



President of the Family Division

Revised Practice Guidance on the Court's approach to unregistered placements

1. This Guidance replaces the 2019 Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales, and the 2020 Addendum.

Introduction

2. Those documents set out Guidance in respect of the registration and regulation structure applicable for residential care facilities for children and young persons. As is well known, the number of applications for Deprivation of Liberty orders has grown very significantly in recent years and a significant number of orders are made in respect of placements which are not registered under the relevant statutory regimes.
3. The 2019 Guidance sets out the steps that the judges were encouraged to take in respect of establishing whether a placement was registered, and if not, in the process towards registration. This included at paragraph 19 the Court providing that an application for registration should be submitted within 7 days of the Order being made and then further oversight of the process by the Court.
4. This process places very considerable burdens on the Court system, but more importantly, is not part of the Court's functions. Ofsted and CIW are the regulatory bodies, with statutory powers as to oversight of children's homes, including where a child is placed in an unregistered home.
5. It is not for the Court to become a regulatory body or the overseer of the regulatory process. The Court's role in deprivation of liberty applications, is to exercise its inherent jurisdiction to ensure that any deprivation of liberty is not itself unlawful, whether as an unlawful detention under the common law, or a breach of Article 5 of the ECHR. That is the extent of the Court's powers, and the Court's role should not go beyond those powers.
6. The Court of Appeal in *Re A Mother v Derby City Council* [2021] EWCA Civ 1867 held that the inherent jurisdiction may be used to authorise a deprivation of liberty in an unregistered children's home, so long as the requirements set out by the Supreme Court in *Re T* are met.

7. The withdrawal of the 2019 Guidance does not mean that there are not usually great benefits for the child or young person in being placed in a registered rather than unregistered placement. The regulatory regime provides very considerable safeguards for the child. This revised Guidance does not detract from that principle. However, the Court should restrict its considerations and orders to its own functions.

Guidance

8. The Courts when considering a DoL application should enquire into whether the proposed placement is registered or unregistered. If it is unregistered it should enquire as to why the local authority considers an unregistered placement is in the best interests of the child.
9. The Court may order the local authority to inform Ofsted/CIW within 7 days if it is placing a child in an unregistered placement.

**Guidance issued by
Sir Andrew McFarlane
President of the Family Division**

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