

Children’s Services

Exceptions Guidance for Placements in Unregistered Settings

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1. Purpose

1.1 This exceptions guidance sets out

- i) the circumstances under which the placement of a child in an unregistered setting may be considered despite such a placement falling outside of statutory regulatory frameworks,
- ii) the authorisation that is required before such a placement can be made, and
- iii) the steps that should be followed to ensure that any unregistered setting in which a child is placed gains registered status as soon as possible thereafter

- 1.2 This guidance only covers unregistered settings; that is, settings that provide care to children, but which, in breach of statutory regulations, are not registered with Ofsted to do so. For guidance on unregulated settings that only provide support (not care) and which are permitted in some circumstances, please see our tri.x procedure [Placements in Other Arrangements \(proceduresonline.com\)](http://proceduresonline.com)
- 1.3 No child aged under 16 years may be placed in an unregulated setting. A proposal to place a child aged under 16 in an unregulated setting should be viewed as a proposal to place in an unregistered setting.
- 1.4 This guidance covers three types of placement in unregistered settings:
- Placements that are unregistered because assessment timelines have lapsed or because there 'family arrangements' or court orders for placement with parents in place (Section 2)
 - Placements made under a Deprivation of Liberty authorisation in settings that are unregistered, because suitable registered placements are not available (Sections 3 to 6)
 - Placements in settings that are unregistered, because suitable registered placements are not available, and which do not constitute a Deprivation of Liberty (Sections 3, 4 and 7)
- 1.5 All placements of children or young people who require care in unregistered settings are illegal. However, the shortage of specialist and secure registered settings currently means that there may be occasions when a child's best interests can only be met through placement in an unregistered setting. This procedure sets out how Children's Services employees should ensure that any such placements are thoroughly planned, properly authorised, and carefully overseen to ensure that the interests and safety of the child are always upheld, and the risk of legal challenge to Dorset Council and its officers kept to a minimum
- 2. Placements that are unregistered because assessment timelines have lapsed or because 'family arrangements' or court orders for placement with parents are in place**
- 2.1 Such placements include:
- Children placed within family and friends fostering arrangements where the placement is not compliant with fostering regulations, for example where:
 - a child is placed with relatives or family and friends, and a viability assessment has not been completed or signed off by the agency decision maker (ADM)

- Where a child is living with a family member, and this is a 'family arrangement' but the local authority has been significantly involved in the arrangement e.g., advising parents that the child cannot be removed from the family member or that their contact with their child must be supervised
- The temporary foster-care approval under Regulation 24 agreement has lapsed, in that it has gone beyond the 16-week assessment period and an extension for a further eight weeks under Regulation 25 (CPPCR Regs 2010), has not been sought from the Fostering Panel
- The Regulation 25 agreement has lapsed after 24 weeks, and the completed full fostering assessment has not yet been presented to Fostering Panel within this timescale
- The Connected Persons fostering assessment has been presented to Fostering Panel and Panel have not recommended approval; the child remains in the care of the adults who are being assessed but are not approved
- Where the court has granted an Interim Care Order (ICO) and decide to place a child with a carer who is not approved as a foster carer as they do not meet fostering regulations, or where the carer has never been assessed
- The Police have used their powers to intervene and remove a child from home into a place of safety for 72 hours; and have placed the child with a family or friend's carer where an initial viability assessment has not been completed
- Placement with Parents under a Care Order, for example where:
 - A child subject to a Care Order/ Interim Care Order and placed with parents with no assessment completed and signed off by the Head of Locality
 - A young person has returned home to live with a parent, which is not agreed by the local authority, but it is not in their best interests to remove them

2.2 All of the above instances should be reported as exceptions via line management; case management should be used to ensure that the child's care or support is brought back within the statutory framework as soon as possible.

3. Authorising unregistered placements

- 3.1 The remainder of this guidance concerns:
- Any child aged under 16 (other than those whose circumstances are described at 2.1 above) and is placed in a setting not registered with Ofsted
 - Any young person aged 16 or 17 who needs care and is placed in a setting that is not registered with Ofsted
- 3.2 A decision to place a child who meets one of the descriptors at 3.1 in an unregistered setting may only be made by the Executive Director, Children, or in their absence by their nominated deputy.
- 3.3 An application by Dorset Council to the Court requesting authorisation of the deprivation of a child's liberty in an unregistered setting may only be made by the Executive Director, Children, or in their absence by their nominated deputy.
- 3.4 The Executive Director will seek advice from Legal Services as part of the decision-making process (whether or not the placement requires the authorisation of the Court), and their written legal opinion will be gained prior to the application or placement being made.
- 4. The legal context: statute and legal guidance in respect of Deprivation of Liberty**
- 4.1 Article 5 of the Human Rights Act states that everyone has the right to liberty and security of their person, save where they are detained within the criminal justice system, or for the purpose of preventing the spread of disease, or 'the detention of a minor by lawful order for the purpose of educational supervision.'
- 4.2 In accordance with the Mental Capacity Act 2005 (as amended) the detention of a child for the purpose of educational supervision can only be through a deprivation of liberty ordered by the Court.
- 4.3 A deprivation of liberty occurs where:
- i) A child is confined
 - ii) They lack the capacity or competence to consent to the confinement
 - iii) Their confinement is 'imputable to the state' (that is, a public authority is responsible for the child's confinement)
- 4.4 'Under section 25 of the Children Act 1989 and section 119 of the Social Services and Well-Being (Wales) Act 2014, a looked-after child may be placed in accommodation for the purpose of restricting liberty ('secure accommodation'), if they have a history of absconding and are likely to suffer

significant harm, or likely to injure themselves or others if kept in any other form of accommodation.’¹

- 4.5 The Care Standards Act 2000 requires that all children’s homes must be registered; the regulatory authority is Ofsted.
- 4.6 Over the past ten years, increasing numbers of local authorities have found it impossible to identify registered secure accommodation for children and young people who have the most complex needs. This has led to applications to the Court to authorise the deprivation of children’s liberty in unregistered settings.
- 4.7 A key judgment in relation to the authorisation of placement in unregistered settings came in the case of *Re T. In Deprivation of liberty of children and young people under the inherent jurisdiction*, Tim Spencer-Lane comments:
‘The key finding is that the secure accommodation frameworks under the Children Act 1989 and the Social Services and Well-being (Wales) Act 2014 are not complete regimes, and the inherent jurisdiction of the High Court in relation to children does continue to apply. Thus, the court can authorise deprivation of liberty in settings other than secure accommodation under the inherent jurisdiction. But while the court may authorise the deprivation of liberty, this does not create an immunity from prosecution for any regulatory offenses (e.g., those which may arise as a child is in an unregulated placement).’²
- 4.8 In response to this trend, *Practice Guidance: Placements in unregistered children’s homes in England or unregistered care home services in Wales* was issued by Sir Andrew McFarlane President of the Family Division 12 November 2019. This notes that,
‘Where application is made to the High Court under its inherent jurisdiction to authorise the deprivation of liberty of a child, it is highly likely the place at which the child is to be accommodated will meet the definition of a children’s home.’

¹ Murray, R (2022) Deprivation of liberty, complex needs, no suitable placement: A County Council v A Mother & Others [2021] EWHC 3303. Case Law. Community Care Inform [online] <https://www.ccinform.co.uk/case-law/deprivation-of-liberty-complex-needs-no-suitable-placement-a-county-council-v-a-mother-others-2021-ewhc-3303/> [accessed: 3 January 2023]

² Spencer-Lane, T (2022) Deprivation of liberty of children and young people under the inherent jurisdiction. Practice Guidance. Community Care Inform [online] <https://www.ccinform.co.uk/practice-guidance/deprivation-of-liberty-of-children-and-young-people-under-the-inherent-jurisdiction/> [accessed: 6 January 2023]

3.9 The *Practice Guidance* states a clear expectation that any unregistered setting into which a child is placed under the jurisdiction of the Court will seek and gain registration with Ofsted as soon as practicable thereafter.

5. When an unregistered placement involving a Deprivation of Liberty may be considered

5.1 Placement in an unregistered setting under a Deprivation of Liberty should only be considered where:

- i) The child has a history of absconding and is likely to suffer significant harm, or is likely to injure themselves or others, in a less restrictive setting.
- ii) There is clear evidence that such a placement is in the child's best interests
- iii) The proposed placement is the least restrictive practicable option
- iv) All potential placements in a registered setting have been explored and found to be either unsuitable or unavailable
- v) The proposed placement is willing and able to undertake registration as a children's home within the immediate future, as recommended in the *Practice Guidance* reference above

5.2 Whilst it is possible that the Court would authorise a placement in a setting with no prospect of registration, such a placement would carry very significant risks:

'Where the court exercises its inherent jurisdiction to authorise the deprivation of the child's liberty in an unregistered placement that has indicated that it will not or cannot comply with the requirement in the Practice Guidance to apply for registration, for the duration of that placement, the child is placed outside the safeguards of the relevant statutory regulatory regimes, and in certain cases outside the statutory regime for administration of medication without consent contained in the Mental Health Act 1983.'³

5.3 Ofsted has demonstrated its willingness to prosecute Directors of Children's Services that place children outside the safeguards of the relevant statutory regimes.

³ Unregistered placements, the inherent jurisdiction and non-compliance with the President's Practice Guidance: Derby CC v CK & Ors [2021] EWHC 2931 (Fam). Case Law. Community Care Inform [online] <https://www.ccinform.co.uk/case-law/unregistered-placements-the-inherent-jurisdiction-and-non-compliance-with-the-presidents-practice-guidance-derby-cc-v-ck-ors-2021-ewhc-2931-fam/> [accessed: 3 January 2023]

6. Procedure for unregistered placements under a Deprivation of Liberty authorisation

- 6.1 Where the conditions set out at 4.1 are met, or where the first three are met and there is no prospect of finding a placement both willing and able to register, the Head of Service, Children in Care will complete a Need to Know Report and circulate it in accordance with the Need to Know Procedure.
- 6.2 The Head of Service, Children in Care will also send materials supporting the case for placement directly to the Executive Director. The supporting materials will provide evidence in respect of all the points detailed at 6.6 below.
- 6.3 The Head of Service, Children in Care will ensure that the child's Social Worker and QARO are informed of and (wherever appropriate) can contribute to all key discussions and decisions under this procedure.
- 6.4 The Executive Director will take legal advice in the matter, and consult colleagues as they deem appropriate, and then decide whether to apply to the Court for placement in an unregistered setting.
- 6.5 In applying to the Court for the deprivation of liberty authorisation, Dorset Council will make clear whether the unregistered setting in which the placement is proposed, is willing and able to register as a children's home in the immediate future.
- 6.6 Where a child is already placed under a Deprivation of Liberty order, and Dorset Council moves them to an unregistered setting, the council will update the court immediately and request a new Deprivation of Liberty order for the placement in the new setting.
- 6.7 In *Deprivation of liberty of children and young people under the inherent jurisdiction*, Tim Spencer-Lane notes that:

'When making applications, it is important to remember that the care plan will normally be the central document that the court will closely scrutinise. The care plan will therefore need, for example, to describe carefully the nature of the restrictions to be put in place for the child or young person, particularly those which give rise to the deprivation of liberty. The care plan and supporting evidence should also very clearly evidence the following:

- why those restrictions are necessary and appropriate;
- what are the risks if the child or young person is not detained;
- the child's or young person's views on the proposed plan, and the views of anyone with parental responsibility;
- the views of professionals concerned in the case, including the independent reviewing officer;
- if relevant, evidence on capacity/competence;

- what other options have been explored and the outcome of those investigations;
 - why are the current or previous arrangements considered inadequate;
 - the child's history;
 - the proposed duration of the deprivation of liberty and the provision for review.⁴
- 6.6 Given the legal complexity of the matters detailed at 6.5, legal advice should be sought as to the quality of the evidence gathered.
- 6.8 Should the Court authorise placement in an unregistered setting, it will require that Dorset Council notify Ofsted immediately, and provide Ofsted with a copy of the order and of the judgement of the Court. The Executive Director should make the notification to Ofsted.
- 6.9 Should the Court authorise the placement on condition that the setting gain registered status, the Corporate Director Care and Protection will support and monitor closely the registration process.
- 6.10 Should there be any delay in the registration process, the Corporate Director Care and Protection will advise the Executive Director immediately, and the Executive Director will notify the Court.
- 6.11 Once registration has been achieved by the setting, the Executive Director will notify both the Court and Ofsted of this.
- 6.12 For the duration of a child's placement in an unregistered setting, Dorset Council will undertake enhanced supervision and oversight of the child.
- 6.13 The child's Social Worker shall visit them at least once every week (this is an exception to our usual Child in Care visiting schedule), listening to the child's account of their experiences, speaking with carers, viewing care records, and forming a view as to whether:
- i) The child's care plan (see 5.4) is implemented in full, and the child is safe
 - ii) the placement is benefiting the child, and
 - iii) the placement continues to be in the child's best interests
- 6.14 After each weekly visit, the child's Social Worker will complete their statutory Child in Care Visit Form and share this with their Team Manager.

⁴ Spencer-Lane, T (2022) Deprivation of liberty of children and young people under the inherent jurisdiction. Practice Guidance. Community Care Inform [online] <https://www.ccinform.co.uk/practice-guidance/deprivation-of-liberty-of-children-and-young-people-under-the-inherent-jurisdiction/> [accessed: 6 January 2023]

6.15 The Head of Locality will update the Need to Know Report each week with a summary of the Social Worker's findings, and any actions that the Head of Locality deems necessary in light of these findings.

6.16 If, on reading the Social Worker's weekly report, the Head of Locality forms the view that:

- i) the child is not safe in the placement, or
- ii) the placement is not benefiting the child, or
- iii) the placement is no longer in the child's best interests

they shall immediately notify the Executive Director, who will decide whether an alternative placement should be sought, and a further application made to the Court.

6.17 The child's Social Worker will receive casework supervision for the child's case at least once every four weeks (this is an exception to our Supervision Guidelines and Standards).

6.18 The arrangements for the child will be reviewed at the twice-weekly Urgent Placements Meeting. The meeting will offer support and challenge in respect of any outstanding actions required by the child's interests.

6.19 The arrangements for the child will further be reviewed at Leadership Oversight every four weeks.

6.20 The child's Quality Assurance Reviewing Officer (QARO) will provide quality assurance for these arrangements by visiting the child within 2 weeks of the start of the placement, and then following the remaining requirements set out in the Visits by QARO to Children in an Unregistered Provision flowchart.

7. Placements in unregistered settings that do not involve a Deprivation of Liberty

7.1 All children in care who are aged under 16 must be placed in a registered setting save where they are placed with their parents (under the terms of their care order or for the purpose of court-ordered assessment), connected persons or with foster carers.

7.2 Young people aged 16 and 17 who require care and support must also be placed in registered settings.

7.3 Young people aged 16 and 17 who do not require care and only need support may be placed in 'other arrangements', which may be regulated or unregulated

7.4 Where there is a proposal to place a child aged under 16, or a young person aged 16 or 17 who needs care and support in an unregistered setting, and the

placement does not involve a Deprivation of Liberty, many of the principles set out in respect of a placement under a Deprivation of Liberty still apply:

- i) There should be clear evidence that such a placement is in the child's best interests
- ii) All potential placements in a registered setting have been explored and found to be either unsuitable or unavailable
- iii) The proposed placement is willing and able to undertake registration as a children's home within the immediate future

7.5 Where all the conditions set out at 6.4 are met, the Head of Service, Children in Care will complete a Need to Know Report and circulate it in accordance with the Need to Know Procedure. Where the first two conditions are met, but there is no prospect of the placement becoming registered, it may still be possible to place the child; the additional guidance at 6.18 will apply.

7.6 The Head of Service, Children in Care, will also ensure that a full case for the placement is sent directly to the Executive Director. This will set out:

- The reason that the child was unable to be placed in a registered home, including in-house provision and external settings
- Whether searches have been undertaken, for how long and whether they are still being pursued
- A brief synopsis of the child's legal status, his/her needs and how the current placement is meeting them, addressing risks, and preparing the child to move on to a more suitable placement as soon as possible
- The nature of the setting and the level of staffing provided
- When the placement started and the cost
- The implications for deprivation of liberty for the young person in relation to their age and whether an order has been made, sought or being applied for
- How long the placement is planned to last and what steps are being taken to move the child into a stable, legal arrangement; including where providers have agreed to apply for registration as a children's home
- The type and date of the most recent risk assessment

7.7 The Executive Director will take legal advice in the matter, and consult colleagues as they deem appropriate, and then decide whether to approve the placement.

7.8 If the Executive Director approves the placement, they will notify Ofsted that a child or young person is being placed in an unregistered setting. They will assure Ofsted that the setting will be applying for registered status in the

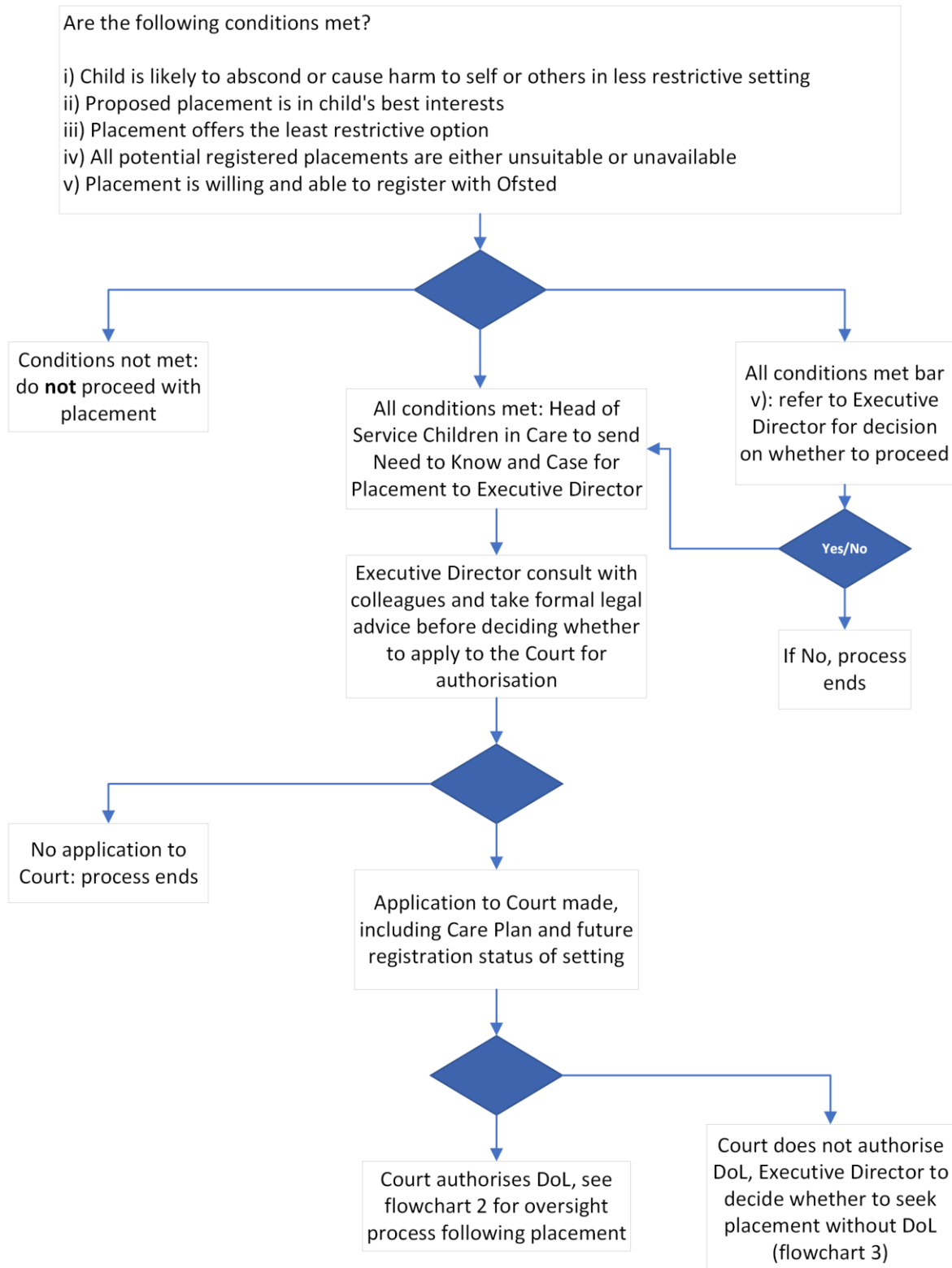
immediate future and give a timescale for completion of this process. They will also give Ofsted assurance in respect of the supervision and oversight arrangements for the child, which will be in accordance with the following paragraphs.

- 7.9 The Corporate Director Care and Protection will support and monitor closely the registration process and will provide support to the Executive Director to complete notification of Ofsted.
- 7.10 Should there be any delay in the registration process, the Corporate Director Care and Protection will advise the Executive Director immediately, and the Executive Director will notify Ofsted.
- 7.11 Once registration has been achieved by the setting, the Executive Director will notify Ofsted of this.
- 7.12 For the duration of a child's placement in an unregistered setting, Dorset Council will undertake enhanced supervision and oversight of the child.
- 7.13 The child's Social Worker shall visit them at least once every week (this is an exception to our usual Child in Care visiting schedule), listening to the child's account of their experiences, speaking with carers, viewing care records, and forming a view as to whether:
- iv) The child's care plan is implemented in full, and the child is safe
 - v) the placement is benefiting the child, and
 - vi) the placement continues to be in the child's best interests
- 7.14 After each weekly visit, the child's Social Worker will complete a report on their findings for the Corporate Director Care and Protection.
- 7.15 The Corporate Director Care and Protection will update the Need to Know Report each week with a summary of the Social Worker's findings, and any actions that the Corporate Director deems necessary in light of these findings.
- 7.16 If, on reading the Social Worker's weekly report, the Corporate Director Care and Protection forms the view that:
- iv) the child is not safe in the placement, or
 - v) the placement is not benefiting the child, or
 - vi) the placement is no longer in the child's best interests
- they shall immediately notify the Executive Director, who will decide whether an alternative placement should be sought; they will also notify Ofsted of the concerns.
- 7.17 The child's Social Worker will receive casework supervision for the child's case at least once every four weeks.

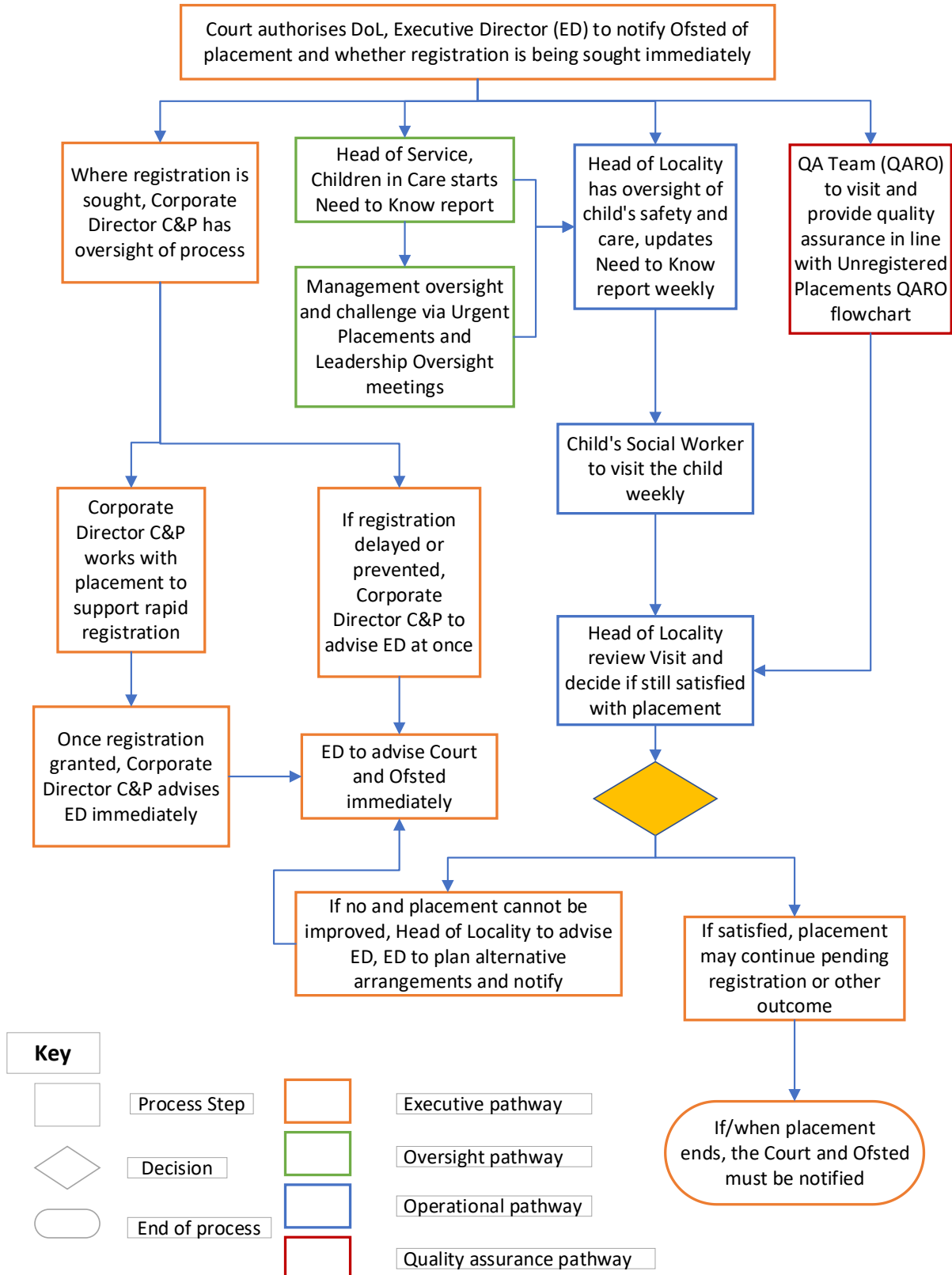
- 7.18 The arrangements for the child will be reviewed at the twice-weekly Urgent Placements Meeting. The meeting will offer support and challenge in respect of any outstanding actions required by the child's interests.
- 7.19 The arrangements for the child will further be reviewed at Leadership Oversight every four weeks (this is an exception to our Supervision Guidelines and Standards).
- 7.20 The child's Quality Assurance Reviewing Officer (QARO) will provide quality assurance for these arrangements by visiting the child within 2 weeks of the start of the placement, and then following the remaining requirements set out in the Visits by QARO to Children in an Unregistered Provision flowchart.
- 7.21 The QARO will also consider whether it is appropriate to discuss with the child whether the child would benefit from their own legal advice and will help them to access this if so.

Appendix 1: Flowchart for Unregistered Placement with Deprivation of Liberty

Flowchart for placement of a child in an unregistered setting where this will involve a Deprivation of Liberty (DoL)

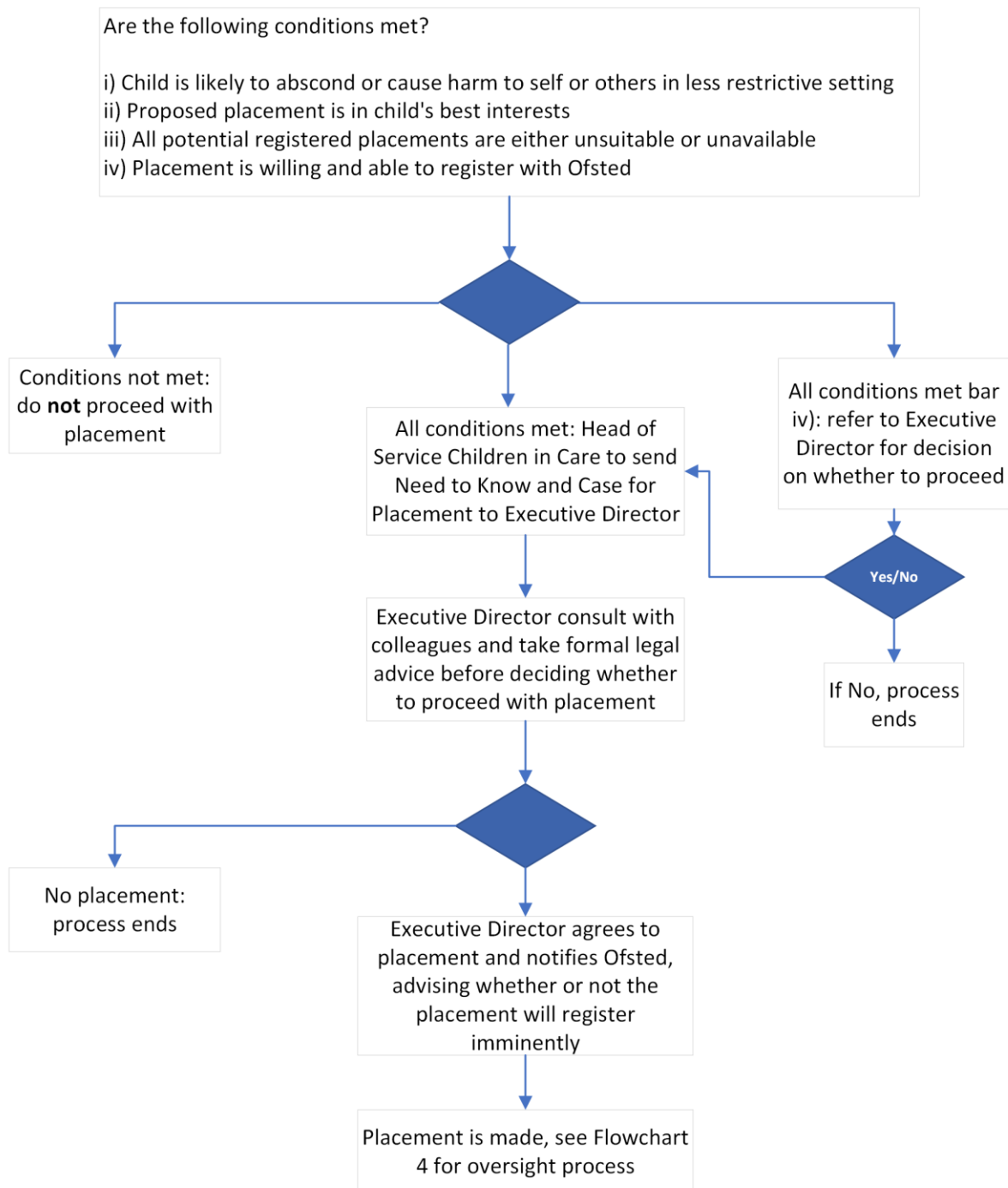


Appendix 2. Monitoring and oversight arrangements for a child placed in unregistered accommodation under a Deprivation of Liberty (DoL) authorisation



Appendix 3: Flowchart for placement in Unregistered Setting (no DoL)

Flowchart for placement of a child in an unregistered setting (no Deprivation of Liberty involved)



Appendix 4. Monitoring and oversight arrangements for a child placed in unregistered accommodation (no Deprivation of Liberty involved)

