

Illegal Children's Homes

December 2024

Table of contents

Foreword from Dame Rachel de Souza.....	3
Executive summary	6
Introduction.....	10
1. Background and method.....	11
Background.....	11
The Children's Commissioner's data request	11
2. Findings.....	13
2.1 Who are the children in unregistered homes?	13
2.2 What are the placements like?	14
2.2.1 Cost.....	14
2.2.2 Length of placement.....	15
2.2.3 Nature of placement.....	15
2.3 Differences between children on or not on Deprivation of Liberty orders.....	15
3. Pen portraits of children in illegal children's homes.....	17
4. What next for these children?	19
Annex.....	25
References	31

Foreword from Dame Rachel de Souza



Every night across England hundreds of children are going to sleep in illegal homes where they are often isolated and left without appropriate care. Most of these are run by private organisations which have the least amount of oversight and scrutiny, leaving children at an increased risk of harm.

There is no process for checking the quality of the care they receive or the suitability of those adults providing the care – because, by law, these homes should not exist.

My report today provides stark evidence to what I have long been concerned about: children in places that are largely extremely high cost and poor quality.

As Children's Commissioner, I am deeply concerned about illegal children's homes and extremely worried that profit making by private companies has been prioritised over the wellbeing of England's most vulnerable children.

I recently used my statutory powers to get a snapshot of what is happening to these young people. It gives us, for the first time, a picture across England of how many children are being placed in these unregistered, unregulated locations and what these are like.

I have found that 775 children were in unregistered accommodation on 1st September this year but I strongly believe the total number of children impacted by this issue is much higher.

Official published statistics show the number of unregistered homes reported to the regulator Ofsted has exploded since 2020. Its data for the previous financial year shows that 1,056 unregistered placements were reported, suggesting that there is under-reporting of the use of unregistered placements for children.

My own Help at Hand advocacy team has stepped in to support many children in precarious living environments. These children are often highly vulnerable with complex needs.

The findings in this report are shocking. They demonstrate some of the most extreme interventions the state can make in children's social care. Almost a third (31%) of the children in unregistered placements were subject to a court-ordered Deprivation of Liberty order.

The quality of placements is poor, and the costs are extortionate. Alarming, 33 children were in placements that had each cost over £1 million.

Altogether, the estimated yearly cost of unregistered placements to English local authorities is almost £440 million, much of which goes to private profit. That is a cost to the taxpayer that could easily be reduced with earlier intervention in a child's life and effective local planning and resourcing, instead of a system that relies heavily on emergency crisis care.

These high costs are not driving high standards. The quality and type of these illegal placements varies. Some are rented flats or houses, some are referred to as 'supported' accommodation, but many children were being looked after in holiday camps, activity centres or caravans while others were placed in holiday rental properties like AirBnBs.

And while we might often think of these kinds of placements being reserved for older children on the cusp of legal adulthood, nearly half are 15 or under. Tragically, some of the children in these illegal homes are pre-school age.

How can we talk about protecting and promoting the early years of a child's life if we are failing to protect the basic rights of a safe and loving home for the youngest children?

The use of these homes is a national scandal - vulnerable children are being failed which should never be allowed. If we wouldn't allow it for our own children, we cannot allow it to happen for those for whom the state is the corporate parent.

We have an opportunity to tackle this now and I welcome the urgency with which the government's Children's Wellbeing Bill is being taken forward. However, its measures need to go much further and be far tougher so we can crack down on these illegal homes and ensure that every child goes to bed every night safe, well and properly protected.

Executive summary

Over the past year the Children's Commissioner's independent advocacy team 'Help at Hand' has supported numerous children with extreme vulnerabilities, often subject to a Deprivation of Liberty (DoL) order, who are placed in children's homes not registered with Ofsted as they should be by law.

In recent years the number of unregistered homes has grown, with Ofsted statistics showing the number of reports of unregistered homes increasing year on year.

In this report, for the first time, the Children's Commissioner's office (CCo) uses local authority data to establish how many children are placed in unregistered accommodation and how much these placements are costing.

Using the Children's Commissioner's unique statutory powers, the office asked all local authorities in England for information about the looked after children, including children on DoL orders, who they had placed in unregistered children's homes on 1 September 2024.

Findings

On 1 September 2024, 775 looked after children were living in unregistered placements in England. Ofsted's data shows that over the course of the previous financial year, 1,056 unregistered placements were reported.¹

Given the CCo's data is a single day snapshot, the use of unregistered placements for looked after children is likely to be much higher over the course of a year.

Who are the children in unregistered homes?

- The majority of children in unregistered homes were older teens with 53% aged 16 or 17, 46% were aged 11 to 15 and less than 1% were aged 10 or under.
 - Over half (58%) of all children in unregistered homes were boys, 42% were girls.
 - Over half of children (57%) in unregistered placements had an Education Health and Care Plan (EHCP) and a further 9% were identified as having SEND but without an EHCP.
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- More than two in five (41%) of children in unregistered provision were in receipt of child and adolescent mental health services.
- Nearly a third (31%) of children in unregistered accommodation had at least one reported missing episode while in the placement. By comparison, missing incidents were reported for 11% of all looked-after children in 2024.²

What are the placements like?

- The vast majority of placements (94%) were supplied by private providers. This is higher than the overall percentage of the children's home market operated by for-profit providers.³
- The majority of children were placed in out-of-local-authority-area accommodation (62%), compared to 45% of all looked after children.
- The average daily cost of an unregistered placement was £1,567.
- Alarming, 33 children were in placements that had each cost a total of over £1 million.
- The estimated yearly cost of unregistered placements to English local authorities is £439,648,762.
- The mean length of placements up to 1st September 2024 was more than six months (185 days) but there was a high level of variation in length.
- There were some shocking examples of placements lasting longer than they should have, for example, a 28-day activity placement that lasted for nearly 300 days. There was another instance of a teenager on a DoL order who had been living in a caravan for 75 days.
- The most common type of placement was an unregistered house¹ (47% of children in the data return), while 40% were placed in supported accommodation (providing support rather than

¹ This included 9% that were described as a "children's home", either not registered with Ofsted or in the process of registering.

care, despite the child being judged to need care²), 3% were placed in a holiday rental (e.g. an AirBnB property), and 2% were at a holiday camp or activity centre.

Differences between children on or not on Deprivation of Liberty orders

- Almost a third (31%) of the children in unregistered placements were subject to a DoL order.
- Children on a DoL were more likely to be female: 55%, compared to 36% of girls not on a DoL.
- Children on a DoL order had higher levels of need than others. For example: 70% of children subject to a DoL order in unregistered provision had an EHCP compared to 52% not subject to a DoL order.
- Almost double the proportion of children on a DoL in unregistered accommodation (60% vs 33%) were in receipt of Child and Adolescent mental health services (CAMHS) services compared to those not on a DoL.
- The vast majority (72%) children subject to a DoL order were placed out of area, compared to 57% not subject to a DoL order.
- Notably, the mean cost of placements for children on DoL orders in unregistered accommodation was higher than other placements, at £2,140 per day compared to £1,321 per day.

What is next for these children?

The Commissioner is clear that every child should be in a home that provides them with the care they need. Children living in illegal homes, often under a DoL order, are the furthest from that goal. New levers are needed to ensure that no child is living in an illegal children's home.

² Based on the data provided the office is not able to determine whether the supported accommodation placements reported were registered or not.

As set out in the Department for Education's policy paper 'Keeping Children Safe, Helping Families Thrive', reforms are expected on unregistered children's homes in the upcoming Children's Wellbeing Bill.

While the Children's Commissioner greatly welcomes provisions aimed at tackling unregistered children's home, there are key areas where more ambitious reform is needed. These include the need to:

- Invest in developing therapeutic children's homes with joint health and social care support that are available across the country and that can tailor care and support to children's needs.
- Strengthen the disincentives for providers and local authorities to prevent the use of unregistered children's homes, including through Ofsted inspections of local authority children's services, and a duty on local authorities to notify Ofsted of a placement in unregistered accommodation.
- Create a new legal framework that provides a mechanism for restrictions on children's liberty other than in a secure setting, supported by statutory guidance.

Introduction

Over the past year the Children's Commissioner's independent advocacy team 'Help at Hand' have supported numerous children with extreme vulnerabilities, often subject to a Deprivation of Liberty (DoL) order who are placed in children's homes not registered with Ofsted as they should be. In recent years the number of unregistered homes has grown, with Ofsted statistics showing the number of homes which they are aware of growing from 144 in 2020-21 to 931 in the year to March 2024.⁴ While it is well understood that profit making from residential care placements is a huge challenge, the role of private provision and profit making in unregistered accommodation acting as children's homes has not yet been quantified. In this report, for the first time, the Children's Commissioner's office (CCo) uses local authority data to establish how many children are placed in unregistered accommodation and how much these placements are costing.

As this report shows, it is not only children subject to a DoL order who have to live in unregistered children's homes, but also children with complex needs whose local authorities have been unable to find them an appropriate placement. This builds on the CCo's recent report on *Children with complex needs who are deprived of their liberty* which showed that this group of children (who are often placed in unregistered children's homes) have high-level and hugely diverse needs⁵.

Using the Children's Commissioner's unique statutory powers the office asked all local authorities in England for information about the looked after children, including children on DoL orders, who they had placed in unregistered children's homes on 1st September 2024, including key information about the vulnerabilities of these children and costs of their placements. The data covers all children aged under 16, who must receive care, and 16- and 17-year-olds who receive care, not just accommodation.

1. Background and method

Background

The Care Standards Act 2000 says that ‘an establishment is a children’s home... if it provides care and accommodation wholly or mainly for children’⁶. Children under the age of 16 must be placed in a setting where they can receive care. The Care Standards Act 2000 sets out that it is an offence to run a children’s home without the appropriate registration.

Settings must register with Ofsted if⁷:

- They are accommodating children who are looked after by a local authority, either as a short-term measure or more long-term, including those that accommodate disabled children.
- They provide both care and accommodation for children aged 16 or 17 (e.g., children who have 1:1 supervision or who have high needs) or who are subject to a Deprivation of Liberty Order.⁸

The latest estimates of the scale of this challenge come from Ofsted data. Ofsted received 1,056 reports of children in unregistered accommodation over the last financial year. While this data provides the most accurate estimate, suggesting that almost 1,000 children had been placed in unregistered children’s home, this is likely to be a substantial underestimate given that this data relies on Ofsted being notified about these settings.

The Children’s Commissioner’s data request

The Children’s Commissioner used her statutory data collection powers as set out in Section 2F of the Children Act 2004 to collect information from local authorities in England on looked after children placed in unregistered children’s homes. The office asked all local authorities for child-level data on any looked after children they had placed in an illegal children's home on 1st September 2024. This would be a home that is not registered with Ofsted and that is providing *care* to a child. In some limited circumstances, 16- and 17-year-olds can be living in a "supported" accommodation that provides support and not care⁹. The office did not ask about these children as these are not illegal homes. We did ask about children who are living in homes that are designed to provide "support" but in fact are providing care, such as

supported accommodation. The deadline to return this data was 28th November 2024. A short extension was given for local authorities to submit late returns and provide clarifications, and by the 6th December 2024, 150 local authorities had responded. Of these returns, 21 (14%) were nil returns. It is not known whether these 21 local authorities had children in unregistered homes on other dates or avoided the use of this practice entirely. The data have not been weighted to adjust for local authorities which had not provided data by the deadline.

The office requested child-level data on: age, gender, the legal status of the child (such as whether they had a Care Order), the presence or absence of a DoL order, status as a unaccompanied asylum seeking child (UASC) or not, any National Referral Mechanism referrals, Special Educational Need and/or Disability (SEND) status, and whether the child had an Education, Health and Care Plan (EHCP), was receiving or waiting for CAMHS support, whether they had any episodes of having gone missing, the length of their placement up to 1st September 2024, the type of accommodation, its staffing, funding, location and the total cost of the placement.

Names of children in case studies, taken from the data returns and from the CCo's Help at Hand service, have been invented or changed in the interests of anonymity.

2. Findings

On 1st September 2024, 775 looked after children were living in unregistered placements in England. Ofsted's data shows that over the course of the previous financial year, 1,056 unregistered placements were reported¹⁰. Given the CCo's data is from a single day as opposed to a full year, this suggests that there is substantial under-reporting of the use of unregistered placements for looked after children.

Of the 129 local authorities which reported having any children in unregistered placements, the mean number of children was six. Most had fewer than eight, but some had over 20.

2.1 Who are the children in unregistered homes?

The majority of children in unregistered homes were older teens with 53% aged 16 or 17, 46% were aged 11 to 15 and less than 1% were aged 10 or under. The mean age was 15.4 years. Although younger children were uncommon, the data returns included some pre-school aged children in unregistered placements. Over half (58%) of children in unregistered homes were boys and 42% were girls, which is broadly in line with the gender breakdown in the overall population of looked-after children.¹¹

We also asked about a range of additional needs and challenges that children in unregistered placements face:

- Over half of children (57%) in unregistered placements had an **EHCP** and a further 9% were identified as having SEND but without an EHCP. For 2% this was unknown.
- More than two in five (41%) children in unregistered provision were in receipt of **child and adolescent mental health services** (CAMHS), and a further 7% were on a waiting list for these services.
- 9% of children in unregistered provision had been referred to the **National Referral Mechanism** for identifying and referring potential victims of modern slavery. For 7% of children, that was unknown.
- 6% of children in unregistered placements were **unaccompanied asylum-seeking children**. This compares to 9% in the overall population of looked-after children.¹²

- Nearly a third (31%) of children had at least **one reported missing episode**. By comparison, missing incidents were reported for 11% of all looked-after children in 2024.¹³

The majority of children (63%) were accommodated under Section 31 of the Children Act 1989, with almost a third (32%) under Section 20 of the Children Act 1989 and 5% under other legislation which includes Section 38. Almost a third (31%) of children in unregistered placements had a Deprivation of Liberty order.

2.2 What are the placements like?

Unregistered placements are overwhelmingly provided by private providers and the majority are out of area, meaning children are placed far away from family and friends and they are often incredibly expensive.

- The vast majority of placements (94%) were supplied by private providers, with 5% provided by public providers and 2% "other".
- The majority of children were placed in out-of-local-authority-area accommodation (62%) while 38% of placements were within the responsible local authority boundary. This compares to the equivalent 45% for all looked-after children in out-of-area placements on 31 March 2024.¹⁴
- Unregistered placements are more common in some areas of the country than others, notably in Inner London and the East of England.

2.2.1 Cost

The average daily cost of an unregistered placement was £1,567. While some placement costs were low, alarmingly 33 children were in placements that had each cost a total of over £1 million as of 1st September. The estimated yearly cost of unregistered placements to English local authorities is £439,648,762, calculated as the sum of daily costs multiplied by 365.

2.2.2 Length of placement

The mean length of placements up to 1st September was more than six months (185 days) but there was a high level of variation³. Some placements started on the 1st of September, the day our data collection applies to. A minority of placements had lasted multiple years.

There were some shocking examples of placements lasting longer than they should have. For example, a 28-day activity placement that lasted for nearly 300 days. There was another instance of a teenager on a DoL order who had been living in a caravan for 75 days.

2.2.3 Nature of placement

The largest number of children (47%) were placed in an unregistered house⁴ while 40% were placed in supported accommodation (that provides support rather than care, despite these children being judged to be in need of care⁵), 3% were placed in a holiday rental (e.g. an AirBnB property), and 2% were at a holiday camp or activity centre.

2.3 Differences between children on or not on Deprivation of Liberty orders

Almost a third (31%) of the children in unregistered placements were subject to a DoL order. There were notable differences between children on a DoL and those not on a DoL.

- Children on a DoL were more likely to be female: 55%, compared to 36% of girls not on a DoL
- None of the 6% of children in unregistered accommodation who were UASC were on a DoL.

Children on a DoL order had higher levels of need than others. For example:

³ Standard deviation is 208.62 days, and the median length of placements was 124 days.

⁴ This included 9% that were described as a "children's home" - either not registered with Ofsted or in the process of registering.

⁵ Based on the data provided the office is not able to determine whether the supported accommodation placements reported were registered or not.

- 70% of children subject to a DoL order in unregistered provision had an EHCP compared to 52% not subject to a DoL order. Only 21% of children subject to a DoL order in unregistered provision had neither SEND nor an EHCP, compared to 37% of those not subject to a DoL.
- Almost double (60% vs 33%) the proportion of children on a DoL in unregistered accommodation were in receipt of CAMHS services compared to those not on a DoL.

The vast majority (72%) children subject to a DoL order were placed out of area, compared to 57% not subject to a DoL order. Notably, the mean cost of placements for children on DoL orders in unregistered accommodation was higher than other placements, at £2,140 per day compared to £1,321 per day.

3. Pen portraits of children in illegal children's homes

Amy

'Amy' is a teenager living under a deprivation of liberty order in a house in her local area staffed by local authority-employed agency staff, where she has been for approaching a year. She is in receipt of support from Child and Adolescent Mental Health Services and has an Education, Health and Care Plan. The total cost of her placement is high, having reached £1.8m by September 2024.

- Local authority data provided to Children's Commissioner's office

Maysa

'Maysa' was child in need who was admitted to hospital because of mental health concerns. The hospital was clear that she should not be there and that she was unnecessarily being chemically restrained in order to keep her on the ward. The local authority applied for a deprivation of liberty order. The council were slow to find her an alternative placement but were under pressure to do so from the court, health service and the Children's Commissioner's office. An alternative placement was found, and Maysa now lives in the community. This was initially an unregistered placement, but Ofsted registration was applied for and ultimately granted, though this took over a year. Maysa told Children's Commissioner's staff that she understands why she needs a deprivation of liberty order to keep her safe.

- Help at Hand case study

Isaac

'Isaac' is a nursery age child with Special Educational Needs or Disabilities but no Education, Health and Care Plan. 'Isaac' is a nursery age child with Special Educational Needs and/or Disabilities but no Education, Health and Care Plan. In between periods living with foster carers, he spent time in a rented unregistered children's home staffed by local authority employees.

Kevin

'Kevin' was at risk of criminal exploitation and fearful of extra-familial violence. He was placed in an illegal children's home. Help at Hand were told that several individuals working for the home had concerning criminal histories, were under probation services and were not suitably trained and qualified to care for children, had not acted in children's best interests, and had been unco-operative with the local authority. The home said they were applying for registration but had not progressed with the registration process.

- Help at Hand case study

Sara

'Sara' is a teenager in care living in a caravan which is not located in her local authority area. Her care is provided by private agency staff. She has Special Educational Needs and/or Disabilities, and is in receipt of support from Child and Adolescent Mental Health Services, but does not have an Education, Health and Care Plan. The cost of her placement, which had lasted about two months, was £76,000.

- Local authority data provided to Children's Commissioner's office

4. What next for these children?

The Children's Commissioner's office is clear that in order to achieve system-wide change for all children, particularly the most vulnerable children who often interact with multiple services, key reforms are needed. That includes wider reforms to the children's services system as well as specific changes to ensure that no child is living in an illegal children's home.

As set out in the Department for Education's recent policy paper 'Keeping Children Safe, Helping Families Thrive' reforms are expected on how children's services are provided, how placements for children in care are planned and commissioned, and specifically on how children are deprived of their liberty. In each of those areas, policy change needs to go further to better protect some of the most vulnerable children in care.

1. System changes

As the office set out in The Big Ambition, all children, but particularly children who interact with multiple services, need there to be wider system reforms to improve the way children's services are delivered. This group of children starkly illustrate the need for those changes. For instance:

- Implementing a unique identifier - these children often rely on support from multiple services. In some instances, it simply wasn't known which services they did rely on.
- Clear, reliable, long-term funding streams for children – lack of reliable funding, and funding that follows individual children, is a barrier to planning adequate provision. It's also a barrier to joint working between different local services.

Consistent local accountability – children with complex needs, who often rely on multiple services, illustrate the importance of consistent accountability. There needs to be a rationalised system of inspection that provides a proportionate and consistent assessment of all services accessed by children.

- A joint children's workforce strategy – the quality of children's interactions with the state are only as good as their worst interaction. That is starkest for those children with high needs and in

touch with multiple professionals. There needs to be a workforce strategy that looks across all of the professionals that children rely on.

- A single child's plan – where children have additional needs, they are too often subject to multiple assessments, asked to tell their story multiple times, and face confusing differences in thresholds. There should be a single plan that brings together the education, health, and social care needs of children so that all professionals work from the same plan and so entitlements are clear to children and their parents.

2. Every looked after child who has experienced trauma can access a therapeutic children's home with joint health and social care support, tailored to their needs.

Most of the children interviewed for the CCo's recent report '*Children with complex needs who are deprived of their liberty*' would have chosen to stay with their family. However, where this is not possible, they want excellent children's homes or foster placements, close to home, which can provide stability, meet their needs in all areas, and keep them safe. They described the difference that being in the right home could make to their overall wellbeing, their ability to focus on their recovery, and their hopes for the future.

Recommendations:

- Local authorities should receive increased Department for Education Children's Social Care capital building funding to expand their in-house provision of children's homes. This should include therapeutic secure children's homes for the small number of children who need them, but there should be a focus on creating alternative therapeutic settings which can cater to children with complex needs who are at risk of being deprived of their liberty.
 - As part of a national sufficiency plan, the Department for Education should support local authorities to put in place appropriate provision for children with complex needs in their area to ensure that no child is deprived of their liberty unnecessarily due to a lack of suitable placements and that, in the small number of cases where this is required for the child's safety, they are placed in appropriate registered settings.
-

- Health and social care should work together to ensure there are sufficient jointly funded specialist placements locally for children with complex mental health needs, including neurodevelopmental disorders and trauma. To support this, the Department of Health and Social Care and Department for Education should agree budgets for a new model of jointly commissioned children's homes, with multidisciplinary teams combining health and social care, paid for through an expanded Better Care Fund. New models should be subject to monitoring and evaluation, and adapted as necessary, with learning shared to inform good practice across all regions.
- The national plan should include a central system for finding and allocating children's home spaces when a local authority has been unable to secure appropriate provision for a child, including powers to direct providers to offer a place where necessary.
- Local authority fostering recruitment and training plans should ensure there are sufficient specialist foster carers locally who can provide a safe home for children with complex needs and who are at risk, where this is the most appropriate setting for them.
- Children with a deprivation of liberty order – like all looked after children - should receive care in a registered setting. In emergency situations where this is not possible, this should be reported to Ofsted within 24 hours. The registration process should begin immediately and be fast-tracked, with updates at least at each looked-after child review meeting. This should be set out in statutory guidance.
- The Department for Education should add new fields to its annual looked-after child census to record the start and end dates of any child's deprivation of liberty order as a new episode. The new information should include the reasons for restrictions.

3. Strengthening the disincentives for providers and local authorities to prevent the use of unregistered children's homes

The Children's Commissioner greatly welcomes the proposed introduction of enforcement powers for Ofsted to issue civil penalties against providers of unregistered children's homes. While the office believes this power will improve compliance with the law, there is a risk that highly profitable providers of unregistered homes will not be deterred by fines.

The office welcomes the introduction of powers for the Secretary of State for Education to cap the level of profit which can be made from children's social care placements. While the acknowledgment of the need for incremental change to avoid instability within the placement market is welcome, the office is concerned about the lack of clarity around the timeframe for the enforcement of the cap. Without a clear indication that the cap will be enforced the CCo is concerned that the financial oversight scheme will not act as a substantial deterrent to highly profitable private providers of unregistered children's homes.

Recommendations:

- The office therefore recommends that a timeframe for the enforcement of the cap on the level of profit from children's social care placements through secondary legislation is set out.
- Given that local authorities have duties to ensure there is sufficient accommodation for looked after children, local authorities need to be disincentivised from using unregistered homes through a strengthened Ofsted oversight regime within the inspection of local authority children's services (ILACS.) Ofsted ILACS inspections should consider how local authorities are using unregistered children's homes. If unregistered homes are used as a long-term measure for children, the local authority should be rated inadequate.
- In addition, it is crucial that use of unregistered children's homes is regarded as an absolute last resort by local commissioners. The office therefore believes there is scope for an enhanced inspection regime that monitors the use of unregistered children's homes by local authorities and Regional Care Cooperatives (RCCs).
- There should be a duty on local authorities to notify Ofsted within 24 hours when a child is placed in an unregistered setting.

4. Remove barriers to registration

The office understands that at least some unregistered provision described in this report will be in the process of registering with Ofsted. Although not all, some will ultimately become registered as a children's home by Ofsted. Providers, local authorities, and Ofsted should ensure registration happens

as fast as possible so that children have the security of their home being properly registered as quickly as possible.

5. A new legal framework provides a mechanism for restrictions on children's liberty other than in a secure setting, supported by statutory guidance

As set out in the Department for Education's policy paper 'Keeping Children Safe, Helping Families Thrive' and expected within the upcoming Children's Wellbeing Bill, there will be an amendment to section 25 of the Children Act that will enable children with a primary need of treatment and care to be placed in a wider range of settings. The provision children will be able to be placed in will be community based and jointly commissioned by health and social care. While the office welcomes this amendment, the Children's Commissioner is deeply concerned that only a small subset of the children under DoL orders would benefit from that provision.

The office believes this reform does not go far enough. Two other groups will likely not be eligible for this new provision: children with learning and physical disabilities needing support/supervision, and children experiencing or at risk of external or extrafamilial risk factors such as sexual or criminal exploitation.

The CCo is calling for a new legal framework, one that provides a mechanism for restrictions on children's liberty other than in a secure setting, supported by statutory guidance.

Recommendation:

All children deprived of their liberty should benefit from a statutory framework guaranteeing their rights and setting out the responsibilities of others to promote their welfare. To achieve this, the Children Act 1989 should be amended to provide for children being deprived of their liberty in an Ofsted registered home that is not a secure children's home (as defined under section 25 of the Act).

The statutory framework should provide clear guidance for local authorities on how and when to apply for a deprivation of liberty authorisation, including in cases where children are accommodated under section 20 or where they are placed across UK borders.

This statutory framework should make it clear that:

- Deprivation of liberty should only be authorised when it is necessary for children’s safety and welfare and not because of a shortage of appropriate accommodation. There should be guidance on what types of restrictions should prompt the necessity to apply for authorisation.
- There should be judicial oversight for any deprivation of liberty order and any authorisation must be reviewed every 3 months. Reviews should always include discussions with children about their progress and how outstanding concerns can be reduced, with restrictions amended as appropriate.
- The child should automatically be a party to any deprivation of liberty proceedings. The children’s guardian must meet the child before an application is made, in all but the most exceptional circumstances, to ensure that their wishes and views are represented.
- Children should have the opportunity to share their views with the judge as part of the deprivation of liberty process and should be supported to do so in a way that is comfortable for them.
- Non-means-tested legal aid must apply to deprivation of liberty applications, as it does for applications for care orders.
- The Secretary of State for Education, and Ofsted, must be notified of any deprivation of liberty application where the child is not in a registered home.
- Local authorities must report all children who are deprived of their liberty, and where they are living, to Ofsted.
- Children deprived of their liberty should have access to advocacy, including non-instructed advocacy as needed.
- The interaction with other legislation, such as the Mental Capacity Act or Liberty Protection Safeguards, should be well defined so that there is no confusion.

Annex

This annex provides more information on the 775 children who were living in unregistered settings on 1st September 2024.

The analysis is split between children subject to a DoL order and those not subject to DoL order for variables with statistically significant differences between these groups (p <0.001 with chi-squared testing).

Percentages have been rounded to the nearest whole number in line with statistical disclosure control procedures. All non-zero percentages below 1% have been reported as '<1%', so that a value of '0%' means that exactly zero children were included. Some columns do not add to 100% due to rounding.

Table 1: Age breakdown of children in unregistered accommodation

Age group	All children
0 to 10 years	<1%
11 to 15 years	46%
16 and 17 years	53%
Total	100%

Table 2: Gender breakdown of children in unregistered accommodation

Gender	Subject to a DoL order	Not subject to DoL order	All children
Female	55%	36%	42%
Male	45%	64%	58%
Other	<1%	<1%	<1%
Total	100%	100%	100%

Table 3: Legislative basis of children’s placements in unregistered accommodation

Legislation	Subject to a DoL order	Not subject to DoL order	All children
Section 20	16%	39%	32%
Section 31	74%	58%	63%
Other	10%	3%	5%
Unknown	<1%	0%	<1%
Total	100%	100%	100%

Table 4: Unaccompanied asylum seeking child (UASC) status of children in unregistered accommodation

UASC status	Subject to a DoL order	Not subject to DoL order	All children
UASC	0%	8%	6%
Not a UASC	100%	92%	94%
Total	100%	100%	100%

Table 5: National Referral Mechanism (NRM) referrals of children in unregistered accommodation

NRM status	All children
Referred to the NRM	9%
Not referred to the NRM	84%
Unknown	7%
Total	100%

Table 6: Special Educational Needs and/or Disabilities (SEND) status of children in unregistered accommodation

SEND status	Subject to a DoL order	Not subject to DoL order	All children
Education, Health and Care Plan (EHCP)	70%	52%	57%
SEND (no EHCP)	7%	10%	9%
Neither	21%	37%	32%
Unknown	2%	2%	2%
Total	100%	100%	100%

Table 7: Child and Adolescent Mental Health Service (CAMHS) receipt of children in unregistered accommodation

CAMHS status	Subject to a DoL order	Not subject to DoL order	All children
In receipt of CAMHS	60%	33%	41%
On CAMHS waiting list	8%	7%	7%
No CAMHS	28%	52%	44%
Unknown	5%	7%	7%
Total	100%	100%	100%

Table 8: Missing incidents of children in unregistered accommodation

Missing incidents	All children
Any recorded missing incidents while in placement	31%
No recorded missing incidents while in placement	69%
Unknown	<1%
Total	100%

Table 9: Type of accommodation of children in unregistered accommodation

Accommodation type	All children
House (including 'children's home')	47%
Supported accommodation	40%
Holiday rental e.g. AirBnB	3%
Care Quality Commission registered setting	3%
Holiday camp/activity centre	2%
Apartment	1%
Crisis intervention placement	<1%
Caravan	<1%
Temporary or repurposed building	<1%
Hospital	<1%
Other	1%
Total	100%

Table 10: Staffing arrangements in illegal children's homes

Staffing arrangement	All children
Staff employed by provider	88%
Staff employed by local authority via an agency	6%
Staff directly employed by local authority	4%
Mix of staff types	<1%
Unknown	1%
Total	100%

Table 11: Sector of providers of unregistered accommodation

Sector	All children
Private	94%
Public	5%
Other	2%
Unknown	<1%
Total	100%

Table 12: In area or out of area status of children in unregistered accommodation

Area	Subject to a DoL order	Not subject to DoL order	All children
In local authority area	28%	42%	38%
Out of local authority area	72%	57%	62%
Unknown	<1%	<1%	<1%
Total	100%	100%	100%

Table 13: Regional analysis of the use of unregistered accommodation

Region	Children in unregistered placements as a % of all looked-after children on 31 st March 2024
East of England	1.57%
Inner London	1.46%
Outer London	1.24%
North East	1.21%
South West	1.18%
South East	1.06%
East Midlands	1.01%
Yorkshire and The Humber	0.69%
North West	0.56%
West Midlands	0.53%
England (total)	0.94%

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³ Bach-Mortensen, A. et al. 2024. *Evidencing the outsourcing of social care provision in England*. Nuffield Foundation and University of Oxford. Available at: <https://www.nuffieldfoundation.org/project/evidencing-the-outsourcing-of-social-care-provision-in-england>

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⁵ Children's Commissioner's office, 2024. *Children with complex needs who are deprived of liberty: Interviews with children to understand their experiences of being deprived of their liberty*. Available at: <https://www.childrenscommissioner.gov.uk/resource/children-with-complex-needs-who-are-deprived-of-liberty-interviews-with-children-to-understand-their-experiences-of-being-deprived-of-their-liberty/>

⁶ <https://www.legislation.gov.uk/ukpga/2000/14/section/1>

⁷ <https://www.gov.uk/government/publications/how-to-open-a-childrens-home/introduction-to-childrens-homes>

⁸ A term used to describe an order from the High Court in England and Wales (under its inherent jurisdiction, rather than specific legislation) that gives permission for a child in care to be put in a placement that deprives them of their liberty. The court must consider whether the order is in the best interests of the child, necessary, proportionate, and the least restrictive method available.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1187743/Guide_to_the_supported_accommodation_regulations_including_quality_standards.pdf

¹⁰ <https://www.gov.uk/government/publications/unregistered-childrens-homes/unregistered-childrens-homes>

¹¹ Department for Education, 2024. *Children looked after in England including adoptions*. Available at: <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2024>

¹² Department for Education, 2024. *Children looked after in England including adoptions*. Available at: <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2024>

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