Supported Accommodation – Are You Committing an Offence?

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As many will know, supported accommodation providers are entering new territory, becoming Ofsted registered and regulated for the first time. As of 28 October 2023, any providers which have not had their complete application accepted by Ofsted need to take urgent action to protect their position and avoid potential prosecution.

What is Supported Accommodation?

Supported accommodation provides accommodation with support for 16 and 17 year old looked after children and care leavers, to enable them to live semi-independently.

According to regulations, you are a supported accommodation provider if you accommodate a child aged 16 or 17 years old who has been placed by a local authority under section 22C(6)(d) or 23B(8)(b) of the Children Act 1989.

This means you need to register as a supported accommodation provider if a local authority has either:

- placed a looked after child in an 'other arrangements' placement, or
- placed a care leaver in 'suitable accommodation'

The requirement to register

Although historically unregulated, supported accommodation providers are now required to apply for registration with Ofsted and will be subject to regulatory oversight and inspection for the first time.

Since 28 April 2023, supported accommodation providers have been able to apply to Ofsted for registration.

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As part of the transitional arrangements, providers were required to have submitted and had their application for registration either 'granted' or 'accepted' by Ofsted by 27 October 2023. An application is considered granted by Ofsted once the registration process has been completed and the provider has become a registered provider. By contrast, an application is classed as 'accepted' where the application has been submitted, accepted by Ofsted as complete and the registration payment received.

If the provider has had its application accepted by Ofsted by 27 October 2023, it may legally operate beyond that date until the outcome of the application has been determined.

However, Ofsted is keen to point out that it is illegal for an unregistered supported accommodation provider to operate after 28 October 2023, if they have not submitted a complete application which has been accepted by Ofsted.

On 8 January 2023, Ofsted published a blog entitled 'Getting ready to regulate supported accommodation', in which it reported on the findings of a survey of local authorities undertaken in 2022 to help understand the size and nature of the supported accommodation sector. From responses to the survey, Ofsted estimated that there were around 1,100 supported accommodation providers, and as many as 7,000 looked after children and care leavers aged 16 to 17 living in supported accommodation.

By contrast, Ofsted's published data shows that, as of 28 October 2023, only 52 supported accommodation providers had been granted registration in England and applications had been accepted for 632 providers, giving a total of 684 providers. This means that a significant number (over 400) of the estimated number of supported accommodation providers in England have no longer been permitted to operate supported accommodation since 28 October 2023.

Ofsted advises that if a provider has had its application refused prior to 28 October or has not had its application accepted by Ofsted, it is unable to continue to operate supported accommodation and must contact the placing local authority so that they can make appropriate plans for the children that are currently accommodated.

It is unclear how many of the currently suspected 400+ unregistered providers are currently operating unlawfully and how many may have chosen to cease providing supported accommodation prior to the deadline. However, for over a third of the sector to fall into this category is a significant volume, and it is difficult to see how local authorities will have been able to make alternative arrangements for the number of young people whose placements would inevitably be impacted. It is likely that there are currently providers providing supported accommodation unlawfully.

Providers still operating supported accommodation

Any providers still operating supported accommodation services, in the absence of their application having been granted or having been accepted by Ofsted by 27 October 2023, will be operating unregistered provision

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and Ofsted can take action under its unregistered provision policy.

Applications refused after 28 October 2023

If Ofsted decides to refuse registration, it will serve a Notice of Proposal to refuse registration, setting out its reasons for refusal. Providers may make written representations to Ofsted, disputing its proposal, within 28 days from receipt of the Notice of Proposal.

Following consideration of any written representations, Ofsted will serve a Notice of Decision, setting out its decision. The provider will then have a further right of appeal to the First Tier Tribunal.

Ofsted has published an interim enforcement policy in respect of supported accommodation services. This clarifies that, where a provider is already providing supported accommodation services prior to 27 October and Ofsted serves a Notice of Proposal to refuse registration after that date, Ofsted will tell the placing local authorities of its proposal to refuse registration. It will make clear that the decision is not yet final and will depend upon any written representations it receives. However, when Ofsted issues a Notice of Decision to confirm the decision to refuse registration, it will also notify local authorities as arrangements will need to be made for the young people to move. This is because a decision to refuse takes effect immediately. If an appeal is submitted to the Tribunal, the refusal will continue to have effect unless or until the Tribunal orders otherwise, meaning that the service cannot operate during that time.

Providers and managers should also be aware that, if Ofsted refuses an application to register from individual providers, partnerships or a proposed service manager, then those individuals, the partners or the manager will be disqualified from fostering a child privately. They will also be unable to carry on, be concerned in the management of, or have a financial interest in, a children's home in England, without the written consent of Ofsted.

Given that the deadline for applying for registration for supported accommodation has now passed, providers could find themselves in significant difficulty if they continue to operate without registration, or if they receive a Notice of Proposal to refuse registration. Both scenarios can pose a significant risk to a provider and its business. Providers in this situation should seek urgent specialist legal advice.

Our team of specialist health and social care lawyers have extensive experience of supporting providers in their dealings with Ofsted, including the factual accuracy process, complaints to Ofsted and defending enforcement action by Ofsted, including preparing written representations and appeals to the First Tier Tribunal. Contact our specialist Ofsted lawyers on 01202 786135 or laura.guntrip@la-law.com to discuss how we can assist you

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