissioners and will be informed of the contract management programme in Wiltshire (see below).

If this is a property that has not been inspected by Wiltshire commissioners, a property inspection will be carried out within 1 month of placement.

**Spot Placements**

Where a spot placement is identified, providers will be asked to:

* Submit a completed Supplier Selection Questionnaire (SSQ) and evidence of adequate insurances.
* Complete the Annex A checklist to evidence why they do not require regulation by Ofsted.
* Sign up to the Framework Terms and Conditions. Where they do not agree, they will be asked to sign a bespoke spot contract, covering the quality of accommodation, fee increase requests, travel, notice periods and other significant areas of risk to the Local Authority.
* Where any provider refuses to sign up to pre-agreed Terms and Conditions, this will be escalated to the Head of Service for Looked After Children for decision on whether or not a placement should be made.
* An initial property inspection will be carried out within 1 month.

**Contract Management Programme**

For live placements, the Children’s Commissioning Team will tier unregulated providers on a monthly basis, based on how each is currently performing in relation to:

* Level of concern about potential that care is being provided within a placement.
* The quality, transparency and consistency of their relationships with operational, brokerage and commissioning colleagues.
* Their willingness to negotiate on contractual terms and engage at a strategic level around meeting local needs.
* The quality and consistency of their staffing management.
* The quality of their safeguarding.
* Their ability to meet the needs of the most complex young people.
* Their ability to meet the needs of UASC (where such placements have been made).
* The transparency and fairness of their weekly fees, comparable to the market average.
* The availability of local placements.
* Confidence in the stability of their business and their continuity plans.

Tier 1 providers will be subject to annual contract management meetings and quarterly KPI submissions.

Tier 2 provers will be subject to quarterly KPI submissions and bi-annual contract review meetings.

Tier 3 providers will be subject to quarterly KPI submissions and annual contract review meetings.

All providers will be subject to twice annual property inspections. Different properties will be inspected on each occasion and the choice of property to inspect will be risk based, on the criteria listed above.

**Additional monitoring where risks are identified**

Where a concern is raised that care may be being provided in an unregulated setting, the serious incident protocol will be utilised. This will involve:

* Children’s Commissioning facilitating a discussion with the young person’s social worker/PA and/or their manager, their IRO and children’s services’ buyers to gather all relevant information about the provider and the placement.
* The child’s social worker will complete Table A : Level of Care Checklist: Unregulated Settings
* An immediate decision being taken over whether any changes are required to the young person’s placement.
* Agreement on whether any medium-term actions need to be taken.
* Agreement on whether any additional quality monitoring activity of the provider is required.

Where concerns are substantiated, the Children’s Commissioning Team will meet with the provider within 10 working days to agree an action plan, which will be monitored monthly until all actions have been completed. The status of the action plan will be reported monthly to operational colleagues through the high-risk provider tracker, which is circulated to all Team Managers and relevant Heads of Service.

**Annex A – Ofsted Supported Accommodation Check List**

• This table sets out criteria to help identify whether the service being proposed or provided is ‘supported accommodation’.

• The table below sets out each criteria in the form of a question, and suggests whether a ‘yes’ or ‘no’ answer means care is provided, or supported accommodation.

• Where care is provided, this service meets the definition of a children’s home and will usually need to register with Ofsted.

| **Criteria** | **Answer Yes/No and provide commentary to explain** | **Answer Yes/No and provide commentary to explain** |
| --- | --- | --- |
| Can young people go out of the establishment without staff permission? | Supported accommodation | Care |
| Do young people have full control of their own finances? | Supported accommodation | Care |
| Do young people have control over what they wear and of the resources to buy clothes? | Supported accommodation | Care |
| 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? | Supported accommodation (note that young people may ask for advice and help on their health, but if decisions rest with the young person, the establishment is not providing care.) | Care |
| Do staff have any access to any medical records? | Care | Supported accommodation |
| Can young people choose to stay away overnight? | Supported accommodation (note that being expected to tell someone if they are going to be away overnight does not indicate providing care, but needing to ask someone’s permission does.) | Care |
| Is there a sanctions policy that goes beyond house rules and legal sanctions that would be imposed on any adult? | Care | Supported accommodation |
| If the establishment accommodates both adults and young people, do those under 18 have any different supervision, support, facilities or restrictions? | Care | Supported accommodation |
| Are there regularly significant periods of time when young people are on the premises with no direct staff supervision? | Supported accommodation | Care |
| Do staff have any responsibility for aftercare once a young person has left? | Care (note that some supported accommodation services will offer some support to help young people get established in their next accommodation − this is not care.) | Supported accommodation |
| Does the establishment’s literature promise the provision of care or relate to specific care support provided to all residents? | Care | Supported accommodation |
| Does the establishment provide or commission a specialist support service, which forms part of the main function of the establishment? | Care | Supported accommodation |
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