

Strengthening of Ofsted's enforcement powers and more: The Government's big "overhaul" of children's social care provision

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This week, the government has announced its ["biggest overhaul in a generation to children's social care"](#).

The comprehensive [Keeping Children Safe, Helping Families Thrive: Breaking down barriers to opportunity policy paper](#) provides an insight into the significant legislative plans coming down the track to:

- Ensure that children remain with their families and be safely prevented from entering the care system in the first place.
- Support children to live with kinship carers or fostering placements, rather than in residential care.
- Fix the broken care market.
- Invest in the key enablers which underpin the social care system – including the workforce and better data sharing.

The plan, written and published by the Department for Education ("DfE") rightly highlights the ambition to drive high and rising standards in care and to ensure that children and young people are provided with safe and secure placements that best suit their needs.

The policy papers sets out the changes across two core themes: *"Chapter 1 – legislating to keep families together and children safe, and to remove barriers to opportunity"* and *"Chapter 2 – legislating to make the care system child-centred, and to tackle profiteering"*.

Embedded within these chapters are a range of proposed changes to legislation which will have a significant

Page 1 Strengthening of Ofsted's enforcement powers and more: The Government's big "overhaul" of children's social care provision

impact on private providers.

For now, we have summarised some of the headline proposals below, taken from “Chapter 2”. We will be publishing further update articles to provide further commentary about the expected changes and the impact that these will have on providers in due course, as and when more information becomes available about the practical workings and reality of these proposed changes.

1. Reforming registration

The DfE will be working with Ofsted to consider a fast-track route for the registration of selected new children’s homes, ensuring that the type of providers (for example, charities and voluntary sector providers and ethical investors) that are being encouraged back to the market can establish new children’s homes more quickly.

2. Planning process

The DfE is looking at options to reform the planning process to enable providers to more easily set up homes where they are most needed. The Ministry for Housing, Communities and Local Government has recently consulted on changes to the [National Planning Policy Framework](#) to make it clear that local planning authorities must consider the need for children’s homes as one of the types of specialist housing in its area.

3. Location assessments

As part of Ofsted’s registration assessment for new provision, the requirement for a location risk assessment will be strengthened by also including a requirement for an application to register a children’s home to be accompanied by an endorsement from the relevant children’s services team that it has determined that there is a local need for the proposed children’s home within the relevant area.

4. Diversifying the market

The DfE will be exploring options to rebalance the market by encouraging new providers (charities and voluntary sector providers) by reducing barriers to creating and maintaining affordable provision.

The policy paper recognises that the major barrier to establishing new residential provisions is the initial set-up costs. To encourage non-profit providers back into the market, national government will act as an enabler, working with providers and investors to support them with innovative funding mechanisms such as finance models like social outcome partnerships.

5. Managing new entrants to the market

The DfE is going to be exploring introducing a requirement that any new provider wishing to enter the market must be owned and domiciled in the UK, including corporate shareholders and majority stakeholders.

6. Community based approach to provision for children that can be deprived of their liberty

There has been a steep rise in the number of children deprived of their liberty under the jurisdiction of the High Court. Research has therefore been commissioned to understand this cohort of children, including mapping their journey.

Ultimately, the intention is to explore new forms of provision to address the rising need for suitable homes for children who may be deprived of their liberty but where the accommodation is not explicitly designed according to the same design specification as the current [Secure Children's Homes](#) model.

7. Strengthening Ofsted's enforcement powers

Ofsted has seen a significant rise in the numbers of unregistered provision (children's homes, supported accommodation, fostering agencies and residential family centres).

For example, in 2023/ 2024 Ofsted opened cases on 1,109 potentially unregistered settings, compared to only 370 in 2022/ 2023. This has understandably been exacerbated by the relatively recent introduction of The Supported Accommodation (England) Regulations 2023 and associated [guidance](#).

Whilst Ofsted already has enforcement powers to tackle unregistered settings and agencies, the Department will be strengthening its powers so that Ofsted can issue civil penalties by way of a monetary fine against providers of unregistered provision.

This will be an alternative to the existing criminal prosecution powers to tackle more unregistered settings in a proportionate way (i.e. a single offence may warrant a financial penalty, whilst a repeat offence may warrant criminal prosecution).

The Care Standards Act 2000 contains further offence provisions for which Ofsted can prosecute and these may be subject to the new civil sanctions regime.

8. Priority application process

The DfE will be working with Ofsted to expand its existing priority application process, particularly in the current

circumstances where demand significantly outstrips supply.

9. Improving quality of placements through a provider oversight scheme

There are plans to increase the transparency of governance arrangements of independent provider groups that own multiple children's homes and other children's social care provision, by granting Ofsted stronger powers to hold these providers to account.

The DfE wants to make changes to the current framework whereby Ofsted must inspect each individual setting when a weakness in organisational structure has been identified. The Department wants to make changes to the framework to empower Ofsted to be able to drive improvements to quality, more quickly. The DfE will therefore change the regulatory framework so that where there are quality issues across several settings owned by the same provider group, Ofsted can hold provider groups to account.

Enforcement action for provider groups could include a civil penalty by way of a monetary fine or Ofsted being able to restrict growth of the provider group, by refusing further registrations based on non-compliance.

10. Improving the Ofsted registration process for children's homes managers

The Competition and Markets Authority ("CMA") has [reported](#) that the registration process for opening new provision is slow and costly. The DfE therefore wants to work with Ofsted to improve the re-registration process when a manager moves to a different children's home, to reduce the administrative burden on the individual manager, provider and Ofsted.

11. Shaping the market through Regional Care Co-operatives

Building on the CMA's recommendations, the DfE wishes to enable local authorities to set up Regional Care Co-operatives to plan and commission children's social care places regionally.

12. Bringing transparency to the costs of homes

The DfE will be engaging with the sector to bring about greater cost and price transparency which will aid local authorities in challenging profiteering providers, as well as enabling greater central government oversight of the placements market. This is intended to plug a current a gap in the data around the underlying costs of different types of children's social care provision.

13. Introducing a financial oversight scheme

A financial oversight scheme will be introduced and led by the DfE to increase financial and corporate transparency amongst the most “difficult to replace” providers.

Much like the market oversight scheme currently led by the Care Quality Commission for qualifying adult social care providers, the DfE recognises that Ofsted is not set up to conduct regular forensic financial monitoring of large group providers. This is something that the DfE wants to introduce for children’s social care because it says that the current system leaves open the risk of provider financial difficulty and the likelihood of business failure going undetected.

14. Creating a mandatory notice period for market exit

As part of the above financial oversight scheme, the DfE will explore a new requirement for all providers to give local authorities sufficient notice if a provider makes a commercial decision to actively exit the market (essentially promoting a well-managed wind down).

15. Regulating the placements market – profit cap

The DfE has stated that if the reforms, as outlined above, do not have the anticipated impact in tackling what it terms “profiteering” across children’s homes, it will not hesitate to take legislative action to prevent private providers continuing to make “excessive profits”.

The DfE plans to introduce powers for the Secretary of State to cap the level of profit of which can be made from children’s social care placements. The DfE will only step in to cap profits if the market is not rebalanced by the other proposed reforms.

The profit cap could include a limit on the level of profit that could be made in each financial year from the provision of specified children’s social care placements.

Looking to the future

The above-proposed reforms are undoubtedly far-reaching and will have a direct impact upon the operation of providers within the sector.

We act for a range of Ofsted regulated providers of children’s provision, including homes, supported accommodation, independent special schools and fostering agencies, and we see first hand the impact that the regulator has on providers in their day-to-day operations.

As we navigate these extensive future changes, a lot remains to be seen as to the practical workings of these proposals and how they will take effect, following the proposals and consultations, referenced above.

We are mindful of the ongoing pressures faced by those within the children’s health and social sector and we are passionate about supporting providers.

We are experienced social care solicitors and we are regularly instructed to assist providers across the breadth of regulatory activity and particularly in relation to Notices of Proposal to refuse registration; Notices of Decision to cancel registrations; draft Ofsted inspection reports; restriction notices and more.

We advise all providers to seek legal advice at the earliest opportunity if they are concerned about Ofsted or DfE regulatory activity.

Contact

Please do not hesitate to get in touch, should you require any advice, so that we can assist you and consider your case as soon as possible. Please contact [Alice Thursfield](#), Associate Solicitor, on Alice.Thursfield@la-law.com or 01202 786353.