

# OUT IN THE OPEN

A framework for the regulation of unregistered alternative provision.

August 2023





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# About the Centre for Social Justice

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them by recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantages and injustice every possible opportunity to reach their full potential.

The majority of the CSJ's work is organised around five "pathways to poverty", first identified in our ground-breaking 2007 report Breakthrough Britain. These are: educational failure; family breakdown; economic dependency and worklessness; addiction to drugs and alcohol; and severe personal debt.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. For instance, in March 2013, the CSJ report It Happens Here shone a light on the horrific reality of human trafficking and modern slavery in the UK. As a direct result of this report, the Government passed the Modern Slavery Act 2015, one of the first pieces of legislation in the world to address slavery and trafficking in the 21st century.

Our research is informed by experts including prominent academics, practitioners and policymakers. We also draw upon our CSJ Alliance, a unique group of charities, social enterprises, and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The social challenges facing Britain remain serious. In 2023 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

# Foreword

It should be the mission of all of us to ensure our education system protects all children, keeps them safe and ensure all receive a high-quality education suited to their needs.

However, while there are many across our education system working incredibly hard to deliver this for so many children, unfortunately our current system does not guarantee this for every child.

If there is one area of particular importance to me, it is children who are excluded. These children are often vulnerable children who need our support the most. However, while many excluded children will end up in a registered alternative provider, some are being sent to unregistered alternative providers.

While some of these unregistered alternative providers are doing amazing work meeting individual needs of local young people, offering a specialist and bespoke approach that mainstream schools cannot provide, by being unregistered they are not subject to any form of inspection.

As there is no national register of these providers, and as unregistered provision does not come under a single national inspection framework, we cannot say with all confidence that every child in unregistered alternative provision is safe and receiving the support and education they need to flourish. In fact, throughout my time focusing on this issue, I have come across multiple occasions where they are not.

More concerningly, as this report uncovers, in some instances unregistered alternative provision is being used to fill the gap of a lack of capacity of state-maintained schools or registered alternative provision. This report also discovered instances where unregistered alternative provision was being commissioned simply because it was the cheaper option.

It is our most vulnerable children who are more likely to end up in unregistered alternative provision. Some are in high-quality bespoke provision that is meeting the needs of the child, but there are also low-quality providers where children are not receiving a full education, may not even be fully safeguarded, and are hidden from view.

These are some of the most vulnerable people in our society, and they need all the support and protection that we can possibly give them.

It is time to bring these children back into view. The government urgently need to implement both a Children Not in School register and a new statutory registration framework for unregistered providers.

We should know where all our children are, whether they are in a mainstream school setting, home educated, in an independent school or in an unregistered school. For as long as we do not, we are failing our children.



**Lord Storey CBE**

Co-Chair, APPG on School Exclusions and Alternative Provision  
Liberal Democrat Lords Spokesperson on Education

# Executive Summary

All children should be educated in a setting that is visible, safe, suitable and delivering a quality education.

Across mainstream schooling and registered alternative provision, there are processes in place to check this is the case. The system may not be perfect, but we know where children are, how well they're doing and how good their schools are overall. The same cannot be said of children and young people in unregistered alternative provision (AP). This means there are an estimated 20,000 children and young people – often among the most vulnerable of their cohorts – studying in settings that we can't confidently say are meeting their needs. The very fact that we're working with an estimate underlines how little we know.

While the data landscape is incomplete, we know that the population served by unregistered AP is highly vulnerable. Pupils in unregistered provision are more likely to be looked-after, to have a special educational need or disability (SEND), to have an education, health and care plan (EHCP), or to be eligible for free school meals.

That is not to condemn unregistered alternative provision as a sector. There is no legal obligation to register, and as explained in chapter two, there are many rational reasons providers may choose not to. Under the existing system, education providers have a statutory obligation to register as a school only where they provide 18 plus hours of education to more than five pupils; a pupil with an EHCP or statement of special educational needs; or a pupil who is looked after by the local authority. The registration process is labour intensive for small settings serving a handful of pupils, and assesses provision against criteria established for traditional school settings, which is in many cases inappropriate for unregistered AP.

In lieu of registration, we are left with a patchwork system of oversight that both fails to guarantee full coverage whilst also subjecting providers to duplicative checks. Partial responsibility spans multiple organisations, making it difficult for any one body to take the lead. Where oversight mechanisms do exist, they are chaotic, sporadic and irregular.

To resolve this, we recommend the introduction of a new statutory registration framework, requiring unregistered education providers to share pupil and setting details. Local authorities would be responsible for collecting these details and these newly 'registered' AP settings would be designated Licensed Supplementary Education Providers, underlining that they are operating in accordance with the rules governing their sector and tackling stigma arising from confusion around the legality of unregistered AP.

In chapter three we consider the very basic requirements unregistered AP is subject to, arguing the existing framework is both too limited and too weak to guarantee minimum standards. While unregistered providers are legally required to comply with basic regulation relating primarily to buildings, insurance, health and safety, and fire protection standards, they are not required to adhere to safeguarding or child protection legislation. The rules that do exist are unenforceable, given that no one authority is responsible for systematically

regulating the sector. While mainstream and alternative provision schools are required to undertake inspections of the unregistered providers they commission, this is through the lens of their pupil's outcomes specifically, meaning the quality of the setting more broadly is not considered.

Many local authorities have taken it upon themselves to act as a quasi-regulator of the unregistered providers within their remit, often imposing higher standards than the legal minimum. While these arrangements have produced broadly positive results, they are dependent on the voluntary cooperation of providers, given local authorities' lack of statutory authority. The lack of a common framework means that local authority quality assurance does not guarantee a common standard universally, meaning local authorities only trust their own quality assurance processes.

To address this, we recommend giving local authorities statutory powers to enter and regulate unregistered alternative provision settings. Ofsted should oversee this process, mirroring the relationship between Ofsted and childminder agencies. Importantly, commissioning schools would retain responsibility for their own placements ensuring that the placement remains in the pupil's best interest and that progress is made towards the set objectives.

Chapter four turns to system improvement. While registration would create oversight and regulation would provide important assurances on safety and suitability, gauging and then raising quality across the sector requires more ambitious reform. Building out from a regulatory framework that ensures minimum standards, the next step is regulation that enshrines high quality education. To achieve this, we recommend introducing a performance framework that judges provider quality. This must recognise that unregistered alternative settings are not – and should not aspire to be – like mainstream schools. Inspectors should be trained in AP to ensure they are able to assess provision on its own terms, and not on the basis of standards applied to mainstream settings.

Establishing comprehensive oversight of the unregistered AP sector and instating enforceable standards will help commissioners make informed decisions about suitable placements, while giving parents and young people more confidence that commissioning decisions are being taken in the best interests of the pupil. Clarifying responsibilities will reduce duplication, while a new category of Licensed Supplementary Education Providers (LSEP) will tackle the misconception that unregistered AP is illegal.

Before getting into the substance of our analysis, though, we provide an overview of the unregistered alternative provision sector: what unregistered AP is, who it serves and what oversight looks like currently.



# Summary of recommendations

## A framework for registration:

- **Recommendation 1:** A new statutory registration framework should be implemented requiring unregistered education providers to share pupil and setting details.
- **Recommendation 2:** Local authorities should be responsible for collecting registration details of unregistered providers with their remit.
- **Recommendation 3:** Unregistered providers which register should be designated as 'Licensed Supplementary Education Providers' (LSEP).
- **Recommendation 4:** Schools and parents have a duty to notify local authorities when they commission an unregistered provider placement.
- **Recommendation 5:** The 'Children not in school' register should be implemented and include data on pupils who attend unregistered provision who are not also enrolled in a mainstream or registered alternative provision setting.
- **Recommendation 6:** DfE should conduct a review into the composition of the cohort of children who receive all their education from unregistered provision.
- **Recommendation 7:** Local authorities should publish a strategy for exposing illegal schools.

## A plan for regulation:

- **Recommendation 8:** Local authorities should be given statutory powers to enter and regulate unregistered alternative provision settings.
- **Recommendation 9:** Local authority alternative provision commissioning teams should be overseen and inspected by Ofsted.
- **Recommendation 10:** Schools should continue to monitor the progress of their placement.
- **Recommendation 11:** There should be a national framework for minimum standards specific to unregistered provision.
- **Recommendation 12:** Unregistered providers should be subject to Keeping children safe in education regulation that ensures safeguarding procedures grant greater protections for children.

### Driving system improvement:

- **Recommendation 13:** Local authorities should make resources available to unregistered settings to gain training in safeguarding, in line with the new regulation.
- **Recommendation 14:** Unregistered providers should be subject to a new national performance framework to inform quality assurance.
- **Recommendation 15:** The same proposed framework for minimum standards regulation should be used for the performance framework.
- **Recommendation 16:** Local authority inspectors of unregistered provision should be trained in AP.
- **Recommendation 17:** Commissioners should track and report on the outcomes of pupils in any alternative provision.

## chapter one:

# State of the Nation

## 1. An overview of unregistered alternative provision

### 1.1 What is alternative provision?

Alternative provision (AP) is defined by the government as educational provision “for children of compulsory school age who do not attend mainstream or special schools and who would not otherwise receive suitable education, for any reason.”<sup>1</sup>

The referral routes into AP can include permanent or fixed-term exclusion, off-site direction by a school, health referrals and temporary referrals when a child is awaiting a placement in a mainstream school.<sup>2</sup> AP can also be used to complement mainstream education. Often, in this instance, children are put on part-time timetables and remain on roll at their mainstream school while accessing AP.<sup>3</sup>

AP can take many different forms including pupil referral units (PRUs), AP academies, AP free schools, independent AP schools and unregistered provision.<sup>4</sup>

### 1.2 What is unregistered alternative provision?

Unregistered alternative provision settings are settings which are not registered as schools but provide some form of alternative provision.

Legally, a setting must register as a school if they provide full-time education for:

- 5 or more pupils of compulsory school age;<sup>5</sup>
- 1 or more pupils of compulsory school age with an education, health, and care plan (EHCP); or
- 1 or more pupils of compulsory school age who are looked after by the council.

There is no legal definition of what constitutes full-time education.<sup>6</sup> However, according to DfE guidance, an institution would not be regarded as offering full-time education if it operates for less than 18 hours per week.<sup>7</sup>

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1 Department for Education, *Creating opportunity for all*, 2018.

2 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

3 Integrated, *Annual Report*, 2021.

4 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

5 Between the ages of 5 to 16.

6 CPS, *Definition of full time basis and extending the registration to part-time*, 2019.

7 Department for Education, *Registration of independent schools: departmental guidance for proprietors and prospective proprietors of independent schools in England*, 2019.

Any setting which contravenes the legal requirement to register is an illegal school (sometimes also referred to as an unregistered school).<sup>8</sup> Ofsted has found a number of unregistered APs that have been identified as running as illegal schools.<sup>9</sup> While this report will touch upon illegal schools, the main focus will be on unregistered AP settings which are acting within the framework of the law by not registering.

As unregistered alternative providers do not register as schools, they are not subject to a comprehensive national register and do not come under a single national inspection framework.

### 1.2.1 Unregistered settings are not recorded on a national register

While the Secretary of State for Education has a register for all schools in England (both state-maintained and independent) there is no comparable register detailing the names and details of unregistered alternative providers.

There are, however, some ad-hoc registration systems in place at both a national and local level. Unregistered provision is not bound by any legal duty to register but they may decide to give their details to these registers on a voluntary basis.

Some APs voluntarily register. Throughout this report we nonetheless use the term “unregistered AP” to capture the fact that these settings are not compelled to register. Neither are they subject to national quality assurance or regulation.

Some providers have registered through the UK Register of Learning Providers, a register which compiles details of schools, colleges, and other training organisations. When an organisation registers through the UK Register of Learning Providers, they are assigned a unique identifier known as a UKPRN.<sup>10</sup> In the school census these providers are designated ‘Registered with a UKPRN’, indicating that while they do appear on a national register, they remain unregistered providers.<sup>11</sup>

Registering with a UKPRN is free and quick and is organised through the Education and Skills Funding Agency (ESFA).<sup>12</sup> When a provider signs up through the Register of Learning Providers, the ESFA verifies that they exist, but they do not provide any assurance of the quality of that provision.<sup>13</sup>

Registering with a UKPRN is not mandatory although it is a requirement for some education settings seeking to apply for certain types of government funding (such as funding for apprenticeships).<sup>14</sup>

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8 Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2020/21*, 2021.

9 Ibid.

10 UK Register of Learning Providers.

11 Department for Education, *School census 2022 to 2023 Business and technical specification, version 1.4*, 2023.

12 UK Register of Learning Providers registration page.

13 UK Register of Learning Providers FAQs

14 ESFA, *Subcontracting: using funding to offer education and training*, 2018.

Local authorities may also collect details of the providers they commission as part of their local AP offer.<sup>15</sup> Many local authorities publish local AP directories, however this is not the case universally. Even when these directories do exist, they may not provide a comprehensive picture of all the provision within a locality. In our research, local authorities detailed the difficulties they have in obtaining a full picture on the use of AP, with many saying they did not know what provision academies used in their area.

While unregistered AP may appear on the UK Register of Learning Providers and in local AP directories, there is no statutory duty that enforces registration. As such, there is no single register that provides a comprehensive, national picture of unregistered AP. This means there is no single figure for the total number of unregistered providers or the number of children in unregistered providers.

### 1.2.2 Unregistered settings are not subject to a national inspection regime

If a provider is registered as a school (such as a pupil referral unit, academy, free school, or independent school) they will fall under some form of inspection regime (typically Ofsted) meaning their AP offering is quality assured at a national level. Unregistered AP is, by definition, not subject to national regulation or a national inspection framework.

Ofsted does not have the power to systematically monitor or inspect unregistered alternative provision.<sup>16</sup> Unregistered AP settings may indirectly fall under the remit of Ofsted inspections, but the focus of these inspections is on the commissioning practices of schools and local authorities and the legality of provision.

Below we set out the ways in which unregistered AP may come into contact with national inspections and investigations. None of these interactions amount to a national inspection framework for unregistered AP quality.

#### a) Ofsted's inspection of school commissioning

When a school is inspected under the Education Inspection Framework, inspectors have a duty to evaluate how well a school undertakes its responsibilities for pupils who attend alternative or off-site provision.

Inspectors ask about the registration status of any AP used by a school and will typically visit a sample of unregistered alternative providers during their inspection. Inspectors also speak to a selection of pupils attending off-site provision.

The inspection guidelines make clear that a school should receive an inadequate rating for leadership and management if its use of AP is inappropriate or ineffective, if leaders do not know how many pupils are in AP or if leaders do not take full responsibility for children educated off-site.

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<sup>15</sup> FFT Education Datalab, *How many children are in unregistered alternative provision?*, 2022.

<sup>16</sup> Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2020/21*, 2021.

## b) Local Authority SEND Inspections

Both Ofsted and the Care Quality Commission (CQC) jointly conduct local authority area SEND Inspections. Until recently, the remit of this inspection has been largely focused on children with special educational needs and/or disabilities (SEND). The inspectorate would look at alternative provision only where children with SEND had been placed there by the local authority.<sup>17</sup>

However, from 2023 onwards, Ofsted has broadened the scope of the area SEND Inspections to cover all AP which is commissioned by the local authority.<sup>18</sup> The justification for this shift is that 80 per cent of children in AP have SEND and in many areas the commissioning strategies for AP and SEND are intertwined.<sup>19</sup>

Under this new framework, the Ofsted inspectorate and the CQC evaluate how local authorities commission and oversee the quality of alternative provision in their area.<sup>20</sup> As part of the inspection, local authorities share data on the settings and the number of pupils placed in AP by the local authority, a summary of the needs of young people in AP, records of intervention plans, and evidence of how the local authority monitors and quality assures alternative provision.<sup>21</sup> Ofsted and the CQC will also carry out sampling in one or more alternative provision settings in the area.

The new inspection framework gives Ofsted greater powers to look at the AP commissioned by local authorities, but the inspections are focused on the local authorities' role as a commissioner and quality assurer. Even under the proposed inspection framework, Ofsted would still not have powers to directly quality assure unregistered AP.

From 2023 onwards, the area SEND inspections have also consisted of a series of thematic visits, undertaken by Ofsted and CQC in each academic year. Each year, a particular aspect of the SEND system is investigated in depth and visits are conducted to a small number of local authorities. For 2023, the thematic area being investigated in depth is alternative provision.<sup>22</sup>

The purpose of these thematic visits is to inform and update future inspection processes. In the case of alternative provision, Ofsted will seek to understand how alternative providers meet needs, what good practice looks like, and what the barriers are to local area partners working together to commission and oversee alternative provision placements.<sup>23</sup> Once the findings have been analysed, they should inform Ofsted's approach to inspections of all types of AP, including unregistered AP.

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17 Ofsted and CQC, *The handbook for the inspection of local areas' effectiveness in identifying and meeting the needs of children and young people who have special educational needs and/or disabilities*, 2021.

18 Ofsted, *Ofsted strategy 2022–27*, 2022.

19 Schools Week, *Ofsted plans expansion of area SEND inspections to include all pupils in AP*, 2021.

20 Ofsted, *Area SEND inspections: framework and handbook*, 2023.

21 Ibid.

22 Ofsted, *Thematic reviews of alternative provision in local areas*, 2023.

23 Ibid.

### c) Ofsted's Unregistered School Taskforce

Ofsted's Unregistered Schools Taskforce was set up in January 2016 with powers to investigate and inspect suspected unregistered schools.<sup>24</sup> Ofsted defines an unregistered school as "an educational establishment that meets the legal definition of an independent (private) school but is not registered with the Department for Education".<sup>25</sup> Unregistered schools are illegal, while unregistered provision is legal.

If an unregistered provider matches the definition of a school, it is deemed an "illegal school". It is a criminal offence to operate an unregistered independent school in England.<sup>26</sup>

Since 2016, the Unregistered Schools Taskforce has investigated 1,036 settings suspected of being unregistered schools. In its 2021/22 annual report, Ofsted recalled instances of schools commissioning unregistered AP that was subsequently deemed to be operating illegally.<sup>27</sup>

## 2. Why is unregistered alternative provision used?

There is a dearth of data and information about the use of unregistered alternative provision.<sup>28</sup> As such, it's difficult to make informed judgements about the motivations behind the use of unregistered AP.

As with registered AP, unregistered AP is commissioned for pupils either at risk of exclusion or who have experienced an exclusion, or for children who, for whatever reason, do not have a place in the school system.<sup>29</sup>

Unregistered AP can take many different forms<sup>30</sup> and at its best provides a specialist, bespoke service which schools would not be able to provide themselves.<sup>31</sup> Where things are working well, schools and local authorities make strategic use of unregistered AP. Commissioners develop a detailed understanding of their children's needs and make strategic referrals to unregistered alternative providers well-equipped to meet these needs and to help the child re-engage with their education.<sup>32</sup> Small, flexible unregistered providers can address individual needs, and the DfE has testimonies from young adults who feel their life chances were transformed through attending non-school settings.<sup>33</sup>

However, unregistered AP is also used where it may not be in the best interest of the child. There have been instances of unregistered AP being used to compensate for a lack capacity in state-maintained schools, or because some unregistered APs are cheaper than AP school placements.

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24 Ofsted, *New data shows illegal schools are a huge nationwide problem*, 2019.

25 BBC, *Ofsted powers boosted to tackle illegal unregistered schools in England*, 2022.

26 Ofsted, *The Annual Report of His Majesty's Chief Inspector of Education, Children's Services and Skills 2021/22*, 2022.

27 Ofsted, *The Annual Report of His Majesty's Chief Inspector of Education, Children's Services and Skills 2021/22*, 2022.

28 Integrated, *Annual Report*, 2021.

29 Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.

30 House of Commons Education Committee, *Forgotten children: alternative provision and the scandal of ever increasing exclusions*, 2018.

31 Transforming lives for Good, *Forgotten children: alternative provision and the scandal of ever increasing exclusions*, 2022.

32 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

33 Department for Education, *Special Educational Needs and Disabilities (SEND) and Alternative Provision (AP) Improvement Plan*, 2023.

The SEND Review found that reliance on unregistered AP was a consequence of insufficient local planning and a lack of places in AP schools.<sup>34</sup> Ofsted has also recently said that unregistered AP is used to prop up the SEND system: children are being placed in unregistered AP settings on a temporary basis as they await an EHCP or a placement in a special school.<sup>35</sup>

Members of the House of Lords have also raised the alarm over the use of unregistered AP, especially when used because of its lower price.<sup>36</sup> The cost of unregistered alternative provision varies significantly from one provider to the next. An ISOS report on the use of alternative provision by local authorities found the average cost for an unregistered alternative provider was slightly higher than the cost of a place in a state-maintained AP school but less than the cost of a place at an independent AP school.<sup>37</sup> However, these averages mask a range of different price points.<sup>38</sup>

## 2.1 The reasons for the use of unregistered AP

The most recent data release from School Census and AP Census collections suggest the most common reason for the use of unregistered AP in January 2023 was behavioural support. The second most common reason recorded by schools was “other”, followed by “medical condition (mental health need)”.<sup>39</sup>

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34 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

35 Ofsted and CQC, *A new approach to area SEND inspections: consultation document*, 2022.

36 Hansard, *Education Funding*, 2019.

37 Isos Partnership, *Alternative provision market analysis*, 2018.

38 Hansard, *Education Funding*, 2019.

39 Department for Education, *Schools, pupils and their characteristics*, 2023.



Figure 1: Reasons for school arranged commissioning of unregistered provision.

	Total	Non-main-tained further education college	One on one tuition	Other un-registered provider	Registered provider with UKPRN	Work based placement
<b>Total</b>	12,084	336	2,568	6,449	1,871	860
<b>Medical condition (mental health need)</b>	2,300	21	861	971	362	85
<b>Medical condition (physical health need)</b>	207	1	91	69	44	2
<b>Off-site placement for behavioural support</b>	6,451	187	1,000	3,747	997	520
<b>Other</b>	3,069	124	596	1,641	458	250
<b>Permanent exclusion (where still going through the review process)</b>	33	2	10	12	7	2
<b>Suspension</b>	24	1	10	9	3	1

## 2.2 The route to unregistered AP

FFT Education Datalab analysis shows that 29 per cent of all pupils identified in local authority commissioned unregistered AP were also enrolled at a state-maintained school or registered alternative provision, which indicates they attend the unregistered AP part-time. 16 per cent were attending a mainstream school and 9 per cent were attending an AP school while receiving unregistered AP funded by the local authority.<sup>40</sup>

The vast majority (93 per cent) of all pupils in unregistered AP had attended a state-funded school at some stage in their education.<sup>41</sup>

FFT Education Datalab’s analysis also found that 16 per cent of pupils in local authority commissioned unregistered AP had been permanently excluded. Pupils in Year 11 were more likely to have experienced a school exclusion: more than 25 per cent of 15 year olds in unregistered AP had been permanently excluded.<sup>42</sup>

40 FFT Education Datalab, *How many children are in unregistered alternative provision?*, 2022.

41 Ibid.

42 Ibid.

Pupils in local authority commissioned unregistered AP were more likely than their peers to have been persistently and severely absent. A third of all children in unregistered AP had been persistently absent (meaning they had missed 10 per cent or more of possible sessions at school) and 1 in 5 children in unregistered AP had been severely absent (meaning they had missed 50 per cent or more of possible sessions at school).<sup>43</sup>

### 3. The use of unregistered alternative provision by different commissioners

There are different types of unregistered alternative providers . The figures we use include 'one on one tuition', 'work based placement', 'registered provider with UKPRN', 'non-maintained further education provider', and 'other unregistered provider'.<sup>44</sup>

The data collected on unregistered AP has historically been patchy. Information is collected through different commissioners, such as local authorities and schools, via the AP and School Census.

The AP census data concerns local authority commissioning and is collected from local authorities who must complete the AP Census each year. As of 2023, schools must also complete a data return on their use of unregistered AP via the School Census. However, parents who commission unregistered AP do not need to provide any information on their use.

#### 3.1 Number of pupil placements in unregistered AP

The existing census data provides an indication of the number of pupils in unregistered AP. The 2023 data release revealed that as of January 2023, 12,084 children were registered at state-maintained schools and also attending some form of unregistered AP. More than half of these pupils in school-arranged provision (6,449) were attending settings that were not included in any national registration system. One on one tuition was the second most popular placement type for schools, accounting for 2,568 pupils.<sup>45</sup>

Concerning local authority arranged provision, the AP census estimates that 8,311 pupils were commissioned by local authorities into unregistered providers. Of these, only 1,245 pupils were placed with providers registered with a UKPRN. The most common form of provision was 'one on one tuition' (3,541), followed by 'other unregistered provider' (2,557).<sup>46</sup>

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43 Ibid.

44 Department for Education, *School census 2022 to 2023 Business and technical specification, version 1.4*, 2023.

45 Department for Education, *Schools, pupils and their characteristics*, 2023.

46 Ibid.

## 3.2 Number of unregistered providers

As FFT Education Datalab have outlined, there is a lack of reliable, up-to-date data about the number of unregistered providers nationally.<sup>47</sup>

As many settings do not appear on a national register, it is therefore not possible to calculate the total number of unregistered AP settings in England using existing data sources.

The Department for Education similarly does not know how many unregistered alternative providers there are in England.<sup>48</sup> Estimates from the Department for Education in 2012 suggest that there are “several thousand [alternative] providers in England, possibly over 10,000”.<sup>49</sup>

## 4. Pupil characteristics

School and AP census data gives some indication to the composition of the pupil cohort in unregistered AP. What we know is further substantiated by existing analyses of available data that offers an insight into pupil trends.

### 4.1 Pupils placed in unregistered AP commissioned by local authorities

FFT Education Datalab have analysed a snapshot of unregistered AP figures from the 2021 AP Census, finding that use of unregistered AP peaks in Year 11. The same is true of state-maintained AP.<sup>50</sup>

The majority of pupils (60 per cent) placed in unregistered AP are between the ages of 15-18. Not all children in unregistered AP are of compulsory school age: according to AP Census figures, 38 per cent of young people in local authority commissioned AP were outside of the 5-16 school age range.<sup>51</sup>

Children in unregistered AP are more likely to have some form of SEN. The analysis from FFT Education Datalab found that 65 per cent of children in unregistered AP had an EHCP. Looking at primary SEN type shows that two types of need dominate among pupils in unregistered AP: social emotional and mental health needs and autistic spectrum disorder.<sup>52</sup>

A recent report from Ofsted also showed that children in unregistered AP are disproportionately likely to be a looked-after child. 1 in 10 of all children who are looked after are educated in unregistered settings.<sup>53</sup>

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47 FFT Education Datalab, *Nobody knows how big the unregistered alternative provision sector is*, 2019.

48 FFT Education Datalab, *Nobody knows how big the unregistered alternative provision sector is*, 2019.

49 Ibid.

50 FFT Education Datalab, *How many children are in unregistered alternative provision?*, 2022.

51 Ibid.

52 Ibid.

53 Ofsted, *The education of children living in children's homes*, 2021.

## 4.2 Pupils placed in unregistered AP commissioned by schools

School-arranged unregistered provision peaks in Year 10 and 11. Of the 12,084 pupils commissioned by schools into unregistered AP, over a third (4,325 pupils) were aged 15. A further quarter (2,972) were aged 14.<sup>54</sup>

67 per cent of pupils in school-arranged unregistered AP are male, compared to 60 per cent in school-arranged registered AP.<sup>55</sup>

As with local authority arranged provision, pupils with SEN are overrepresented. 39 per cent of pupils had some form of SEN support, and a further 30 per cent had an EHCP. In school-arranged registered AP, 46 per cent had some form of SEN support, but only 10 per cent had an EHCP.<sup>56</sup>

These pupils are also disproportionately disadvantaged, with 53 per cent being eligible for free school meals. This is consistent with trends in registered AP, where 54 per cent of pupils are eligible for free school meals.<sup>57</sup>

## 4.3 Pupils placed in unregistered AP commissioned by home educating parents

The AP and School census only capture information regarding school and local authority commissioning patterns. This means that information about provision commissioned directly by parents is unavailable.

Ofsted has welcomed and continued to call for the implementation of the government's plans to introduce local authority registers of children who are not in school, including home educated children and children in unregistered alternative provision.<sup>58</sup> Currently though, without a route to capture information on these pupils, insights into the composition of the cohort remain out of reach.

# 5. The case for change

The rest of this report outlines the case for change. Despite the incomplete data picture described above, it is clear that some of our most vulnerable children end up being placed in unregistered alternative provision and that oversight of this provision is limited at best. Some of this provision is high-quality and tailored to the needs of the child. Some of it is not, meaning children are being denied access to an education that allows them to fulfil their potential.

This report addresses three key themes which explain the challenges in the unregistered AP sector and provide a basis for practical, effective change.

The next chapter looks at the registration framework for unregistered AP, assessing the

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54 Department for Education, *Schools, pupils and their characteristics*, 2023.

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2020/21*, 2021.

different mechanisms through which oversight is achieved. The third chapter addresses the regulatory framework, analysing how regulation should be used to create assurances of the safety and suitability of unregistered AP. The final chapter outline reforms to improve the quality of unregistered AP and create a system of continuous improvement which improves the life chances of children educated in these settings.

Our report is a product of interviews and discussions with AP leaders, unregistered provider leaders, local authorities, and local area education consultants.

From these discussions it is clear that the current system is not working. Greater oversight is needed to ensure this cohort of often vulnerable children is getting the quality of education they deserve. This report makes the case for a light-touch registration system and then outlines a new system of unregistered AP quality assurance and improvement.

## chapter two:

# Registration

## 1. Issues with the existing registration framework

Unregistered provision is not subject to a national registration framework. This presents immediate issues for the sector as it drastically limits the oversight that local bodies and education authorities have of the settings and pupils within it.

Pupils with complex and additional needs are overrepresented among those attending unregistered provision, which makes the lack of oversight an even more salient issue. Hidden from view, these vulnerable pupils are at increased risk of falling through the cracks in the education system. A functioning registration framework for unregistered providers is the first step in bringing these pupils back into view, to understanding their needs and ensuring that the education they receive serves their best interests.

There are two broad issues with the existing school registration framework. Firstly, and most importantly, the risks to pupils in provision that is unregistered, given the absence of effective alternatives for ensuring oversight. But also secondly, the incompatibility between the registration process for school status and the setup of unregistered provision that is currently forcing such providers to sit outside the system.

The first section will set out the barriers to unregistered providers becoming registered and will explore the lack of oversight for providers that remain unregistered. The second and third sections outlines the registration framework that we would like to achieve, including what should be avoided to maximise the benefits of registration.

### 1.1 The barriers to registration: The school registration framework expects settings to behave like schools

The registration framework for independent and state-maintained schools does not extend to the unregistered AP sector.

Under the existing system, education providers have a statutory obligation to register as a school when a provider offers full-time education (minimum 18 hours/week) to:

- more than five pupils;
- or, a pupil with an EHC plan or statement of special educational needs;
- or, a pupil who is looked after by the local authority.

If an education setting does not meet these criteria, it does not need to register as a school. In unregistered alternative provision, it is common for pupils to receive less than 18 hours of

contact time per week. As a result, providers can easily operate without being required to register. Unlike schools, many unregistered settings don't want to offer a full-time provision, as their interventions are most effective when delivered over a couple of four-to-five-hour sessions per week – falling far below the 18-hour limit.

This registration framework is ill-suited to unregistered providers because it was designed for prospective schools. There is no registration framework that was designed with unregistered providers in mind.

Clearly, unregistered providers are not schools. Nor should they need to be. The distinction is reflected in their day-to-day activities, their capacity, their ethos, and their mission; some or all of which may be very different to that of a school.

The school registration framework is not flexible enough to accommodate the differences between unregistered providers and schools or school-like settings. Unregistered providers are often not like schools, nor are they always like each other. Many of the advantages of unregistered alternative education derive from flexibility, variety, and innovative education methods – characteristics which the registration framework does not account for. Meeting the requirements of the school registration framework as it stands would result in many of these benefits being lost.

There are two key areas in which the mismatch between the current school registration framework and the unregistered sector creates barriers to unregistered providers registering. In each area, complications arise because the framework demands school standards from registered providers. This section explores each area in detail.

### 1.1.1 The registration framework, and the process for registering, presume school-like capacity

When a setting wants to register, that provider must follow the registration process for independent schools, as outlined by the DfE.<sup>59</sup> The provider must also conform to the Independent School Standards and independent school inspections as part of the registration framework<sup>60</sup>. However, both the registration process and the inspection framework were designed for prospective schools, and consequently do not account for the significantly smaller administrative and resource capacities which are typical of unregistered settings.

The current process requires the prospective school to complete an application form, alongside 12 supporting documents outlining the school's policies and procedures, and curriculum plans for every year group the setting teaches<sup>61</sup>. The DfE then takes six months to process and approve the application from receipt of the completed documentation.<sup>62</sup>

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59 Department for Education, *Registration of independent schools*, 2019.

60 Department for Education, *The Independent School Standards*, 2019.

61 Department for Education, *Register an independent school: application guidance and checklist*, 2022.

62 Department for Education, *Registration of independent schools*, 2019.

The lengthy, intensive registration process deters potential applicants. In discussion with the CSJ, unregistered providers described the process for registering as an independent school as too arduous to initiate. Completing the form and providing the necessary evidence is time consuming. Furthermore, preparing for, delivering and following-up on the visits necessitated by the registration process are labour intensive.

For many unregistered settings, this process demands a significant amount of their operational capacity. Many are small organisations operating on limited budgets and staff cohorts. As local authorities have testified, committing to such an arduous process is logistically infeasible. This is hardly surprising, given that they may have five or fewer pupils, yet are required to go through the same process as a school which might support 2,000 pupils.

The standards required by the inspection framework also fail to account for the limited resources many unregistered providers have access to. Unregistered settings have said that to conform with the framework they would have to invest a considerable degree of capacity and resources in facilities that have little bearing on the educational offer. For example, one unregistered setting told us they were prevented from registering because the building did not meet the independent school framework's standards – specifically, there were no girls and boys changing rooms or showers for PE classes.<sup>63</sup> Given PE is not on their curriculum, and they rarely host pupils attending more than one day a week, these facilities are irrelevant to their offer. From their perspective, meeting the registration requirements would constitute a very expensive box-checking exercise.

In this respect, both the process of registering and the requirements of registration require resources that, while acceptable from the perspective of a prospective independent school, would overburden many unregistered APs.

### 1.1.2 The registration framework presumes a school-like education offer

For many unregistered providers, the standards expected by the school registration framework are not relevant to their educational offer.

Some settings have said it would be impossible for them register while preserving what makes their provision effective. Faced with the choice of compromising their ethos or remaining unregistered, settings tend to the latter.

One provider for example provides peripatetic support, helping to reach children and young people who are struggling to attend school. The current framework offers no possible routes for peripatetic providers to register. As a result – and despite their willingness – they are incapable of registering without operating instead from a school-like, permanent setting. The provider told us that to do so would undermine the efficacy of their provision.

Similarly, local authorities have relayed cases where unregistered settings which specialise in vocational training have been told by Ofsted that to be considered for registration they are required to offer a full curriculum – including subjects such as the humanities. This would be counterproductive, given they provide education to pupils who have not had their needs met by the conventional school system. Implementing a traditional curriculum would therefore be contrary to their founding principles.

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63 UK Legislation, *The Education (Independent School Standards) Regulations 2014*, 2014.



In such cases, qualifying for registration would require changes that inhibit providers' ability to deliver the specific interventions that have proven effective. It is often precisely *because* these settings are not the same as schools that they manage to meet the specific needs of the vulnerable cohorts that depend on them.

Unfortunately, the only registration system that exists is one that demands settings become like schools. As a result, some settings now associate the idea of registration with becoming a school, and treat it with the same aversion. One setting was highly suspicious of sharing details on a national register, as they assumed that doing so would require fundamental changes to the content of their education offer.

## 1.2 The lack of oversight: Without a national register the unregistered sector is hidden from view

Due to the barriers to becoming registered, many providers choose to remain unregistered. The result is a critical shortfall of oversight. This means that for a significant proportion of a pupil's educational timetable, the quality of their educational experience is largely unknown.

Given the barriers to oversight in the sector, local authorities are particularly concerned for pupils who spend long periods in unregistered AP each week. Including those providers who take the opportunity to maximise the freedoms afforded to them by the complacent restrictions on the operating hours. Local authorities are aware of providers who intentionally operate just under the hourly limits of the registration threshold, as they aim to constitute the mainstay of the pupil's education. One local authority expressed how it encouraged a setting which was teaching pupils for 17 hours 50 minutes a week to register, but given the local authority has no formal powers to enforce registration the setting continued to operate as usual.

The 18-hour limit may be taken advantage of in other ways as well. As explained above, local authorities are aware of pupils dividing their time between multiple unregistered providers, resulting in a patchwork of provision. This arrangement is possible because the 18-hour a week limit for each unregistered setting is not met. These pupils are effectively attending unregistered providers full-time, leaving oversight alarmingly limited. Both local authorities and the DfE recognise this as a concern.<sup>64</sup>

In the absence of a national register, oversight of the unregistered sector currently relies on alternative approaches. However, the attempts to provide oversight are beset with issues. This section explores the issues with current efforts to gain comprehensive oversight of the sector.

### 1.2.1 Chaotic mechanisms of oversight

There are numerous means of referral into the unregistered system. This, alongside the piecemeal procedures that are undertaken in the form of ad-hoc registers and sporadic inspections, fail to yield comprehensive oversight.

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64 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

In the existing arrangement, oversight is the collective responsibility of the commissioning school, Ofsted, and the local authority. In practice this has resulted in a system where each stakeholder is left with a partial view of unregistered AP, with no body capable of comprehensive oversight of the sector. The limitations faced by each body will be explored in detail:

#### **a) The school**

According to the DfE's 'Alternative Provision' guidance<sup>65</sup> the placement is the responsibility of the commissioner. As such, schools must maintain a working relationship with the provider and monitor the progress of the pupil to ensure the placement is appropriate. In practice, this means schools may conduct either remote or in-person checks of the unregistered setting.

However, while this arrangement ensures that an individual school is satisfied with its oversight of the pupils on its school roll, this does not equate to oversight of the sector. Schools only need assurances on their pupil, and so do not share details with other schools or the local authority, or collect information on local authority commissioned AP. This means there is no pooled database of pupil rolls in unregistered provision.

Furthermore, unregistered providers have faced challenges relating to school inspections of their settings. While provider leaders have welcomed Ofsted's emphasis on the importance of schools taking more responsibility for their pupils, some providers find repeated checks from commissioners to be an increasingly unmanageable burden. One provider explained how 22 different schools collect information from the setting, and they therefore struggle to cope with the increasing demands for paperwork, particularly as they don't have the resources for an admin team.

#### **b) Ofsted**

Ofsted itself similarly fails to provide proper oversight of the sector. As outlined above, when Ofsted conducts a routine school inspection, Ofsted also performs inspections of a sample of the alternative providers commissioned by that school.

These inspections grant Ofsted a limited presence in unregistered AP, however these are ad-hoc, sporadic assessments through the lens of individual pupils. The data gathered in these inspections does not contribute to a comprehensive database on settings and pupil data comparable to that of school settings.

The requirement to select only a sample of the alternative providers commissioned by the school for inspection also means that most of Ofsted's oversight of providers is limited and it is therefore possible for pupils to be at a setting for a long period without that setting receiving an inspection.

Most concerningly, the existing inspection framework means that Ofsted sees unregistered settings solely through the prism of commissioning schools, meaning they do not engage with settings that take commissions of pupils not on a school roll – for example, from home-educating parents. This is the primary issue with depending on Ofsted to provide oversight; the focus revolves around the commissioner's use of unregistered providers, rather than the settings themselves.

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<sup>65</sup> Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.

This particular issue has been partly addressed by the introduction of the Ofsted's area SEND inspections in January 2023. These inspections acknowledge the role of the local authority in commissioning AP, including unregistered AP, and consider whether the local authority practice is lawful and appropriate to children and young people's needs.<sup>66</sup> However, Ofsted similarly only samples a selection of local authority commissioned APs, rather than conducting systematic checks of every setting. In addition, area SEND inspections may only take place once every five years.<sup>67</sup> Ultimately, they are not designed to build an ongoing or comprehensive picture of the sector.

### c) Voluntary national registration systems

Another mechanism for oversight of the sector is a national registration system. Many unregistered providers already make use of voluntary national registration frameworks such as the UK Register of Learning Providers (UKRLP).<sup>68</sup> This acts as a database of different types of learning providers, including further education colleges, charities, and unregistered providers, collecting educational information such as institution profiles and reports, and contact details, in one central register.

The UKRLP framework was created to enable learning providers to request services or funding from education-sector bodies, such as the Education and Skills Funding Agency and the Learning Records Service.<sup>69</sup> It was not designed to act as a comprehensive register of pupils on-roll at unregistered settings.

The registration system is voluntary, and so does not achieve full coverage. Local authority leaders have expressed concern about the pupils in providers that evade oversight. This voluntary registration system has no power to bring these settings into view.

In addition, the register does not require settings to submit information on pupils attending the setting. It fails therefore to grant oversight of pupil movement into and out of the setting and gives no indication of the characteristics of the pupil cohort. Furthermore, the UKRLP does not quality assure or accredit the learning provision of the registered providers in any way.<sup>70</sup>

For these reasons, the UKLRP cannot be relied upon as an effective mechanism for ensuring oversight. This is not what it was intended for.

### d) Local authorities

In many cases, local authorities have taken it upon themselves to provide local oversight of the unregistered AP sector. However, of the local authority leads we spoke to, not one was confident they knew the number of unregistered settings which operated within their remit, nor the number of children or young people who attend these settings.

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<sup>66</sup> Ofsted and CQC, *Area SEND inspections: framework and handbook*, 2023.

<sup>67</sup> Ibid.

<sup>68</sup> UK Register of Learning Providers.

<sup>69</sup> UK Register of Learning Providers FAQs.

<sup>70</sup> UK Register of Learning Providers.

This is not to say they're not trying. Many local authorities have devised their own procedures to establish as much oversight as possible. Some local authorities have positioned themselves as the intermediary through which schools come to for direction when they need to commission an AP placement. Others have established multi-agency local placement panels which bring together schools, unregistered settings, and state-maintained APs to discuss the best option for a proposed placement.

This engagement with the unregistered sector allows local authorities to establish informal oversight of placements. However, the lack of national registration still presents challenges. One local authority described how it is comfortable with its own procedures, but complications arise when a child takes a placement in a neighbouring local authority, as there is no data-sharing capacity between local authorities.

The most significant challenges however arise when schools or parents commission unregistered providers directly. While the school must inform Ofsted of their AP placements when Ofsted conducts a school inspection, they are not required to tell the local authority. In these cases the local authority may therefore be unaware of the placement. For this reason, direct commissioning is a prominent concern for local authorities that want to retain oversight of all the pupils in their remit.

Concerns are particularly acute when schools commission a combination of part-time unregistered provision from different providers, creating a full-time education package. Local authorities have said they are aware of pupils attending unregistered providers full-time in this way. When schools commission this provision directly, the local authority may lose sight of a child's total educational offer. When it is home educating families that commission unregistered settings, these pupils may not be subject to any kind of oversight, indirectly from Ofsted or otherwise. Parents are not required to notify the local authority when they commission an unregistered provider, and while the provider may appear on a voluntary register, this is not mandated. If no pupils on a school roll attend the setting, then similarly, there is no reason why any school and by extension Ofsted would be aware of its existence. The Education Select Committee and Ofsted have both previously raised concerns over the existence of such settings.<sup>71,72</sup>

While local authorities hold registers of home educated pupils, local authorities accept that these registers are incomplete.<sup>73</sup> This means local authorities have no oversight of either the pupil, or the provision being commissioned. Visibility of pupils that attend these settings is very limited.

### 1.3 Summary of current issues

The existing registration framework is designed for mainstream school settings. Requiring unregistered providers to conform to the same standards fails to recognise the fundamental differences between the types of education provision, and acts as a barrier to these settings becoming nationally registered.

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71 House of Commons Education Committee, *Strengthening Home Education*, 2021-22.

72 Ofsted, *Father and daughter sentenced for running illegal school*, 2021.

73 Centre for Social Justice, *Out of Sight and Out of Mind*, 2022.

The mechanisms for oversight of unregistered settings that do not register are ineffective. Neither schools, Ofsted, nor local authorities can be confident in their oversight of the operations of all unregistered settings in their areas, nor the pupils within them. This poses huge questions about where many vulnerable pupils are receiving their education.

Until the registration system accounts for the substantive differences between unregistered providers and other school-like settings, the pupils within these settings are denied the protections that a register would afford them. The registration process and framework need to be restructured to bring oversight to the sector.

## 2. What we want to achieve

### 2.1 A register that guarantees oversight of pupils

As set out above, unregistered providers operate without appearing on an official register. There is no comprehensive record of unregistered providers operating in England, and no record of the pupils who attend these settings.

This creates a serious problem of oversight. As the SEND and AP Review pointed out, poor oversight in unregistered provision puts the educational attainment and safety of children and young people at risk.<sup>74</sup> This is particularly pertinent given unregistered alternative provision is disproportionately used by pupils with SEND, SEMH needs, and pupils known to social services, leaving some of the most vulnerable children and young people unprotected.

Furthermore, a lack of oversight means identifying trends in pupils' educational journeys and experiences is near impossible, making it difficult for policy makers to assess what changes are needed and whether they work. Knowing where pupils are, who is educating them and the quality of education they are receiving is essential to help them overcome the challenges that many of them face.

Registering would remedy the issues which stem from poor oversight. Records collected on pupils and on settings, in line with those collected for pupils in school settings, would protect children and young people more effectively. It would enable education authorities to gain a more concrete understanding of the national and local education offer, helping to strategize for the future.

This section of the report will outline the benefits that an effective registration system can offer.

#### 2.1.1 Registration provides oversight of children and young people in education

If authorities cannot identify where a pupil is during school hours, it cannot be guaranteed they are even attending an education setting.

A register which collects admissions data for unregistered providers would identify where these pupils are receiving their education. This register would serve as a national database, collecting data regularly on pupil placements from all unregistered providers.

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<sup>74</sup> Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

The importance of oversight is recognised by local bodies, which is why there are so many ad-hoc registers to gather information on pupil placements. The problem is that – as is set out above – these processes provide inadequate visibility of pupils. The introduction of a national register would resolve these issues by relieving the dependency on this piecemeal system and replacing it with a standardised database of information.

A statutory national register would require all settings to register their pupil enrolments, ensuring total coverage. This compares to the current arrangement, where there is no guarantee either settings or pupils will appear on a register. The DfE underlined this in the SEND and AP Review, raising specific concern for pupils who attend unregistered provision full-time in a combination of part-time placements. For such pupils, “no single local body is responsible for ensuring that children and young people are attending full-time education”<sup>75</sup> Comprehensive data collection would give schools, local authorities and Ofsted confidence that all pupils are attending provisions across the week.

Gaining oversight of where pupils are accessing education is all the more important because of the nature of the unregistered provision cohort. It has already been set out that quantitative estimates indicate the unregistered cohort is overwhelmingly comprised of vulnerable children and young people. This is supported by qualitative research. Local authorities and unregistered providers alike have emphasised the high number of pupils with additional vulnerabilities who attend their settings. Some providers told us that most of their pupils have an EHCP, while others told us the majority of their pupils were known to social services, or were looked after children.

For these pupils more than most, establishing where they access education is vital. These cohorts are more susceptible to lower attendance, attainment, and outcomes, so it is important they are properly supported throughout their educational journey. Confirming where these pupils receive their education is the essential starting point in understanding whether the placement is serving their best interest.

Although on its own this says nothing about the conditions of the setting, whether minimum standards are met, or the quality of programme delivery, it is the foundation from which such assurances can eventually be provided.

### 2.1.2 Registration informs national policymaking

A register which collects details on pupils’ characteristics, including additional vulnerabilities such as any SEND, SEMH concerns, or social services involvement, would help to establish the educational needs of the cohort and thus provide an important guide for future policy. Strengthening our understanding of the cohort is particularly important given what is known about the composition of the cohort already. Such a register would also allow for the disaggregation of cohorts within unregistered provision. As has been set out, some pupils receive all their education from unregistered provision, while others attend part time, receiving the rest of their education in the school they are on roll at. There may be substantive differences between these cohorts, in terms of their characteristics and needs. Many of those that are in unregistered provision full-time do not appear on any school roll given they are commissioned by parents, and if they do appear anywhere it will be a non-statutory roll held by the local authority.

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75 Department for Education, *SEND Review: Right Support Right Place Right Time*, 2022.

Their outcomes are unclear, and often this particularly vulnerable subsection of the unregistered cohort is the one that is least visible.

A national register should also collect details on the unregistered settings themselves. Records of numbers, types, and the distribution of the unregistered settings across the country highlights regional trends and imbalances, demystifying the sector. This would act as a guide to policymakers for what is missing from the maintained sector.

Both local authority leads and setting leaders told us that unregistered providers often set up in response to community need, having identified demand for a service which the state sector is failing to address. In some instances, this means providing SEND support for children with complex needs, in others providing vocational training for young people who have fallen out of the traditional schooling system. While the state sector should be meeting this need, there is not always enough support in the mainstream system to reach all young people. One local authority explained that there is only one pupil referral unit across the local authority, and so unregistered providers have set up to fill the gaps in the education offer.

A centralised record of the type and distribution of unregistered settings would lead to greater transparency and could be used by policymakers to assess the types of provision for which demand is going unmet in the state sector.

The high numbers of vulnerable pupils in unregistered settings likewise reflects likely shortcomings in the state-maintained sector. Local authority leads told us that the rise in unregistered provision placements in recent years has resulted from mainstream schools failing to meet pupil needs. In one local authority, for example, there are no more special school places available; there is an 18-month waiting list for CAMHS, and mainstreams cannot cope with the increasing numbers of pupils with SEND. The result has been a spillover into alternative provision and unregistered provision.

A detailed understanding of the cohort attending unregistered provision would therefore serve as an indicator of those who have first been unable to access proper support in mainstream education.

Ultimately, a register collecting pupil and setting details would deepen policymakers' understanding of both unregistered provision and the wider education offer, informing more appropriate, better targeted interventions across the system. A clear understanding of need is the first step in ensuring we meet this need.

### 2.1.3 Registration informs the local offer

Access to a comprehensive dataset on pupil details and characteristics could also help local authorities to understand the strengths and weaknesses of the local offer, and respond accordingly. As outlined above, the make-up of the unregistered provision cohort is often a reflection of those who have failed to prosper in the mainstream sector. The better local authorities understand the needs of the cohort attending unregistered settings in their remit, the more effectively they can meet this need. This may include making schools more accountable – particularly when it comes to their upstreaming procedures and SEN and SEMH support.

The oversight afforded by a register would also help local authorities to monitor pupil movement. The obligation on settings to share pupil enrolment lists with the local authority would ensure that pupils' journeys could be straightforwardly tracked through the system. This would make it easier to identify and address malpractice, and by extension hold commissioners to account.

On this point, one unregistered setting expressed scepticism that the best interests of pupils are considered when placements are made into its provision. They often receive an influx of permanently excluded pupils leading up to January exams, suggesting schools are off-rolling pupils to boost their performance. The issue has magnified recently, after they received nine permanently excluded pupils in 2022, compared to an average of one or two per year. Local authorities have similarly raised concerns about schools' use of unregistered providers, with one local authority describing how a school asked for a three-year placement for one of its Year 9 pupils.

Such cases raise questions about how the system is being used, or abused, to serve the agendas of schools instead of pupils. Serving the best interests of pupils should come first, and registration would facilitate a clearer picture of pupil movement, exposing off-rolling trends.

#### 2.1.4 Registration helps to tackle illegal settings

Registration would also help to resolve the issue of illegal schools. Between January 2016 and March 2023, Ofsted received 1,140 referrals to the Illegal Schools Taskforce. Across the same period, 534 settings were inspected and 146 were issued with warning notices, resulting in the eventual closure of 22 settings.<sup>76</sup>

However, the process of identifying and closing illegal schools is not simple. Even when Ofsted identifies an illegal school this may not result in the immediate closure of that setting. A 2022 Schools Week investigation found that often illegal schools ignore closure orders – in one case, a south London illegal school remained open 6 months after the proprietors were convicted for the offense.<sup>77</sup>

Despite government guidance<sup>78</sup> impressing upon local authorities their responsibility in tackling illegal schools, the burden for identifying and closing illegal schools still largely lies with Ofsted. This is because, unlike local authorities, Ofsted has powers of entry into unregistered providers. This is why of the 1,026 referrals, 534 were made by Ofsted themselves, while only 169 of these referrals were made by local authorities.<sup>79</sup>

However, with the introduction of a register the local authority could play a stronger role in tackling illegal schools. Consistent oversight of settings and pupils would make it far harder for providers flouting the rules to continue to operate unchallenged. Local authorities could therefore assist Ofsted in ensuring illegal settings close permanently.

As well as helping in the process of closing the schools, a register would help to identify settings which operate illegally. Local authorities would be able to notify Ofsted of providers that they are aware of but who refuse to register or share information, enabling Ofsted to

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<sup>76</sup> Ofsted, *Unregistered schools management information*, 2023.

<sup>77</sup> Schools Week, *DfE to get new suspension powers for 'unsafe' private schools*, 2022.

<sup>78</sup> Department for Education, *Unregistered independent schools and out of school settings*, 2018.

<sup>79</sup> Ofsted, *Unregistered schools management information*, 2023.



take the appropriate action. In this regard, registration both makes it easier to flush out illegal schools and alleviates the burden on Ofsted by giving local authorities a more active role in policing their area.

## 3. What we want to avoid

To ensure a registration framework is implemented effectively, there are a number of considerations that should be kept in mind.

### 3.1 Registration must not be too burdensome

The framework should not be so burdensome as to trigger an exodus of providers from the sector.

Unregistered providers have relayed struggling with excessive inspections, often from multiple local authorities and schools, which divert their attention from programme delivery to administrative tasks, and the introduction of a national registration system should not add to this.

Accordingly, while many unregistered providers told us they would welcome the introduction of a national register, they were clear that the process of registering must not be excessively onerous. As has been stated, numerous providers already subscribe to ad-hoc registration systems such as the UKPRN system, and a national register should take lessons from these systems.

### 3.2 Registration must not be too demanding

Similarly, the register should not be prescriptive about how programmes are delivered in unregistered providers. The new register should not require fundamental changes to the way effective settings are run, as is the case for some settings wanting to register under the current system.

Unregistered providers set up to deliver alternative and often creative education methods to meet complex needs. They are able to do so because of the freedom afforded them. A register which dictates how programmes are delivered could therefore dissuade new market entrants and drive good providers from the market, harming the education offer as a whole.

A light touch register which is neither demanding nor burdensome would still fulfil the core objective of providing sector oversight. The information collected must be accurate and comprehensive, but the process of registering and submitting data need not be time or resource intensive. Voluntary local authority registers prove that providers have the capacity to provide these details.

## 4. Recommendations

### **Recommendation 1: A new statutory registration framework should be implemented requiring unregistered education providers to share pupil and setting details.**

#### **Rationale:**

To guarantee oversight of the unregistered provider sector, a statutory national registration framework should be introduced which collects data on pupils and settings.

This system would replace the existing disjointed methods of data collection with a comprehensive mechanism for oversight. Every setting would be obliged to appear on this register, making certain that all pupils attending unregistered providers are visible, regardless of whether they are referred by schools, local authorities, or parents.

While the register should be thorough in its data collection, it should not be so burdensome as to force good practice from the sector. To reconcile these considerations, the registration framework should be 'light touch', accounting for the limited staffing and resource capacity of unregistered providers.

The national register should oblige unregistered provisions to provide:

- Pupil data:
  - Numbers on roll
  - Details – names, age, commissioner (school/ local authority/ parent), parent/ guardian details, previous education details, exclusion record, hours attending the setting per week.
  - Pupil characteristics – social services involvement, SEN, SEMH, behavioural
- Setting data:
  - Details – staff details, address (may not be applicable if peripatetic), contact details, health and safety accreditation, risk assessments, fire safety assessment, pupil capacity, insurance details.
  - Programme details – overview of offer including length, delivery area, admissions criteria, price.
  - Any quality assurance **\*\*NOT statutory\*\*** – if applicable include details of any QA and safeguarding accreditation schemes
  - May include Ofsted, LA inspections, other notable validators.

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**Recommendation 2: Local authorities should be responsible for collecting the registration details of unregistered providers with their remit.**

**Rationale:**

Local authorities are best placed to collect this information. Many already produce non-statutory local registers, and this would formalise these responsibilities. To ensure that local authorities undertake these responsibilities effectively, central government should equip local teams with sufficient resources and capacity to do so. Local authorities that already produce locally held registers should be consulted on what resources would be appropriate to carry out this duty.

To ensure ongoing accuracy, pupil data should be collected on a termly basis. The data should also be submitted to the Department for Education for analysis by national policymakers, to inform future interventions in the sector.

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**Recommendation 3: Unregistered providers which register should be designated as 'Licensed Supplementary Education Providers' (LSEP).**

**Rationale:**

Clearly distinguishing LSEPs from settings that do not register would indicate their openness to oversight and accountability, and distinguish them clearly from illegal settings. This would help to address the unwarranted stigma that unregistered providers are currently subject to. This distinction also assists in tackling the illegal schools issue, as settings which fail to register become easier to identify.

At the same time, stipulating the difference between LSEPs and schools signals the substantive differences between the settings. This is an indicator of the differing objectives, cohorts, and obligations between them.

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**Recommendation 4: Schools and parents have a duty to notify local authorities when they commission an unregistered provider placement.**

**Rationale:**

The local authority should be able to capture information at every point in the system so that the register truly constitutes a comprehensive record of all pupils and settings in the sector. To achieve this, every pupil entering unregistered provision must be referred to the local authority at the point of referral. The commissioner, be it parent or school, must share all relevant details of the pupil and the nature of the placement.

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**Recommendation 5: The 'Children not in school' register should be implemented and include data on pupils who attend unregistered provision commissioned by a parent.**

**Rationale:**

This register would place a duty on local authorities to maintain a register of children who are not in school.

This should act as an additional referral mechanism to the local authority to unearth pupils that do not appear on school rolls, but receive part or all of their education from unregistered providers. The data could be used by the local authority to identify providers who are operating otherwise unbeknownst to education authorities.

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**Recommendation 6: DfE should conduct a review into the composition of the cohort of children who receive all their education from unregistered providers.**

**Rationale:**

The unregistered cohort includes a particular subsection of pupils who are referred by parents or local authorities, who do not appear on school rolls, and who may be attending unregistered provisions full-time. Visibility of these pupils is particularly limited, so the DfE should prioritise gaining an understanding of this cohort. This information should allow a comparison between pupils attending provision full-time and part-time.

The review should seek to uncover short and long-term educational outcomes of pupils, length of time in this type of system, and the purpose of these placements, with a view to ensure that the local authorities which oversee these placements are held accountable for the experience of the pupils within these settings.

The DfE should consider whether such pupils would benefit from appearing on a school roll, and how Ofsted should engage in oversight of such pupils. Having multi-agency interest in these pupils would help to hold local authorities to account and serve the interest of pupils.

DfE should consult on whether creating a separate new role within local authorities to lead on the oversight of unregistered alternative provision within that local authority would be effective. Using data analysis to discern the numbers of and outcomes of pupils who receive all their education from a patchwork of unregistered provision will inform whether it is needed to create a new separate role to oversee this cohort.

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**Recommendation 7: Local authorities should publish a strategy for exposing illegal schools.**

**Rationale:**

The introduction of a register would make it easier for local authorities and Ofsted to tackle the illegal schools issue, as a register makes it more difficult for these settings to hide.

To ensure that local authorities can effectively assist the Illegal Schools Taskforce in their duties, they should publish a strategy for unearthing these settings. The strategy should include procedures for notifying the Illegal Schools Taskforce of providers that refuse to register, or those who are less cooperative with sharing information. The Children not in school register and existing referrals methods of illegal schools should facilitate this strategy.

The quality of the strategy should be judged by Ofsted as part of the area SEND inspection framework.

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## chapter three:

# Regulation

### 1. Issues with the existing regulatory framework

Unregistered provision is not subject to a comprehensive regulatory framework. There is no statutory inspection regime, and therefore there are no nationally verified assurances on minimum suitability and safety standards of unregistered providers. This is a particular issue given that the children who end up in unregistered alternative provision are some of the most vulnerable.

This arrangement is not by design. Unregistered provision comprises provision that is not illegal, but for which no direct regulation has been devised.

The regulation that does apply to unregistered provision is remarkably limited, applying only to the very basics of a setting's operations. In addition to the laws regarding illegal schools<sup>80</sup>, existing legal requirements require settings to observe standards on health and safety, fire procedures, and insurance. Beyond this however, statutory regulation is non-existent.<sup>81</sup>

The current framework also suffers from the lack of a direct regulator, so the limited regulation that does exist is not enforced. Unlike the state-maintained school system, which is regulated by Ofsted, no authority is directly tasked with ensuring that standards are enforced in the unregistered sector. While this does not mean that unregistered settings avoid checks entirely, the absence of a regulator does present challenges in holding settings to account.

Perhaps most alarming is the lack of regulation regarding safeguarding and child protection procedures. Unregistered providers, unlike registered settings, are not legally compelled to perform safeguarding procedures such as undertaking DBS checks for staff, appointing designated safeguarding leads, and conducting training on safeguarding. The vulnerability of the cohort of children and young people in unregistered provision makes this particularly concerning.

To remedy the issues arising from a lack of regulation, many local authorities have assumed the position of quasi-regulator. In the absence of statutory standards, locally devised regulation is imposed in its place. However, this arrangement is beset with challenges. Local authorities have no legal authority to regulate unregistered providers, and so the extent to which they can perform this role is limited. In the absence of a national framework, local authorities devise their own localised frameworks. While this has produced some innovative and sophisticated delivery models, it has also led to inconsistencies between local authorities and an incoherent system which often leaves unregistered providers overwhelmed.

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80 Department for Education, *Unregistered independent schools and out of school settings*, 2018.

81 Department for Education, *Keeping children safe during community activities, after-school clubs and tuition: non-statutory guidance for providers running out-of-school settings*, 2022.

Despite the weakness of the current regulatory framework, it would be wrong to make sweeping assumptions about the quality of unregistered AP. The unregistered sector is an important part of the education offer for many children and young people, providing targeted support programmes that can have a life-changing impact for those that struggle in mainstream schools. Many settings demand higher standards of themselves than the limited statutory regulation does, employing school-standard safeguarding procedures and even ad-hoc performance frameworks. In the absence of a regulatory framework, there is no vehicle to guarantee minimum standards nationally.

A good regulatory framework is one that celebrates the successes of the unregistered sector, embracing innovation and encouraging best practice to proliferate across the education offer, while ensuring that important minimum standards are met. Such a framework would ensure that all pupils have access to a safe and suitable education.

The existing regulatory framework is too limited and too weak to achieve these ambitions. Until it sets stronger standards for unregistered providers, and establishes stronger methods of accountability, the necessary assurances on suitability for the unregistered sector as a whole will never be produced. The weak regulatory framework fails those high-quality providers that cannot demonstrate they are safe and suitable, and fails children and young people attending settings without verified protections in place.

This section will explore the issues with the existing regulatory framework.

## 1.1 Regulation exempts unregistered AP from safeguarding

Unregistered provision falls under the umbrella category 'Out-of-school settings.' While there is notably no specific guidance relating to unregistered alternative provision, the guidance does acknowledge that "tuition or learning centres which may be used to support mainstream, or home education" fall within this bracket.<sup>82</sup> According to the guidance, all 'Out-of-school' settings are legally required to comply with basic regulation, primarily relating to building, insurance, health and safety, and fire protection standards.

The settings which fall under the 'Out-of-school' umbrella range from Christian Sunday schools to martial arts clubs to Guides groups.<sup>83</sup> Given the guidance covers such a varied group of offerings, the regulation is generic. It fails to reflect the specific circumstances of the unregistered alternative provision sector and the needs of the pupils within it.

The 'Out-of-school' settings guidance does not legally compel such settings to adhere to safeguarding and child protection legislation.<sup>84</sup> While the guidance does include detailed advice on appropriate staff training programmes, safer recruitment policies, and safeguarding procedures, these sections of the guidance are recommended rather than statutory. As a result, unregistered providers face no legal repercussions should they choose to ignore them.

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82 Department for Education, *Keeping children safe during community activities, after-school clubs and tuition: non-statutory guidance for providers running out-of-school settings*, 2022.

83 Ibid.

84 Ibid.

Many unregistered providers voluntarily adhere to a written safeguarding and child protection policy. However, the existing regulation means this is optional. The guidance states that safeguarding is something that providers 'should' do.<sup>85</sup>

Local authorities have recounted instances of unregistered providers operating without observing safeguarding procedures. There have been cases of staff working without DBS checks, and cases where heavy machinery is used on a site without any trained first-aiders.

This is a serious concern given the overrepresentation of vulnerable pupils in the unregistered provision cohort. The evidence has demonstrated that looked-after children, children with SEN, SEMH, or behavioural issues are more likely to be in such settings, and the lack of statutory safeguarding leaves these already disadvantaged young people unprotected.

The 'Out-of-school' setting guidance is ultimately inadequate in setting standards for unregistered provision. While the guidance may be appropriate for a martial arts club or a Sunday school, these settings do not deliver a substitute to school education. Such settings likely operate outside of school hours and typically host pupils that attend school full-time. The unregistered provision sector is substantively different from these other settings covered in the guidance, and any legislation which is to set appropriate minimum standards must reflect this.

## 1.2 Regulation is unenforceable

A further concern with the lack of a regulation of unregistered provision is that no authority is responsible for systematically regulating the sector. This fact is acknowledged in the 'Out-of-school settings' guidance, which states that 'the DfE will not monitor or assess whether providers are implementing the practices set out'.<sup>86</sup>

The absence of a direct regulator means there is no assurance that all settings are compliant with statutory regulation.

Many settings are, however, subject to an indirect form of regulatory oversight. Commissioners and Ofsted possess statutory powers to perform checks on certain unregistered providers, which has imposed some limited accountability on the sector. However, even when Ofsted and the commissioners meet their obligations, this is not enough to provide sufficient assurances that all unregistered providers are meeting their legal obligations.

### 1.2.1 Commissioners as a regulator

Mainstream and alternative provision schools undertake inspections of the unregistered providers they commission. The alternative provision statutory guidance<sup>87</sup> establishes the primary responsibility of the school is to define the objectives and timeline of the placement and monitor the progress against these objectives through frequent visits.

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85 Ibid.

86 Ibid.

87 Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.



However, the guidance also notes that commissioners need wider information on the suitability of the setting to be able to decide which provision is most appropriate for a pupil. This may include information on “safeguarding, health and safety, [and] quality of accommodation”.<sup>88</sup> For registered school settings this information is collected by Ofsted, but in the case of unregistered alternative providers the responsibility to collect this information lies with the commissioner.

Relying on commissioners to undertake all these checks on unregistered alternative provision is problematic.

Unregistered provider accounts of school inspections have often described how commissioner inspections lack in rigour. Providers describe schools failing to carry out frequent checks on their placements and have said that when they do some schools treating inspections as ‘tick box’ exercises, given their objective is only to meet the standards of an impending Ofsted inspection, rather than to engage properly with overseeing their pupil’s education.

The lack of rigour may result from capacity demands on the commissioner. An alternative provider school described the demands on capacity when commissioning an unregistered provider, explaining that it necessitates ‘hours of manpower’ confirming insurance details, health and safety standards and so on, and requires sending personnel off-site to conduct these checks.

Depending on the commissioner to regulate unregistered settings, in addition to their primary role of monitoring the quality of the placement, demands too much capacity from the school. This leads to inspections which lack scrutiny and weak assurances that settings are meeting minimum standards. It also means commissioners have less capacity to be thorough in their primary role of assuring the quality of their pupil’s placement.

Currently, Ofsted only visits a sample of the unregistered providers commissioned by a school.<sup>89</sup> This means the bulk of Ofsted’s checks on unregistered settings are conducted remotely and are therefore reliant on the quality of inspections conducted by schools.

## 1.2.2 Ofsted as a regulator

Ofsted undertakes checks on unregistered settings both remotely and in-person. These checks are subsidiary to a separate Ofsted inspection on the commissioner of the unregistered provider – the mainstream or alternative provision school at which the pupil is on roll. Ofsted considers the quality of the commissioning practices of the school, and so judges the suitability of the unregistered providers commissioned by the school to evaluate these practices.

As part of the inspection, Ofsted seeks assurances the setting is compliant with its legal obligations, as well as considering:<sup>90</sup>

- why leaders considered off-site provision to be the best option for the pupils concerned and whether leaders have kept that under review;
- whether leaders have made the appropriate checks on the registration status of the provision and how that has influenced their decision to use that provider;

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88 Ibid.

89 Ofsted, *School inspection handbook*, 2022.

90 Ibid.

- what safeguarding checks leaders have made and continue to make to ensure that the provision is a safe place for their pupils to attend;
- the extent to which leaders ensure that pupils benefit from a well-planned and sequenced, well-taught, broad and balanced curriculum;
- the attendance and behaviour of the pupils who attend the provision;
- how well the provision promotes pupils' personal development.

There are various issues which prevent Ofsted's inspection framework operating as a reliable method of regulation for the unregistered sector.

### a) Coverage

Firstly, there is an issue of coverage. Ofsted's checks on unregistered providers are predominantly conducted remotely, as it relies on the commissioning school to undertake the in-person checks and to pass the information on. Ofsted inspectors only enter settings in-person rarely and sporadically, selecting a random sample of the unregistered providers a school commissions to inspect, rather than systematically judging every single provider.<sup>91</sup> As a result, coverage is patchy.

The issue of coverage is compounded by the fact that certain settings do not receive any checks from Ofsted either remotely or in-person. Ofsted's interest in unregistered providers is primarily through the lens of school commissioning, so the vast majority of checks are conducted on providers that take in school pupils.<sup>92</sup> While area SEND inspections ensure that Ofsted does periodically inspect some local authority commissioned provision, this coverage is similarly incomplete because Ofsted only visits a sample of providers.<sup>93</sup> Either way, providers which cater for solely home educated pupils are never inspected, leaving a portion of the sector without any scrutiny or even an indirect regulatory presence.

As set out above, Ofsted is working with the Care Quality Commission to review how inspections of alternative providers are conducted, which may contribute to more comprehensive coverage in the future.<sup>94</sup> However, until the findings from these thematic reviews are evaluated, it is unclear whether these issues will be resolved.

### b) Capacity demands

Ofsted's unsystematic approach to the assessment of unregistered providers means the process is incoherent and overly burdensome. While some settings have no regulatory oversight, other unregistered providers have the opposite problem. Some settings are subject to checks through multiple commissioners, resulting in a system which is extremely taxing on the administrative capacity of the unregistered provider. One unregistered AP explained how it has dealt with five separate Ofsted checks in the last year, far surpassing that which any school would encounter, and representing a remarkably inefficient use of resources from the perspective of all parties.

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<sup>91</sup> Ofsted, *School inspection handbook*, 2022.

<sup>92</sup> *Ibid.*

<sup>93</sup> Ofsted and CQC, *Area SEND inspections: framework and handbook*, 2023.

<sup>94</sup> Ofsted, *Thematic reviews of alternative provision in local areas*, 2023.

### c) Accountability

Furthermore, there is an issue of accountability. While unregistered providers can be held to account for practices which contravene the statutory guidance, this accountability does not extend to the recommended, non-statutory guidance.

For example, when a school check uncovers a breach of statutory regulations regarding health and safety or insurance, this will result in the offending unregistered provider being appropriately penalised. However, the same cannot be said for the recommended guidance. The majority of the 'Out-of-school setting' guidance is recommended, meaning settings which disregard it face no consequences .

This is evident from Ofsted's assessment framework for unregistered providers. The emphasis is on the decision making of the leaders at the commissioner, and as such the judgement Ofsted arrives at on the suitability of the setting reflects on the quality of the commissioner rather than the unregistered setting itself.

If Ofsted forms a negative view of a setting, it is the school that is penalised with a low rating for leadership and management, while the provider itself faces no formal repercussions. In response to a poor rating, a school may pressure the unregistered provider to employ better procedures and raise standards, or may stop commissioning the setting altogether, but this does not guarantee substantive changes at the setting.

Many unregistered providers excel in Ofsted and school inspections, as (among other considerations) they recognise that the use of the setting is at the commissioner's discretion. Consequently, the unregistered provider is incentivised to comply with recommended guidance. However, this form of accountability is indirect and pales in comparison to the far more robust regulation maintained schools are subject to

### d) Unregistered schools

Separate to Ofsted's role in inspecting a school's commissioning practices, Ofsted also conducts in-person checks on unregistered settings in its remit as the Illegal Schools Taskforce. Ofsted conducts these checks on unregistered settings to ensure they are not operating as an illegal school.

In this capacity, Ofsted establishes an unregistered setting as illegal if "full-time education is provided (a) for five or more pupils of compulsory school age or (b) for at least one pupil of that age who is looked after by a local authority or has a statement of special educational needs or an education, health and care plan."<sup>95</sup>

However, these checks do not constitute systematic and consistent regulation. Ofsted relies on referrals of potential misconduct from its own commissioning practice checks, from the local authority, and from the public. These illegal school checks are not undertaken on a regular basis and so suffer from the same issues of coverage that regular Ofsted inspections on unregistered provision do.

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95 Department for Education, *Unregistered independent schools and out of school settings*, 2018.

Unregistered providers report negative experiences of illegal schools checks, even when found to be operating legally. Providers compared inspections to a police raid, as they arrive unannounced, and inspectors are equipped with bodycams. Providers have described how pupils are left unnerved and afraid. In many cases this has created a difficult relationship between unregistered providers and Ofsted, rather than a productive working relationship between regulator and provider.

Commissioners and Ofsted are the only bodies with statutory authority to inspect unregistered settings, but ultimately the weaknesses in their regulatory role inhibit their ability to guarantee minimum standards. Without these guarantees, unregistered APs that work hard to maintain high standards cannot signal their suitability and safety, and commissioners are denied nationally verified assurances.

### 1.2.3 Local authorities as regulator

Considering the issues which derive from a lack of regulation, many local authorities assume the role as a quasi-regulator of the unregistered providers within their remit. These arrangements have produced broadly positive results. Many cooperative unregistered providers will submit themselves to scrutiny by the local body, eager to signal their safe and suitable procedures and flex their credentials. The DfE has been supportive of local authorities fulfilling this role, as outlined in the Prevent Duty<sup>96</sup> which advises local authorities to gain assurances that out-of-school settings are following the recommended safeguarding regulations and subscribing to voluntary third-party accreditation schemes.

However, while the DfE has encouraged local authorities to assume these responsibilities, once again this guidance is advisory only. Accordingly, the efficacy of local authorities as a regulator is limited. For the reasons set out below, relying on quasi local authority regulation cannot be regarded as a silver bullet.

#### a) Local authorities lack statutory powers

To gather assurances on the suitability of settings, many local authorities conduct inspections ensuring that providers comply with the basic regulation that applies to 'Out-of-school settings.' This includes electrical compliance checks, risk assessments, and health and safety validations.<sup>97</sup> Often local authorities will go further than what is legally required, undertaking checks on safeguarding and child protection procedures. For those settings that cooperate, the local authority is better assured that the setting is suitable and safe for the children and young people attending, and this informal arrangement for regulation works well.

However, this arrangement is dependent on unregistered providers cooperating and, given the settings are not legally compelled to engage with local authorities, this type of regulation does not grant sector-wide assurances. Local authorities do not have the power to carry out an inspection against the wish of a provider or even the power to demand that any unregistered provider make themselves visible. The risk is that providers who are least likely to submit themselves to voluntary inspections are those which are non-compliant.

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<sup>96</sup> Home Office, *Revised Prevent duty guidance: for England and Wales*, 2021.

<sup>97</sup> Department for Education, *Keeping children safe during community activities, after-school clubs and tuition: non-statutory guidance for providers running out-of-school settings*, 2022.

Some local authorities attempt to conduct regulatory checks on all unregistered providers in their areas, including safeguarding checks and quality assurance judgements. However, they told us that their lack of statutory powers means checks are limited in their reach and impact.

These weaknesses played out in one particular case. One local authority uses a sophisticated system to commission alternative provision. Unregistered APs apply to join the online system and the local authority conducts regulatory checks before confirming the providers place on the system. Commissioners then have access to this pool of local authority accredited suppliers. When a commissioner requires a particular type of placement, they filter by different requirements to find an unregistered AP that meets their objectives. These unregistered APs then bid for the contract. The local authority told us that the competition drives up standards.

The advantage for the local authority which uses this delivery model is that only accredited alternative providers are awarded a place on the system. The accreditation requires checks on health and safety, public liability insurance, and safeguarding, and the local authority has found this method ensures that unregistered providers meet expected standards. From the provider's perspective, they are incentivised to comply with the regulations because of the greater access to placements that doing so facilitates.

However, schools remain able to commission unregistered providers directly, bypassing the local authority's requirements. The local authority also noted that the accreditation process deters some providers from participating, as they see the process as too onerous and bureaucratic.

## **b) Local authority accreditation lacks authority**

In the absence of a regulatory framework, local authority checks on settings lack authority.

Some local authorities do not have confidence in the validity of their own accreditation. One local authority emphasised that while they maintain a county-wide directory of providers they have assured for safety and suitability, they do not consider this an 'approved' list in the absence of national guidance stipulating what suitable unregistered provision entails. The local authority feels that it does not have the requisite expertise to make the decision authoritatively. This sentiment was shared by another local authority, which described feeling nervous about 'rubber stamping' a provider that is subsequently charged with malpractice, in case this ends up in 'court'.

The lack of authority that local authority checks have is lost neither on Ofsted nor schools, who do not recognise the standards inspections conducted by local authorities at all. This adds to the administrative burden of unregistered providers, many of whom host checks from the local authority, from Ofsted and from all their school commissioners. Providers regularly fill out forms providing the same information for different agencies, as Ofsted do not accept local authorities' accreditation as evidence of suitable quality commissioning practices.

This problem is even more acute for settings operating across several areas, as they regularly host inspections from multiple local authorities. While local authorities are aware of the challenges this creates for providers, in the absence of a national regulatory framework for unregistered provisions, these areas cannot rely on their neighbours' assurance processes.

## 2. What we want to achieve

### 2.1 Regulation that creates assurances, coherence, and credibility

We have explained that unregistered providers operate without being subject to a comprehensive regulatory framework. There is no standardised national inspection regime and the regulation that the sector is subject to is basic and too weak to protect the vulnerable cohort that attends unregistered providers.

Checks that are carried out on unregistered settings are sporadic and incoherent. Coverage is patchy, accountability is weak and while local authorities have stepped in to remedy these gaps with some success, their lack of statutory authority limits their effectiveness.

This leaves the sector with a lack of assurances. Those unregistered providers that are not meeting basic minimum standards may go undetected, while those that are delivering quality services cannot be officially recognised as suitable and safe.

Effective regulation resolves these issues by providing assurances, coherence, and credibility to the sector. The appropriate inspection framework would ensure that all unregistered provisions meet suitable minimum standards, while regulation that stipulates the roles of local authorities, commissioners and providers would allow each to carry out their responsibilities confidently and effectively, without duplication.

Stronger regulation would also grant the unregistered sector a greater degree of credibility in the eyes of commissioners. With firmer assurances regarding the legality, safety and suitability of settings, commissioners are more likely to make effective placements.

This section of the report will outline the benefits that proper regulation can deliver.

#### 2.1.1 Regulation provides sector-wide guarantees

A comprehensive regulatory framework is essential in providing guarantees that unregistered providers are meeting minimum standards on safety and suitability.

A framework would need to provide total coverage, articulate minimum standards and ensure that these standards are appropriate for unregistered provision.

##### a) Total coverage

Minimum standards can only be guaranteed if every provider is subject to regular, systematic checks. An effective regulatory framework would grant one body the authority to undertake these inspections and impose a legal obligation on all unregistered providers to submit themselves to these checks.

Regular non-statutory inspections have already proved effective in creating assurances for local bodies. Numerous local authorities perform regular inspections on willing providers to ensure compliance with standards of health and safety, risk assessments and insurance policies. Unlike Ofsted, they do not undertake these inspections to judge the quality of the commissioner, but instead to directly establish whether these settings meet minimum standards. For those providers that cooperate, local authorities told us that this arrangement leaves them more confident in their compliance with regulation.

## **b) Clear minimum standards**

Providing assurances across the sector requires not only inspections in every setting, but also regulation that clearly articulates the minimum standards that will be assessed in those inspections.

The current regulation fails to define the minimum standards for unregistered alternative provision. Unregistered providers currently adhere to the standards set out in the 'Out of school settings' guidance. This regulation, however, is generic. It applies to a myriad of settings, including martial arts groups and Sunday schools, rather than catering to the specific circumstances and needs in the unregistered sector.

Regulation which clearly defines these minimum standards would clarify the responsibilities of providers and inspectors, and is crucial to guaranteeing these minimum standards are met.

## **c) Appropriate minimum standards**

Minimum standards must reflect the challenges and needs of the sector. .

As previously outlined, unregistered alternative providers are not mandated to comply with 'Keeping children safe in education' (KCSIE) regulation, unlike registered AP and mainstream schools.

Large numbers of unregistered providers nonetheless do operate safeguarding procedures, often directly observing the KCSIE guidance. These unregistered providers agreed that if a setting is providing an education, it is right they abide by the safeguarding procedures set out in KCSIE, as this is essential to guaranteeing the safety and protection of children and young people.

Local authorities also emphasised the importance of safeguarding regulation to protect children in unregistered settings. This is why so many local authorities require unregistered settings to provide evidence of safeguarding procedures as a prerequisite for appearing on the locally-held directory.

Unregistered providers are already legally subject to the standards expected for all 'Out-of-school' settings. Given the disproportionate numbers of vulnerable pupils that attend unregistered settings, regulation must be enforceable, and strengthened to include safeguarding and child protection procedures. It is only with adherence to all these minimum standards that assurances on the safety of children and young people that attend these setting can be given.

### **2.1.2 Regulation provides coherence in the sector**

Regulation is essential in clearly defining the responsibilities of providers, commissioners, and regulators. A framework consisting of one authority with the statutory duty to regulate unregistered AP would provide clarity and coherence, allowing commissioners, providers, and local authorities to all undertake their responsibilities more effectively.

### a) Commissioners

With one body directly regulating unregistered provision, the role of the commissioner is clarified and streamlined.

Commissioners are responsible for monitoring the progress of their placement and ensuring it remains in the pupil's best interest. Currently, they also must conduct checks on the suitability of the setting – including legal compliance and safeguarding checks. However, the duty to carry out these wider checks could be made the responsibility of a regulatory body separate to the commissioner. While the school would continue to monitor the progress of their placement, they would be relieved of responsibility for ensuring the setting is safe and suitable. This arrangement aligns with how schools commission registered AP.

This is beneficial because schools are poorly suited to the role of a regulator. As already set out, unregistered providers have often found school checks to be sporadic and lacking in rigour. The 2013 Alternative Provision guidance states that the commissioner's objectives for a placement should be "regularly monitored, including through frequent visits to the provider"<sup>98</sup>. However, one unregistered provider told us they estimated just 10 per cent of their commissioners carry out checks as frequently as they should. The unregistered AP told us they thought it was a lack of school capacity that accounted for this.

Instead of relying on every commissioner to conduct the same legal compliance and safeguarding checks, one regulator could perform the check and accredit the setting as safe and suitable. The checks would be more rigorous and more efficient, given they are conducted by just one body.

Stripping back the responsibilities of commissioners would also allow them to be more diligent in undertaking their primary responsibility of monitoring their pupil, and tracking their progress against the objectives of the placement.

### b) Unregistered providers

One body directly regulating unregistered provision would similarly release capacity in the unregistered providers themselves.

Providers lament the fact that they are subject to repeated checks by different commissioners in the absence of an ongoing accreditation status provided by a regulator (like the Ofsted certification that schools receive). Taking the example above, the unregistered provider emphasised that despite only 10 per cent of their commissioners undertaking frequent visits, any more than this would overwhelm them. This burden is even more acute for settings which sit across local authorities, who must contend with multiple local authority checks in addition to all those undertaken by commissioners.

Rather than allocating capacity to administrative tasks, providers argued that their time could be channelled far more productively to the benefit of their pupils. Diverting resources to form filling detracts from effort spent producing and delivering high quality education.

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98 Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.



### **c) Local authorities**

Local authority capacity would also benefit from the introduction of one regulator.

Some neighbouring local authorities conduct separate regulatory checks on the same unregistered provider when that provider takes commissions from each local authority. This duplication arises because each local authority wants assurances on the education of pupils from their area.

Local authorities knowingly inspect providers that their neighbour has already accredited, as they do not trust their neighbour's accreditation. In the absence of national regulation and agreed standards, each local authority tends only to trust its own processes.

If local authorities were able to rely on the accreditation of an unregistered provision regulator, this issue would be resolved. Local authorities could trust that minimum standards checks were carried out appropriately and would not have to devote capacity to surplus inspections.

### **2.1.3 Regulation can provide sector credibility**

Unregistered provision is often viewed with suspicion because of conflation with illegal, unregistered schools. Commissioners may therefore form a negative view of the sector at large. One AP described how it had taken commissions from a local school for years while it was a registered provider. However, recently the provider became unregistered and has found that overnight the school stopped commissioning the setting, despite no changes to their processes or standards.

Regulation which provides guarantees on minimum standards will enhance the reputation of unregistered alternative provision. This assuages commissioner concerns and enhances the ability of the unregistered sector to provide effective interventions for some of the most vulnerable young people.

The credibility that derives from effective regulation would help the sector to flourish. It would:

#### **a) Resolve the ambiguity over the legality of unregistered settings**

Unregistered provision is often mistakenly conflated with illegal schools. This confusion extends to the education sector itself, as unregistered providers recount instances of schools confusing them with illegal schools. In one case, the staff at an unregistered provider told us they believed they were registered, solely because they knew they operated legally.

The introduction of a strengthened regulatory framework would allow the sector to become redefined as 'regulated' provision and, in so doing, resolve this ambiguity. Regulation would send a clear signal that settings are operating within the bounds of the law, improving their public image and assuaging doubt in the minds of potential commissioners.

This distinction also has benefits for Ofsted's Illegal Schools Taskforce, as a starker divide between unregistered providers and unregistered illegal schools would make it easier for the taskforce to identify settings which are illegally operating.

## **b) Facilitate effective placements**

As the sector gains credibility, potential commissioners are more likely to see the value in unregistered provision.. We know that schools prefer to commission placements when they are provided with firm assurances that their pupil will attend a safe and suitable setting.

Unregistered providers have emphasised the importance of gaining credibility. Credibility in the eyes of schools in particular is central in understanding why so many unregistered providers agree to non-statutory inspections by the local authority. In many areas, only providers that meet certain expectations can appear on the locally held directory. Given prospective commissioners often draw exclusively from list when commissioning unregistered AP, there are clear advantages to being able to demonstrate good standards.

Local directories also allow schools to more easily identify settings which target the specific needs of their pupil. One provider, for example, described how it worked hard to gain a reputation for being trauma-informed, which has helped it win contracts.

Regulation therefore can help commissioners make more informed choices about the most appropriate unregistered provider for their pupil. Accredited provider lists can include details such as the provider's area of focus and the pupil needs they accommodate, as well as information demonstrating their ability to meet these needs effectively. Connecting pupils to the appropriate placement enhances the ability of the unregistered sector to meet the needs of vulnerable pupils.

A more credible unregistered provider sector therefore has the potential to deliver benefits to the entire education sector. The best unregistered provisions employ innovative education methods and deliver tailor-made programmes that meet specific needs with great success. Used correctly, this can have life-changing impact for the vulnerable children and young people that attend these settings.

## **c) Encourage innovative education methods to spread**

In many cases, pupils in unregistered AP access high quality, specialist interventions. Raising confidence in the sector will help to ensure effective practice informs practice across other education settings, such as mainstream schools and registered AP.

In some instances, education techniques used by unregistered providers have been adopted by commissioners who have been satisfied with the placement. In one case, after finding an unregistered provider's behavioural approach to be effective, the commissioner opened an internal behavioural unit which adopted similar techniques to those seen in the unregistered AP.

Providing guarantees on the safety and suitability of unregistered provision would improve its reputation, meaning schools would be more likely to adopt procedures working well in the AP sector. In this regard, the successes of unregistered AP can be harnessed for the betterment of the education space as a whole.

## 3. What we want to avoid

The potential benefits from regulation are clear. However, if regulation is poorly thought through or clumsily implemented it could do more harm than good. This section will set out the considerations to ensure a new regulatory framework is introduced effectively.

### 3.1 Regulation should not be too burdensome

The purpose of clear and strengthened regulation is to guarantee minimum standards and to clarify the roles of local bodies. It must not force good quality settings out of the education sector.

Accordingly, any new regulatory inspections should not impose unmanageable burdens on unregistered providers. On the contrary, the introduction of one direct regulator should alleviate administrative burdens by freeing providers from repeated school, Ofsted, and local authority inspections.

The unregistered providers we spoke to were confident that a statutory regulatory framework would be manageable. Many welcomed heightened oversight and scrutiny as an opportunity to demonstrate their quality. They stated that any settings which were unable to evidence the suitability and safety of their setting should probably not be operating anyway.

However, unregistered providers and local authorities identified compliance with KCSIE as potentially challenging for smaller providers. Specifically, providers singled out the difficulties of appointing a Designated Safeguarding Lead (DSL) within the provision. Settings with limited resources may be discouraged from opening if they had to meet these demands.

To account for these unintended consequences, a considered approach to implementation is needed. Settings which cannot immediately meet the requirements of new regulation should be assisted in doing so. We know that effective capacity-building models already exist. One local authority, for example, provides free training and an AP resource base which providers can draw from to help raise their standards around safeguarding.

### 3.2 Regulation should not undermine the responsibilities of the commissioner

The introduction of a regulator would remove the onus on commissioners to carry out legal compliance checks. This should not, however, reduce the commissioner's responsibility to oversee and monitor their placement.

Unregistered providers described an historic issue of schools using alternative provision as a dumping ground, with some schools placing pupils in AP in an attempt to reduce their responsibility for the pupil. To tackle this, the 2013 guidance on alternative provision<sup>99</sup> increased commissioners' responsibility for their placements. Therefore, any further regulation should preserve this objective.

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<sup>99</sup> Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.

As such, the introduction of a regulator should not compromise the responsibility schools have for the pupils they place in unregistered provision. It should be clear that while schools are no longer responsible for undertaking minimum standards checks, they must continue to monitor their pupil, to track their distance travelled and their personal progression in accordance with the 2013 guidance.<sup>100</sup>

### 3.3 The regulator should not act without scrutiny

A regulator would be responsible for holding unregistered providers to account for their processes, which is fundamental in gathering assurances that providers are meeting minimum standards. However, just as the government holds Ofsted to account for its processes, there must also be robust processes in place to ensure that the unregistered provision regulator is performing its role to a suitable standard.

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<sup>100</sup> Ibid.

## 4. Recommendations

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### **Recommendation 8: Local authorities should be given statutory powers to enter and regulate unregistered alternative provision settings.**

#### **Rationale:**

A system of direct regulation is the best method of ensuring that unregistered providers meet their legal obligations.

The regulator would have powers to enter and inspect unregistered settings. A direct regulator of unregistered provision would be responsible for ensuring standards are met across the sector and for holding settings to account. Inspections would extend to every provider, guaranteeing all children attend legally compliant unregistered settings.

The body best placed to assume this role is the local authority. Local authorities are already carrying out much of this regulatory work, but in the absence of statutory powers their efficacy is limited. Local authorities can use their understanding of the local context, and the local education offer to build a constructive working relationship with the sector.

Local authorities should accredit settings in accordance with national minimum standards specific to unregistered alternative provision. Each should be responsible for the providers based within their area. As the standards are national, once a setting is accredited there would be no need for neighbouring local authorities to repeat the accreditation process if a pupil from their area is commissioned into the setting.

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### **Recommendation 9: Local authority alternative provision regulatory teams should be overseen and inspected by Ofsted.**

#### **Rationale:**

To ensure that local authorities carry out their regulatory role effectively, the quality of their accreditation process should be overseen by an independent inspector. The institution best placed to assume this role is Ofsted.

Without proper scrutiny, local authorities may fail to uphold suitable standards. Ofsted should oversee the quality of these inspections to ensure that local authorities are rigorous and competent in discharging their responsibilities.

In this capacity, the relationship Ofsted would have with local authorities would mirror the relationship between Ofsted and childminder agencies. Childminder agencies are responsible for upholding the standards of childminders registered with them and Ofsted is responsible for ensuring the agency undertakes its responsibilities appropriately. This model should be transposed to the unregistered provision sector.

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**Recommendation 10: Schools continue to monitor the progress of their placement.**

**Rationale:**

It is imperative that schools continue to closely monitor their pupils in unregistered provision, ensuring that the placement remains in the pupil's best interest and that progress is made towards the set objectives. Granting local authorities statutory powers to inspect minimum standards should therefore not detract from this responsibility of the school.

Crucially then, school inspections should continue, but focus only on tracking the progress of individual placements. Schools would no longer be responsible for ensuring the legal compliance of unregistered settings as this responsibility transfers to the local authority. This arrangement should free up capacity of commissioners, allowing them to become more diligent and effective in monitoring the progress of their placements.

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**Recommendation 11: There should be a national framework for minimum standards specific to unregistered provision.**

**Rationale:**

At present there is no specific guidance on minimum standards relating to unregistered alternative provision. The legal obligations that unregistered provision are subject to are outlined in 'Out-of-school settings' guidance, but this regulation is generic and applies to a myriad of different settings. This has resulted in some uncertainty on minimum standards for unregistered provision.

A clear minimum standards framework resolves this issue. Providers are made aware of their responsibilities while schools and other commissioners can be confident they are meeting them.

The responsibilities must include all the existing legal obligations for 'Out-of-school' settings and, as is detailed below, further regulation relating to safeguarding practices.

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**Recommendation 12: Unregistered providers should be subject to Keeping children safe in education regulation that ensures safeguarding procedures grant greater protections for children.**

**Rationale:**

This recommendation is designed to strengthen the protections afforded to children that use unregistered providers. It is particularly salient in light of the overrepresentation of vulnerable pupils in the unregistered cohort. Most importantly, it would create a statutory requirement for unregistered providers to produce a safeguarding policy and for staff to be subject to DBS checks before having access to children and young people. These requirements are in line with the standards required for other education providers.

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**Recommendation 13: Local authorities should make resources available to enable unregistered settings to train in safeguarding, in line with the new regulation.**

**Rationale:**

Some smaller unregistered settings may find it difficult to immediately adopt the procedures of KCSIE. In such cases the local authority should grant them access to safeguarding training to support improvement. This should all be part of collaborative working between the local authority and unregistered sector.

The courses should be delivered by a verified accreditation scheme.

Ofsted should oversee the quality of the resources local authorities provide as part of their area SEND inspections and as the regulator of local authority AP teams.

## chapter four:

# System Improvement

## 1. System Improvement

Registration creates oversight and regulation provides assurances on safety and suitability, but more substantial system improvement demands more ambitious reform.

Building out from a regulatory framework that ensures minimum standards, the next step is regulation that enshrines high quality education. To achieve this, the sector requires a performance framework that judges provider quality.

### 1.1 The current picture

To some extent, unregistered providers are already judged on their performance. The Alternative Provision guidance<sup>101</sup> outlines that schools must monitor the progress of their placement against predetermined outcome goals to judge the quality of their placement. The schools' judgement then inform the schools' decision to continue using the provider.

However, while individual schools form views on a placement, the judgements are only used to determine the effectiveness of individual placements, rather than contributing to an overarching assessment of provider performance.

Some local authorities have therefore stepped in to provide quality judgements on unregistered provision. These local authorities have been motivated by a desire to provide the education sector with firmer measures of the quality of settings and assurances which go beyond minimum standards.

However, as previous chapters have explained, local authorities face challenges regulating unregistered providers; these same barriers prevent effective quality assessment. Fundamentally, a lack of statutory powers undermines the impact and reach of local authority attempts to effectively regulate the sector .

These challenges have already been explored. In addition to these limitations, local authorities face challenges specific to quality assessment.

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101 Department for Education, *Alternative Provision Statutory guidance for local authorities*, 2013.



### 1.1.1 Local authority quality assurance issues

There is no national performance framework for unregistered provision. The only indicator used by local authorities to signal the quality of a setting is inclusion in the local directory of alternative provision. If a local authority judges an unregistered provider to be performing adequately, it will be included; if not, it will not be. Unlike Ofsted grades, the assessment of unregistered provision is binary – in the directory, or not.

As things stands, local authorities arrive at these judgements based on locally devised approaches, rather than standardised comparable metrics.

For this reason, there is significant variation between local authorities. Neighbouring areas operate different requirements, with local authority inspectors focusing on different aspects of the provision, asking different questions, and giving weight to certain areas more than others.

The result of the different approaches is that providers in some local authorities have less exacting standards than others, meaning that providers of very different quality could both appear in their respective local directories.

Ultimately, without a standardised approach to judge performance, or a framework to signal high quality besides the local directory, local authority quality assessments are inconsistent.

Some local authorities do not judge quality at all, given the absence of a national framework providing guidance on what constitutes high quality provision. They may still include providers on local directories with the caveat that it is not an indication of quality. Others judge quality simply as compliance with legal requirements and safeguarding standards. A few local authorities assess the quality of the placements by judging how effectively the provider delivers on the objectives of its placements.

Inconsistency leads to imbalance. Providers in areas with less rigorous quality assessment methods are under less pressure to maintain high standards. Once on the directory, there is often little tangible benefit to improving standards further.

The disparities in expected standards between areas frustrates local authorities. Local authorities that undertake thorough checks on their providers feel undermined by neighbouring local authorities which demand less from their providers. One area may consult with commissioners to get their judgement on a setting, track outcomes for pupils, and record successfully delivered objectives, while the other may only ensure that the setting is meeting minimum standards around safety and suitability. Their concern is that pupils will be placed with a provider in a neighbouring area which may not have undergone robust quality assessment.

This is a factor driving repeated local authority checks on unregistered providers. Each local authority measures the quality of the setting against its own performance framework as, in the absence of national standards, it does not trust its neighbour's procedures.

Providers are also frustrated by the disparities in approach. An unregistered provider that takes commissions from multiple local authorities has drawn attention to the inconsistencies between areas. With different local authorities asking for different measures of quality, there is a lack of clarity about what good-quality unregistered provision looks like.

Unregistered providers and local authorities alike recognise that inconsistencies derive from the absence of a national performance framework.

## 2. What we want to achieve

### 2.1 An effective national performance framework

Clear, standardised metrics for providers to measure themselves against would help to drive up standards of programme delivery. These should be reflect the objectives of AP and be suited to the unregistered provision cohort.

Some local authorities already use sophisticated models for judging quality. These represent valuable case studies in best practice.

In one local authority quality assurance inspections are carried out either once or twice per year. In these inspections the local authority evaluates the success of the provider in delivering on the objectives of the placement which were stipulated at the outset; this is the same criteria that schools use to assess the quality of their individual placements. The framework focuses on the outcomes for the pupils, rather than the methods employed by the setting.

The local authority's assessment includes recommendations for improvement. As part of this, the local authority may offer resources which offer guidance on curriculum or pastoral practices for APs. They may also discuss best practice suggestions at local AP panels which meet weekly.

The local authority then uses its understanding of provision quality to inform future placements. Certain settings will be identified as particularly effective for specific interventions, helping to link schools with a pupil with a specific need to the appropriate provider.

This delivery model outlines the gains that are to be had from a thorough quality assessment programme for unregistered provision. A national performance framework can unlock these gains for the entire sector.

Rigorous quality assessment allows commissioners to be confident in the quality of a provider's programme. The information that is gathered can tell the commissioner not just if the provider performs well, but if it well suited to a pupil's specific needs. This maximises the potential of unregistered provision in supporting vulnerable pupils.

For providers, the benefits of rigorous quality assessment are best demonstrated with reference to the feedback from providers that operate within the local authority in the example, who were broadly positive about the delivery model. One provider said that thorough quality assessments gave them confidence and enabled them to produce an action plan for continual improvement. They said they would welcome a performance framework, given this would signal their quality and they were confident they would perform well.

Other unregistered providers shared this view, saying they were keen to face scrutiny which verified their quality and enhanced their credibility among potential commissioners. Providers argued that they could benefit from experts visiting their settings, as the assessments would present an opportunity to share expertise. Conversations which analyse, challenge, and advise unregistered providers have the potential to prove valuable as a form of consultancy service.

Further to this, unregistered provider leaders emphasised that a rigorous assessment of their quality once every six months to a year, alongside regular but less demanding checks on individual placements from commissioners, would be more manageable than the existing system which entails whole setting checks from local authorities, commissioners and sometimes Ofsted.

## 3. What we want to avoid

There is a clear appetite for a performance framework. Commissioners, providers, and local authorities all stand to gain from its introduction. However, any performance framework should take the below considerations into account.

### 3.1 The performance framework should not treat providers like mainstream settings

The performance framework should not result in unregistered providers being held to the same standards as schools. This would fail to recognise that alternative providers and mainstream schools serve different cohorts, have different objectives, and take different approaches.

This already troubles the registered AP sector. Registered providers argue that school inspection frameworks fail to reflect the challenges that alternative providers face which separate them from mainstream education settings.

One registered alternative provider explained that they are subject to the Independent School Standards, the same framework designed for schools which are ten times the size and host very different, less vulnerable cohorts. In the past, inspectors have rated them 'Inadequate', owing to their poor attendance rates compared to the mainstream sector. This is despite the cohort attending the AP comprising troubled children and young people, with poor exclusion records and additional needs. The provider told us that an AP setting with such a cohort will never achieve the 95 per cent attendance typical of mainstream independent schools.

If unregistered provision becomes subject to a performance framework this must take account of the cohort within this sector

Similarly, unregistered provision does not employ traditional education methods. The key draw of the unregistered sector is its ability to innovate. Innovative education methods have proved highly effective in addressing acute pupil needs which traditional education methods have failed to meet. Settings often pursue alternative techniques, adopting therapeutic and holistic approaches to overcome the specific challenges of vulnerable pupils.

Some unregistered providers, for example, make use of equine therapy in their offer. Others have hairdressing classes, mechanic workshops, or rock-climbing lessons. These varied approaches have proved effective in allowing young people to develop skills and improve their confidence, helping them to engage better with education. Creative approaches such as this clearly differ from traditional schooling methods, but can nonetheless have real value to certain pupils.

For this reason, any proposed performance framework should be careful not to penalise methods that are far removed from a traditional school approach, as this would risk discouraging dynamism and undermine the purpose of unregistered provision as an alternative to mainstream education.

This does not mean letting providers do whatever they like or allowing pupils to be treated as test subjects. Programmes must be able to demonstrate that they meet need, but a flexible approach to meeting that need is important. Quality assessments should focus on pupil progress, judging distance travelled while keeping in mind the desired outcomes for the pupil.

## 3.2 Inspectors should have AP expertise

A new performance framework for unregistered provision would require inspectors to make judgements on quality. However, inspectors without experience of alternative provision would be poorly equipped to do this. The performance framework can only be successfully implemented if inspectors understand AP .

Ofsted inspectors inexperienced in AP have judged the performance of alternative provisions against the same standards as mainstreams. One registered AP leader explained the case of an inspector who was formerly a grammar school headteacher, with a wealth of experience working in mainstream, but no experience of alternative provision. The inspector rated the AP 'Inadequate', citing the poor attendance rates and pupil behaviour compared to what is expected in mainstream settings.

Unregistered providers are aware of the problems that derive from inspectors lacking in AP expertise. Unregistered providers told us that, in some cases, Ofsted inspectors had never even met children in alternative provision before, meaning they did not know how to talk to them and ask the right questions, let alone accurately judge quality.

Where an inspector has knowledge of alternative provision, they recognise that the cohort is comprised of disadvantaged and vulnerable pupils who may need additional social, emotional or mental health support before engaging in education. The inspector therefore appropriately judges the quality of the provider based on individual journeys .

However, an effective performance framework should not be reliant on which inspector turns up on the day. To overcome this, all inspectors should have a good understanding of alternative provision and be able to consider the challenges inherent to the sector, enabling them to arrive at accurate judgements of performance.

## 4. Recommendations

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### **Recommendation 14: Unregistered providers should be subject to a new national performance framework to inform quality assurance.**

#### **Rationale:**

This would introduce a new quality assessment framework for judging the quality of unregistered settings. The ambition is to provide consistent assurances about the quality of the education in individual settings, and to hold providers accountable for their offer. The framework must be 'light-touch', so as not to deter settings from operating, and appropriately reflect the objectives of good quality unregulated provision.

The quality assurer should recognise the specific objectives of each setting and judge the provision against its ability to meet these objectives.

The quality assurer should consult the commissioner to gauge how well the setting met the objective of the placement. Each placement should have a clearly defined and appropriate goal. The quality assurers should measure the quality of a provision against how satisfied commissioners are that this goal was achieved.

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### **Recommendation 15: The local authority should be responsible for enforcing the performance framework.**

#### **Rationale:**

The local authority should assume the role of quality assurer, given its understanding of the local offer and the logistical benefits of having the quality assurer in closer proximity to providers, allowing inspections to be undertaken efficiently. Quality assessments could run concurrently with minimum standards inspections, minimising the administrative workload of both providers and inspectors.

Ofsted should regulate the local authorities in this role, ensuring that their implementation of the performance framework meets acceptable standards. The relationship would once again mirror that of Ofsted and childminder agencies.

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**Recommendation 16: Local authority inspectors of unregistered provision must be trained in AP.**

**Rationale:**

The performance framework should only be deployed by inspectors with a good understanding of alternative provision. The DfE should consult on potential methods to ensure inspectors gain a 'good understanding', but this may involve specific training from AP sector experts.

Training would support quality judgements and enable providers to benefit from advice from inspectors. Inspectors should be able to confidently identify areas for improvement and suggest processes that providers could employ to further best practice.

Ofsted should also ensure that their inspectors have a working knowledge of alternative provision as part of their role in regulating the local authorities alternative provision teams.

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**Recommendation 17: Commissioners should track and report on the outcomes of pupils in any alternative provision.**

**Rationale:**

Currently schools must monitor the progression of any pupil on their school-roll attending off-site provision to ensure that the provider is delivering against the objectives of the placement.

However, the commissioner is not judged on their use of alternative provision on the basis of the longer-term outcomes of the pupil. Longer term outcomes may include post-16 destinations and NEET status. By tracking outcomes of these pupils, and using this to evidence the schools commissioning practices, this would reinforce the accountability of schools for the pupils on their school roll.

Holding schools more accountable would ensure that placements into any form of AP, especially long-term placements, are structured such that they serve the best interests of pupils.





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