**RESPONSE TO: Home Education – Call for Evidence and revised DfE guidance**

**27.05.2018**

1. **What is your name?**

Caroline Ellis

1. **What is your email address?**

[tauntonhomeeducation@gmail.com](mailto:tauntonhomeeducation@gmail.com)

1. **Are you responding as an individual or an organisation?**

An Organisation.

1. **If you are responding on behalf of an organisation, what is your organisation?**

Taunton Home Education

**5. Which of the following best describes the capacity in which you are responding to this consultation?**

**Choose answer from dropdown list**

**If Other, please give details**

Local Home Education Group serving over 700 home educating families across Somerset.

**6. Which local authority area are you based in?**

**Please select**

Somerset

**7. Would you like us to keep your responses confidential?**

No

**8. How effective are the current voluntary registration schemes run by some local authorities?**

**What would be the advantages and disadvantages of mandatory registration of children educated at home, with duties on both local authorities and parents in this regard?**

Voluntary schemes' effectiveness in our experience depend upon whether:

* the local authority has something beneficial to offer home educating families either by way of useful information, support and services;
* families can trust the local authority not to overstep their powers;
* there is a strong relationship of trust and respect with the officers employed under the scheme.

Somerset County Council used to operate a voluntary registration scheme which included annual visits, an information bulletin, an annual trip, loan of resources, funding for exams at 16 and grant support for the Home Education Centre. This was an opt-in scheme and it was also possible to opt-out. There was no penalty for not signing up to it and indeed those parents outside the scheme were trusted to get on with their home education without interference. Parents could leave the scheme with no prejudice at any time. The scheme ceased because central government austerity policies necessitated service cuts and since the EHE team had lost a very well liked, experienced and trusted adviser and replaced them with someone with no real enthusiasm or understanding of home education, parents had lost confidence in the scheme.

Today most home educators have the misfortune to be known to the local authority. We say misfortune because the benefits to our children and families are non-existent, while the risks of intrusion into family life and stress of dealing with unsympathetic Education Welfare Officers (who it must be remembered are part criminal prosecutors) are things we would rather avoid. Those parents who do not become known post school deregistration become known through unlawful data-sharing. This is hardly an ideal basis from which to nurture positive relations.

Taunton Home Education believes ‘registration schemes’ are an outdated and inappropriate approach to managing relationships between home educators and their local authority. The purpose of ‘registration’ is to find out who we are and where we are in order that we can be regulated/controlled because we are viewed as a ‘problem’. Hence, we reject it.

We are fundamentally opposed to compulsory notification or registration. The disadvantages of mandatory schemes are many and include:

1. Potential infringement of human rights - e.g. right to privacy and family life, non-discrimination.

2. Stigmatisation of home educating families - what other group of parents is required to register with the authorities?

3. Creating further unnecessary conflict and hostility between local authorities and home educating families and undermining a lot of hard work that has gone in to attempting to build better relationships.

4. Pointless criminalisation of law-abiding families.

5. Creating the conditions for creeping state control of home education which is highly undesirable because it will stamp out innovation, creativity and personalisation- the three things which are crucial to a meaningful education. A child-centred approach would be increasingly difficult if not impossible if registration is introduced, allied to prescriptive control mechanisms.

There are no advantages – although advocates of totalitarianism or aspects thereof might hold a different view on that!

**Our suggested alternative is this:**

Instead of an approach based on a dualistic 'state' vs 'home educator' paradigm the Government should

* start from the basis that home education is a long standing legal right/duty, that it provides unique benefits to children and that the state should be there to support and collaborate not dictate, police or control (Note: we have no argument with the backstop powers provided underS437 of the Education Act IF they are exercised with proportionality)
* Look to positive incentives to increase voluntary notification and engagement. For example, if one of our members was moving from Somerset to Birmingham and asked us ‘should I notify?’ we might say ‘yes why not’ because it is widely known that Birmingham has a positive attitude to home education and are working in partnership with home educators and offering concrete help in terms of boosting access to 14-16 provision, funding meeting places for groups etc.

The purpose of voluntary notification should be so that parents might access something useful and supportive and authorities might offer the same. That requires a sea-change in approach.

So, we recommend the Department institutes a system of voluntary notification linked to positive attitudes to home education, an empowering and supportive service offer with light-touch, proportionate regulation as we describe below and real collaboration on local policies and procedures we would have no problem with that and would welcome it. This we believe, would be a fair and proportionate way of satisfying the needs of home educators while giving the state a more effective role in supporting children’s educational entitlements.

**9. What information is needed for registration purposes, and what information is actually gathered by local authorities? Would it help the efficacy of these schemes, and the sharing of information between authorities, if there were a nationally agreed dataset or if data could be shared by national agencies, such as DWP or the NHS?**

We strongly disagree with registration for the reasons given in our response to question 8. For voluntary notification only, the minimum necessary data should be collected and retained by a local authority - names, contact info for parents, ages of children this could be on file with a brief overview of provision provided by the parent plus a note of any valid concerns brought to the authority’s attention and how these were dealt with. As a result of GDPR families will now have the ability to access and check any information held for free.

Current and proposed approaches to data sharing are extremely concerning. There should be no data sharing with the NHS or DWP.

We have seen advice from David Wolfe QC that the routine sharing of data as envisaged in the consultation document, purely on the basis that a child is home educated and in the absence of any significant safeguarding concerns, would not meet the requirements of Article 8 of the European Convention on Human Rights or Data Protection legislation (currently being updated in line with the GDPR).

Local authorities such as ours – Somerset County Council – who operate such data sharing practices should be instructed to cease and desist as should the hospitals, child minders and other agencies who have been inveigled into unlawfully passing on information without even asking for explicit consent from parents or children. We are advising our members and service users to object to such unlawful data sharing and take action if their data is processed unlawfully.

Local agencies should only be sharing data when absolutely necessary for the purposes of preventing significant harm.

Routine data sharing not only infringes families’ human rights and exposes them to potential unwarranted intrusion in private and family life it also runs the risk of further alienating people from public services who rightly already mistrust the authorities.

**10. Does experience of flexi-schooling and similar arrangements suggest that it would be better if the scope of registration schemes included any children who do not attend a state-funded or registered independent school full-time? If so, do you think that local authorities should be able to confirm with both state-funded and independent schools whether a named child is attending that school full-time?**

NO. We have seen legal advice from David Wolfe QC that flexi-schooled children are on a school roll and therefore should not be considered within the ambit of any plans on home education registration.

**11. Would the sanction of issuing a school attendance order for parental non-compliance with registration be effective, or is there another sanction which would be more useful?**

That is an appalling idea. It would be wrong and unjust in principle and would most likely be deemed a disproportionate response in human rights terms. Nor would it be effective for those of us who will not comply on principle as we will not be deterred by threats of sanctions anyway and would rather fight for our children's fundamental right to a suitable education than give way to an overbearing, autocratic approach such as this.

**12. What steps might help reduce the incidence of schools reportedly pressuring parents to remove children to educate them at home?**

Government itself bears responsibility for the fact that some children's experience of school is so appalling that parents feel it is in the child's best interests to EHE and that schools are so starved of resources, pressured and league-table driven that they either unwittingly or deliberately shunt children out of state provision.

Off-rolling by schools is symptomatic of these wider issues. In an effort to protect their position in league tables, to avoid falling foul of the attendance regime which puts arbitrary targets ahead of children’s health and wellbeing and not having the resources to deal with children with complex additional needs yes, some schools either actively encourage parents of children who cause them issues to home educate them or suggest home education would be a good move to avoid a permanent exclusion. One of our members’ children was placed in seclusion in their school and was deprived of education - thus his parents deregistered him in order to safeguard him and ensure he had access to learning opportunities.

Therefore, to reduce the incidence of off-rolling and exclusion Government should increase school funding, change the attendance regime, ensure bullying is stamped out, boost SEN and EOTAS provision.

Government should also focus on investing in and transforming state schooling in line more with approaches focused on children's wellbeing and happiness as in Finland for example and democratising the way schools are run.

Please also note that in our experience the legions of parents who have deregistered their children because they have been injured, harmed, bullied, excluded or off-rolled are extremely committed and positive home educators. Having made a best interests decision to remove their child to get them a suitable, safe education at home, these parents go to great lengths to make their provision the best it can be.

**13. Is there an argument for some provision which allows a child to return to the same school within a specified interval if suitable home education does not prove possible?**

The question only gives a YES or NO option so we said NO. Our reasoning is:

This is fraught with difficulty. On balance we think this would be inadvisable. We are aware of schools harassing parents even after deregistration – asking them to come to meetings, seeking information about their children from medical professionals and subjecting them to other unwanted contact rather than respecting their decision and letting them get on in peace. If children were still somehow ‘on roll’ even post deregistration this would just get worse. That said it should be incumbent on admission authorities to deal sympathetically and helpfully with families where a period of home education has had to end for whatever reason and ensure that those children are properly supported to settle into an appropriate school placement suited to their needs and preferences.

**14. How effective is local authority monitoring of provision made for children educated at home? Which current approaches by local authorities represent best practice?**

Local authorities have no legal basis for monitoring provision made for EHE children on a routine basis. Such monitoring is WRONG and unlawful. Many local authorities are sadly quite incapable of distinguishing between routine monitoring without cause (UNLAWFUL) and appropriate, proportionate intervention when there is good cause to ensure specific concerns can be addressed (LAWFUL). Where a local authority is clear on this distinction and confines itself to intervening only when valid concerns are brought to its attention and does so in a constructive way then that is good practice.

The problem of unlawful monitoring practices in many authorities could and should be addressed by the Department. It is appalling that you currently tolerate local authority practices which conform neither with education law nor your own existing EHE guidelines.

The idea that local authorities might have any positive impact on a child's learning by having it subject to scrutiny by someone with no personal experience of home education, no understanding of different pedagogies and no in-depth knowledge or understanding of the child in question, how they best learn, what their aspirations are is farcical.

There is no case for instituting ongoing oversight of children's EHE provision and there are many reasons to reject such proposals:

a) the negative implications for human rights such ongoing interference would involve given that home education is inextricably intertwined with the wider life of the family and the right to privacy and family life are enshrined in the Human Rights Act

b) it would undermine parents' ability to meet the individual needs of their child since they would be forced to consider what the authorities expect them to be doing or how they will judge provision rather than focusing on the needs of their child.

**15. If monitoring of suitability is not always effective, what changes should be made in the powers and duties of local authorities in this regard, and how could they best ensure that monitoring of suitability is proportionate?**

The Department should not be actively considering 'monitoring of suitability' which goes against existing law and guidance and good practice. Guidance to local authorities needs to be crystal clear: NO ROUTINE MONITORING. A flowchart for local authorities should be included in guidance showing what a recommended, lawful and proportionate approach looks like in practice. Although this is not formatted as a flowchart it should give an idea of the steps to include i.e.:

* Home educator becomes known

First communication with family:

* Send family welcome pack with useful info, contacts and resources. Ask for confirmation that they are EHE. You can ask them about their reasons for choosing home education. If family become known post deregistration from a school, make it clear they can report any issues about the school to you and set out what you can do about issues such as off rolling. Reassure them that furnishing such information to you will have no bearing on your relationship with them or how you view their provision.
* If you decide to ask them for information about provision you need to make it clear they can provide information in writing, in person at a neutral venue, on the phone or at home or on an online form (if you have provision for that) it is entirely up to them and you must restrict your request to a BRIEF OVERVIEW – a few lines covering their philosophy/approach, couple of examples of what provision looks like (e.g. activities the children are doing), how special educational needs are being met, opportunities for interaction, any support groups accessed.
* Education Officer looks at brief overview- a competent education officer should be able to decide if this looks like suitable education or if there is anything to suggest that education is not suitable from this. (Ensure officers involved are indeed competent and have had proper training)

Response to family

If all seems well:-

* Letter back to parent saying ‘thank you very much and best of luck on your home education going forward. Do not hesitate to contact us if you need advice or signposting to any support. We will be in touch in a year’s time just to ask if you are still home educating and if there have been substantive changes in your circumstances or approach you can let us know about that at that point.

(Note: if authorities have established programmes of (annual) visits that parents use and after consultation sufficient parents wish to continue to have access to these, consider whether funding allows for this and turn this into an ‘advisory service’ offer rather than an inspection rota)

If specific concerns are brought to LA attention:-

* First consider their validity. Has any evidence been supplied to back up any concerns brought to your attention? Are they clearly related to the educational provision? Are they relevant? Are they significant or do they sound spurious and petty? Senior Manager should be involved in considering whether they need to be followed up then if it is decided they do need follow up…
* Send a letter back to parent saying ‘We have been notified of some potential concerns about your education provision – here are the specific concerns, would you be able to clarify or offer further information on x and y. ‘ Give parent a reasonable timescale within which to respond. Make it clear they have choice as to how to respond: in writing/email, phone, visit at neutral location or at home etc

MANAGING CONCERNS (A)

* If Response from parent – Education Officer reviews, either concerns deemed dealt with or not. If concerns dealt with notify parents of this saying all well thank you, you’ll just hear from us in a year’s time (as above)

MANAGING CONCERNS (B)

* B (I) If No response from parent. Write back, saying it would be great to clarify these issues please respond in writing or we could meet somewhere to discuss or if you have third party who can vouch for you on these points great otherwise we may have to consider a formal letter to satisfy under S437 Education Act and we would rather avoid that if at all possible (explain consequences), suggest parent seeks advice and help from local HE support group and urge them to let us know if there is a reason why they feel comfortable responding.
* B (II) IF Response from parent inadequate – does not address concerns, write back saying thanks but this does not adequately address concerns give further opportunity to satisfy the authority on the specific concerns either in writing or by meeting or third-party evidence or by offering to work with the family on an action plan to improve provision. Explain about S437 letter to satisfy process.
* In BOTH cases If that does not resolve the issue consider any other reasonable steps that might be taken.
* If no further reasonable steps possible consider and decide re issuing letter to satisfy.
* Letter to satisfy issued with statutory period for response (15 days) clearly stated and choice (as above) for parent on how to respond:
  + if response received Education officer reviews information supplied to check that concerns have been dealt with and the education appears suitable. If this is so, a letter goes back to the parent saying thank you we are satisfied etc.
  + If no response or inadequate response received, then consider what other steps could be taken reasonably to attempt to resolve. Once reasonable steps exhausted consider whether expedient to issue SAO or whether another solution should be considered. SAO should only be used as a last resort consider whether other action e.g. referral to EOTAS if appropriate might be effective.

**16. Should there be specific duties on parents to comply with local authorities carrying out monitoring if such LA powers and duties were created, and what sanctions should attach to non-compliance?**

No. No sanctions. No routine monitoring. You have not made any case for any benefits to children, families or wider society to be derived from a regime of control and routine monitoring and the consequences for our children's wellbeing and our democracy are almost too dreadful to contemplate. We recommend and encourage a proportionate system as outlined in our response to Q15.

**17. Is it necessary to see the child and/or the education setting (whether that is the home or some other place), in order to assess fully the suitability of education, and if so, what level of interaction or observation is required to make this useful in assessing suitability?**

No. A competent Education Officer should be able to assess suitability on the basis of written information. Stick to the current law which says parents are responsible for giving their child a suitable education and notwithstanding the fact that they can make proportionate informal enquiries, local councils should only intervene and investigate further when serious concerns are brought to their attention.

There can never be any justification for attempting to invade the private space of a child and their family which is what a home is just to get more information about education provision. That would have significant implications under the Human Rights Act. Currently the guidelines rightly provide for meetings in a neutral location or providing further information in writing.

**18. What can be done to better ensure that the child’s own views on being educated at home, and on the suitability of the education provided, are known to the local authority?**

This is a ridiculous question which is loaded with unhelpful assumptions.

Government and local authorities should recognise that ‘Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern’. (UNCRC article 18). Home education is a best interests decision parents make, taking full account of the views of the child and it is IMPOSSIBLE to sustain home education if your child is not happy with it!

Most children who end up home educated after a period in school do so either because they tell their parents 'I am deeply unhappy at school because of x, y and z. Please don't make me go there. Please home educate me' OR they communicate said unhappiness by becoming mentally or physically distressed, throwing up in the morning etc and refuse to attend.

There is no policy in place to ask children in school their views on whether they are happy to be educated at school or would they rather be home educated, and schooled children are not asked for their views on the suitability of the education they receive at school. Unless and until there are such provisions there can be no rational basis for asking home educated children. Please note that children's rights to express their views also encompass a right not to have to talk to people in authority and not to have to express their views to them.

Further, there would be huge human rights and safeguarding issues arising from any attempt on the part of local authorities to insist on ‘knowing the child’s views’ by interviewing them. Many of our children (particularly those on the autistic spectrum or with mental health problems or who have suffered trauma by being bullied or discriminated against in institutional settings where authority figures did not take them seriously or act to keep them safe) would rightly be distressed and upset at having a stranger forcibly question them.

**19. What are the advantages and disadvantages of using settings which are not registered independent or state schools, to supplement home education? How can authorities reliably obtain information on the education provided to individual children whose education ‘otherwise than at school’ includes attendance at such settings as well as, or instead of, education at home?**

If this is a question about unregistered religious schools that should be addressed elsewhere. We don't have these in Somerset it is a NON-issue.

Home educated children like schooled children enjoy a wide range of perfectly benign, engaging and stimulating activities in settings which may be regulated or may be more informal. Parents are more than capable of assessing the suitability of such settings.

We presume the Department is not attempting to gather information to attempt to somehow regulate parent-led home education groups such as ours and it should be very careful not to discourage home educators from exercising freedom of association by meeting up socially or organising activities. Please also note that formal groups such as ours which organise lots of family learning activities, hands-on learning opportunities and events will be extremely attentive, as we are, to issues such as health and safety, data protection, equality and safeguarding with appropriate policies and procedures in place as well as public liability insurance.

**20. What are the advantages and disadvantages of using private tutors to supplement home education? How can authorities best obtain information on the education provided to individual children whose education at home includes private tuition, or whom attend tuition away from home?**

Some children benefit from using private tutors it really depends on their needs and aspirations. Tutoring one-to-one or in small groups can be an invaluable component of a suitable education depending on the needs of the child. Parents are in our experience perfectly adept at finding tutors and assessing suitability and are of course aware of safeguarding issues.

We are confused as to why you think local authorities should go to the lengths of attempting to gain information on the content of home educated children’s private education tuition. If you want to regulate private tutors that would seem to be a separate matter, certainly it would be overly intrusive and inappropriate to demand detailed information from parents about tutors and exactly what they are teaching.

**21. Are there other matters which stakeholders would wish to see taken into account in this area?**

Yes. Public policy on home education requires a major rethink. Coproduction and involvement need to characterise how public policy is approached and formulated. The documents issued for consultation appear to be entirely from the perspective and priorities of one set of stakeholders – a sub set of local authorities and regulators whose views are based on unevidenced assumptions about home education. The most important stakeholders are us: the home educating parents and families. We recommend NO changes are made to guidance or policy, let alone the law that do not have the backing of our communities. An advisory committee should be established to ensure better communication and policy development. It should include representatives of home educating families, local support groups, legal experts on human rights in education such as David Wolfe QC and representatives of local authorities widely regarded as implementing best practice in light-touch regulation and positive working relationships.

**22. What might be done to improve access to public examinations for children educated at home?**

Children educated at home should have access to free functional skills qualifications - locally Somerset Skills and Learning currently offer this from age 15. We would urge the Department to invest in such organisations so they can offer this as a matter of routine as we understand the funding for this to continue may be uncertain; can we also suggest that SS&L and similar organisations be given the funding flexibility to work with small groups of EHE teens in a range of settings to ensure young people traumatised by school can better access provision in an environment where they feel safe.

Funding for bespoke part time EHE 14-16 provision with sound vocational and academic options should be extended, guaranteed and made more flexible in terms of age ranges (our children's peer groups do not map across neatly to the artificial school year groups to which funding is geared). Every major town with a suitable college base should have such provision.

We recommend the Department funds local authorities to provide free access to GCSEs for home educated children who want to study for them independently. You would simply need a modicum of information to show they had undertaken a relevant programme of study.

More should be done to ease EHE children's pathway into further education. Many may not be ready to start trying for formal qualifications at ages 14-16. Some may be able to access an entry level course but a bespoke EHE pathway for those who have not followed a traditional educational path should be considered.

We believe that traditional academic routes are over prioritised at the expense of equally if not more valuable ways of demonstrating skills and attainment. Our group has just signed up to be a Duke of Edinburgh Awards Centre working with the County Council - if we can get this going and make a success of it will be a huge boon to our young people. We hope groups elsewhere can be enabled to get involved in the scheme in this way.

**23. What good practice is there currently in local authority arrangements for supporting home-educating families? Should there be a duty on local authorities to provide advice and support, and if so how should such a duty be framed?**

Talk to Birmingham - we hear lots of good things about them. Somerset USED to fund a home education centre, provide laptops, fund exams and – going back in the mists of time - there were also free maths and English classes at one point.

The last EHE Manager in Somerset John Riches (now retired sadly) instituted good working relations with our group and others in our EHE community and we got the impression he would have wanted to do more to support us had there been any funding available. Our local authority gives new parents contact details for local groups. Recently we were put in touch with the post 16 Commissioning Adviser who briefed us on a huge range of opportunities which lead to us getting in touch with the D of E team, Somerset Skills and Learning. The contact with the post 16 Adviser was invaluable. She treated us with respect and her role was to help and open doors. Perhaps there is a lesson there.

Local authorities should have these duties:

To provide EHE families with an introductory package of information including:-

• up to date information on relevant local contacts, support groups, activities and resources available in their local community including libraries, museums.

• a clear guide to parents’ rights and responsibilities under the law,

• clear information about accessing local services including assessments for SEND,

• contacts for local HE groups,

• Links for popular online educational resources and courses,

• Contact details for further education colleges and providers especially those offering 14-16 programmes for EHE children

• clear reliable information on the authority’s EHE policy and procedure

Authorities should also check what parents’ preferred form of communication is – in writing via post, or via email, or by phone and whether they have any accessible information needs (e.g. information in large print, audio etc)

In order to provide decent advice and support there will need to be far more rigorous training put in place. The current standard of EWOs' knowledge is woeful. Please see our response to Question 26 below.

**24. Should there be a financial consequence for schools if a parent withdraws a child from the school roll to educate at home?**

NO. It’s too easy to blame individual schools for what are systemic failings in the system – a lot of them caused directly or indirectly by central government. We assume there is a financial consequence anyway from losing a pupil at your school. To impose additional financial penalties would simply disadvantage pupils at the school and we have no desire to see scarce resources diverted away from children.

**25. Should there be any changes to the provision in Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006 requiring local authority consent to the removal of a**

**child’s name from the roll of a maintained special school if placed there under arrangements made by the local authority?**

Yes. A parent of a child in a special school under arrangements made by the local authority who decides their child's best interests would be served by EHE should not have to seek the consent of the local authority. We think the current provision is discriminatory and are surprised it has not been subject to legal challenge. Children with SEND tend to thrive in home education particularly where you have inclusive, proactive communities such as in Somerset. Why should those in special schools have extra hoops to jump through to enjoy the benefits? Parents are quite happy to provide a brief overview of provision outlining how they will meet their child's SEN. We also believe however that the whole area of SEND provision is woefully lacking, has been grossly underfunded and would like to see EHE children access their rightful entitlements to support.

**26. Are there any other comments you wish to make relating to the effectiveness of current arrangements for elective home education and potential changes?**

Local authorities should be under a duty to ensure any officers in contact with or working with EHE families receive training covering:-

a. The legal framework for EHE and Government guidelines on the responsibilities of local authorities.

b. Human rights laws, standards and practice as they relate to EHE

c. Equality law and best practice as it relates to EHE

d. The SEN and Disability Code of Practice and associated legislation.

e. Different educational philosophies and relevant theories of child development including the concept and practice of self-directed learning.

f. Examples of the experience and outcomes of elective home education for a variety of children and young people.

Training packages should include case studies and role play exercises and should be developed and co-produced with home educators – wherever practical/feasible local home educators should be invited to collaborate in delivering such training locally.

Local authorities should proactively ensure that relevant local public services – for example family learning providers, the music service, post 16 commissioning, skills and learning organisations – make home educators aware of the opportunities they can access.

All counties have at least one and usually a plethora of local home education support groups. Every local authority should identify all such groups in their area and set up regular communication and engagement with them. For example, they could arrange a schedule of meetings with representatives, so they can provide feedback and advise the authority of information or support needs of families. Authorities would also be required to involve – not simply consult – home educating families in determining and reviewing local policies and procedures.

The Department of Education should set funding aside for local authorities to spend on real support NOT policing so support for sitting exams, grants for local groups, whatever local EHE communities identify as being the priorities.

You have got to get into the mindset that your role should be to add value to what we do not distort it, interfere with it, attempt to police it or coerce us into doing things that have nothing to do with the best interests of our children.

**27. What data are currently available on the numbers of children being educated at home in your local authority area?**

The numbers in Somerset may well have reached the 1,000 mark or beyond but doubtless Somerset CC will provide you with up to date figures. The last figure we heard was something like 977 - that was over 6 months ago. As we are often an early port of call when parents are considering deregistering and judging by the number of requests to join our Facebook groups the steady exodus from state education continues as do the ranks of very capable, thoughtful young parents who are choosing EHE from the outset since many more are now aware this is an option.

**28. Do you have any comments on any of the contents of the call for evidence document in relation to equality issues?**

We are astounded that there is no equality impact assessment provided with the documents given that:-

* as home educators we are a minority community that faces prejudice and hostility from public authority figures and in the media;
* our community is very diverse with people from several different protected characteristic groups overrepresented within it.

We fear the approach outlined in the call for evidence which is all about control and punishment risks stigmatising and alienating us as a group.

Proposals for compulsory registration and monitoring and the effective abandonment of light-touch, reasonable, proportionate regulation as suggested in the revised guidance would disproportionately affect:-

* women or rather mothers as it is predominantly mothers who are responsible for home education provision (notwithstanding that in our group we have several dads closely involved) hard working mums are not impressed at having their time diverted into having to manage ill-informed EWOs;
* disabled parents and disabled children – apart from asking about removing the requirement to get consent to deregister from a special school there is no understanding of the discriminatory attitudes that afflict relationships between local authorities and families with disabled members or of the need to address barriers to accessing services;
* Muslim families whose experiences and needs - according to research by Martin Myers and Kalwant Bhopal – have not been properly acknowledged or understood such has been the obsession with the potential dangers of ‘radicalisation’ (even though there is NO connection with home education whatsoever[[1]](#footnote-1);
* Working class families – there is an unpleasant class bias creeping into public discourse and it can be detected also in the current documents where there are negative references to those on low incomes managing to home educate properly (in our experience as a group with many low income families there is no correlation between income and effectiveness, low income families may not get the same opportunities as others but tend to make up for it by their own ingenuity and hard work and will absolutely prioritise education provision for their children above all else).

The Department should also be aware that unlawful data sharing practices by authorities infringe upon their public-sector duty and this should be tackled. For example, Somerset County Council’s online form for schools asks schools to note any ‘education concerns’ when a child is deregistered to enter EHE. Not only are schools being invited to share often quite sensitive information about parents and children without their consent it is impossible for a school to have a valid concern about a family’s EHE provision if they have no information or knowledge of it. What schools are really being invited to do is comment on their perception of parents’ suitability to provide an education or indeed to comment on a child’s abilities or issues. We have had a case where a school has been aware that a parent had a mental health problem in the past and been subject to domestic violence in the past and have submitted this as an ‘educational concern’.

We could go on. We do not have the resources as a voluntary group to do the work the Department should have done **before** issuing these documents for consultation.

**REVISED EHE GUIDELINES FOR LOCAL AUTHORITIES**

**29. Comments on Section 1: What is elective home education?**

This section implies that children and families who flexi-school come under the guidelines. On the basis of advice we have seen from David Wolfe QC, that is erroneous. Children who are flexi-schooled are on a school roll therefore these guidelines should not apply to them.

**30. Comments on Section 2: Reasons for elective home education**

In 2.1 it should be explained to local authorities that parents home education fundamentally because it is in the best interests of their child. This fundamental fact is too often overlooked and needs to be stated here. Further it is because – if parents have considered or indeed had experience of the school system – they have decided that it would be impossible for them to fulfil their S7 Education Act duty to provide a suitable education by having their child in school (either at all or in the particular schools available locally). For some this will relate to a child not being able to express themselves, pursue their interests or have sufficient freedom to learn in the school environment, for others they may not feel their child would be safe or well in such an environment or indeed parents may be aware of fundamental flaws in the school system which lead, for example, to 17 per cent of school leavers being functionally illiterate[[2]](#footnote-2). There are as many specific factors as there are home educators and it will depend on the needs and interests of the individual child (a significant proportion of our members, for example, have some children in school as well as home educating some).

Two highly prejudicial statements which are clearly based on opinion rather than fact should be deleted:

* In 2.1 this phrase should be DELETED: “but the latter can have a bearing on how well a family is likely to carry it out.”
* In 2.2 this should also be DELETED: “in other cases however home education may be attempted almost as a last resort. When the impetus is a negative one, that may well have implications for the quality of home education which can be provided”

It is wrongly implied that parents reacting to negative impetuses or left with little other option won’t make a good job of home education. In our experience such home educators very quickly become extremely enthusiastic home educators and work extremely hard to enable their children to recover from school trauma and get their health and happiness back as well as providing amazing learning opportunities.

Of course, it is important to bear in mind the lead up to home education and for local authorities to understand that many parents who have had unpleasant experiences with Education Welfare Officers in schools will not be happy at having to explain their reasons for or provision of home education to them.

In para 2.3 the last line is rather prejudicial and should be deleted. Instead reference should be made here to the validity of unschooling/autonomous and self-directed learning and it should be stated that it should not be assumed that any particular approach is any more or less suitable than another.

**31. Comments on Section 3: The starting point for local authorities**

In para 3.4 there is a sentence based on conjecture not fact which should be removed: “However, few people would argue today that parents should be able to exercise their right to home educate children with absolutely no independent oversight”. There is no evidence to support this opinion. Further the following sentence - “The job of each local authority is therefore to find an appropriate balance between parental autonomy and its overall responsibilities for education of children in its area” - is inaccurate: what it should say is that under our legal framework parental autonomy should have primacy unless there is reason to believe that the parent may be failing in their duty.

In para 3.5 the inclusion of the word ‘preferably’ leaves it open for local authorities to adopt a policy without consulting local home educators which surely goes against the spirit of good public policy. Delete ‘preferably’. Written policy statements also need to be drawn up to clearly reflect the principles of proportionality required by the Human Rights Act and that should be made clear.

**32. Comments on Section 4: How do local authorities know that a child is being educated at home?**

Parts of this section are highly problematic and require amendment to be compatible with both education law and the requirements of the ECHR/Human Rights Act 1998.

In para 4.1 this sentence should be qualified because it could encourage local authorities to break the law: “Local authorities are therefore encouraged to use any other data sources available to them to identify children living in their area who are not on the roll of a state school or registered independent school.”

This sentence, as drafted, implies local authorities can merrily raid data held by other agencies (obviously in practice this will be through agreements and protocols) without due regard to basic data protection and human rights requirements. The Guidelines should be absolutely clear that data sharing across agencies will normally require consent of the data subject and should only be contemplated if there is a specific concern as to the adequacy of the child’s education. In relation to health services the bar will be even higher for data sharing – see comment below on 4.4

The wording of some of para 4.2 should be tightened up. This is a highly problematic sentence: “Until a local authority is satisfied that a home-educated child is receiving a suitable full-time education, then a child being educated at home is potentially in scope of this duty”. It should instead say “until the LA has established that the child is in receipt of a suitable education…..” . If this wording is left as it is it would suggest to local authorities that any home educator could be required at the outset to ‘satisfy them’ rather than simply respond to an informal enquiry and as we have argued previously at the outset an informal enquiry resulting in provision of a brief overview is what is proportionate when there are no specific concerns to address. Indeed, we think it needs spelling out to local authorities that under S436A ALL they are entitled to do is ask for a brief overview and they need to be reminded that parents are under no duty to respond although (with reference to the Donaldson judgement) ‘it would be sensible for them to do so.’

Para 4.4 needs rewriting as it again contains confusing advice to local authorities concerning when and how data can be shared. It needs to clearly state that ‘Local authorities need to ensure that any agreements with other agencies such as health authorities, general practitioners and others concerning information on home educated children are fully compliant with data protection legislation and Article 8 of the ECHR. What this means in practice is that it is unlawful to seek or make a referral between agencies simply by virtue of the mere fact of a child being home educated. Such arrangements should only be in place if a child is at risk of significant harm.” The bar is very high indeed for data sharing without consent, especially in relation to health services. For example, Dr Catherine Wills, Medical Defence Union deputy head of advisory services has stated very clearly in respect of data sharing that:

*“(medical staff) will need to judge whether failure to disclose this information 'may expose others to a risk of death or serious harm' (paragraph 64). One example of when such disclosure is likely to be appropriate arises when a patient has confessed to a serious crime such as child abuse.*

*The GMC does not define serious crime in its guidance but refers to examples given in the NHS’s Confidentiality Code of Practice. These include murder, manslaughter, rape, kidnapping, and child abuse or neglect causing significant harm’*.[[3]](#footnote-3)

Para 4.6 – obviously we hope the Department will decide to remove the discriminatory requirement for parents with children who have EHCPs and are at special school under arrangements made by the local authority to seek consent to deregister in order to EHE.

Paras 4.8 and 4.9 need to be careful to remind local authorities of data protection requirements and to be mindful of the rights of data subjects.

**33. Comments on Section 5: Local authorities’ responsibilities for children who are, or appear to be, educated at home**

Parts of this section are highly problematic and require amendment to be compatible with both education law and the requirements of the ECHR/Human Rights Act 1998.

Para 5.1 is an important one because it is mercifully clear on the subject of routine monitoring NOT being part of a local authority’s statutory duty. Indeed, interference where there are no concerns is not only incompatible with Article 8 ECHR it is also a gross misuse of public funds at a time when SEN and disability services, EOTAS and CAMHS are crying out for investment.

In para 5.2 it would be wise to advise local authorities that most families deemed to be providing a suitable education simply wish to be left alone to get on with it without further hassle from their LA. It would be best to recommend that

* local authorities simply get in touch once a year to check if home education is continuing and ask if there have been any significant changes in circumstances to report (parents could reply by means of a simple email or whatever their preferred communication method is) *this follows Lancashire policy*
* local authorities say to parents ‘feel free to contact at us at any point if you need advice about your home education’ (although in practice few have any useful to advice to give it is good for positive relations not to force contact but to make it clear you will be responsive if parent wants contact for whatever reason)

To avoid widespread problems of local authorities badgering parents for no good cause it needs to be spelt out in the strongest terms that such badgering is unreasonable and disproportionate and could raise issues under Article 8 ECHR.

THAT is what light touch and proportionate should mean in practice.

In our answer to Question 15 we supplied a draft flowchart of what light-touch, proportionate oversight should look like and urge the Department to consider something similar to this.

This sentence is NOT consistent with the law and should be removed from the guidelines: “Maintaining such oversight is consistent with the local authority’s duty under s.436A”. Once the LA has established that the child is in receipt of a suitable education, they have no further duty under s436A, so cannot ‘maintain oversight’. There is no duty to ‘maintain oversight’ anywhere in law and suggesting that there is would be deeply misleading and would encourage bad practice. Informal enquiries can of course be made under S437 in accordance with case law in Donaldson but cannot keep being made willy nilly- that would be neither light touch nor appropriate.

In Para 5.3 the phrase ‘it is for each local authority to decide what is necessary and proportionate’. This is not legally correct. Local authorities are not the arbiters of what is necessary and proportionate – the courts are and in deciding whether something is necessary and proportionate when human rights are engaged they will be guided by the principles which underpin European Human Rights law namely:

• Individual rights such as the right to a private, family life can only be interfered with by the state to achieve a fair result and where there is a legitimate interest in doing so. Legitimate interests are limited by both the European Convention and the Human Rights Act and include, public safety, the prevention of crime, the protection of health, national security or the protection of other people’s rights.

• Any interference with an individual’s rights must be in accordance with the law and necessary in a democratic society.

• Even if the reason for interfering with a human right is legitimate, it must correspond to a pressing social need and it must be proportionate to the aim pursued.

• Proportionality

* the interference must be no more than is absolutely necessary to achieve one of the aims in the HRA/Convention.
* the impact of the restriction on the individual must not be excessive in relation to the legitimate interests pursued. In other words, the state must not use a sledgehammer to crack a nut.

Further in considering proportionality the standard approach of the Supreme Court is to address:

(i) whether the objective is sufficiently important to justify the limitation of a protected right,

(ii) whether the measure is rationally connected to the objective,

(iii) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and

(iv) whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter (i.e. whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure).

**Local authority policies should be framed so as to meet this proportionality test or else they will be open to challenge under judicial review.**

We strongly agree with the recommendation in para 5.4 that every local authority should have a named person who knows about the law, policy and different educational philosophies (to which we would add that such an officer ought also to have expertise in human rights law and good practice) but the Department needs to be aware that this will involve considerable investment in training as there is scant understanding of different educational philosophies in our local authority and our discussions with home educators across the country suggests this is rather widespread with very few authorities having anything like a reasonable appreciation.

We strongly disagree with the suggestion in para 5.4 that local authorities should demand essentially the equivalent of a report on provision from home educating families on ‘at least’ an annual basis. This is not light touch or proportionate and, as we keep stating, a waste of everyone’s time and resources. It would give a green light to bad practice. After a brief overview has been provided at the outset and assuming no specific concerns have been brought to an authority’s attention there is NO case for anything other than a quick touching base to confirm a family is still home edding as described above. The Guidance must make this clear.

Training on the law as referred to in this section needs to go much further. As we cited in response to a previous question, local authorities should be under a duty to ensure any officers in contact with or working with EHE families receive training covering:-

a. The legal framework for EHE and Government guidelines on the responsibilities of local authorities.

b. Human rights laws, standards and practice as they relate to EHE

c. Equality law and best practice as it relates to EHE

d. The SEN and Disability Code of Practice and associated legislation.

e. Different educational philosophies and relevant theories of child development including the concept and practice of self-directed learning.

f. Examples of the experience and outcomes of elective home education for a variety of children and young people.

Training packages should include case studies and role play exercises and should be developed and co-produced with home educators – wherever practical/feasible local home educators should be invited to collaborate in delivering such training locally.

In reference to contact with other agencies here it is again necessary to reiterate to LAs the limits on their data processing and sharing activities imposed by Data Protection Law and Article 8 ECHR.

**34. Comments on Section 6: What should local authorities do when it is not clear that home education is suitable?**

Parts of this section are highly problematic and require amendment to be compatible with both education law and the requirements of the ECHR/Human Rights Act 1998.

Para 6.1 refers to the ‘quality’ of home education provision. ‘Quality’ is not a concept that appears in the legislation. What is it doing here? This para also contains a rather odd and patronising reference to ‘it can simply be that as the child grows older, the provision of education is becoming beyond the resources of the parents’. This is not explained. Why would the provision of education become beyond the resources of parents as children get older?

Obviously as children head into their teens some begin to look at options for studying for qualifications but parents in our experience are extremely good at working out their options and there are umpteen different routes available to securing qualifications for free. We think local authorities should maximise the free options by helping with exams, but it is misleading to suggest that those free options are not already there, they ARE it is how many of our members children will be accessing GCSEs and a range of other qualifications (e.g. at the 14-16 centre at Cannington College part of Bridgwater and Taunton College or indeed via a variety of study programmes offered by local FE providers).

Para 6.2 is correct that there is no legal basis for setting aside our Section 7 duty until we get our ducks in a row or the child takes a break (sometimes after traumatic school experiences). HOWEVER anyone with any direct experience of home education would tell the Department that a period of deschooling focusing on building a child’s enthusiasm for learning and general mental wellbeing back up is often essential to the child’s wellbeing and future development and parents should not be afraid to say at the outset ‘We are deschooling’. Miserable, stressed children will not get the most out of their education. When we advise a parent to deschool for a period which we often do we are not advising ‘don’t learn anything’ – that would be impossible since children learn naturally and are naturally inquisitive, they are learning ALL the time – what we do mean is that it is beneficial quite often to focus on doing things that are meaningful to the child and bring them joy and we explain that these inevitably will involve learning just not in a ‘schooly’/ instruction-obsessed way. It would be highly advisable for the guidelines to be in synch with how home education actually works and for local authorities to be able to advise parents on de-toxing and revivifying their poor kids if they have just come out of a damaging school experience. Some parents go straight into a planned approach, others deliberately take time to see what works for them. In the fair and proportionate system we want to see you would allow for this by giving parents a period of 3-6 months if they want to let the authority know how they are fulfilling their s7 duty (by means of a brief overview). Indeed further on in section 10 it is acknowledged that “parents and their children may require a period of adjustment before finding their preferred mode of learning”.

You should delete the ridiculous statement ‘Every week in which a child is not being educated properly is a week lost’. You have not defined what you mean by ‘being educated properly’ and indeed ‘being educated properly’ is not a concept found in the Education Act. Nor have you said what you mean by ‘lost’. This is presumably a reference to the obsession in formal schooling at present to achieving 100% attendance of children regardless of their health or other needs because there is a misguided assumption that education=formal schooling and that hours served sat behind a desk = an education and that an education is something imposed on a child rather than something they can create for themselves. This sort of statement has no place in a document concerned with home education.

In Para 6.5 this sentence is highly problematic: “it will be very easy for the authority to conclude that the child does not appear to be receiving suitable education”. In our view that is not compatible with case law in Phillips v Brown (1980) namely:

‘If parents give no information or adopt the course adopted by Mr. Phillips of merely stating that they are discharging their duty without giving any details of how they are doing so, the L.E.A. will have to **consider and decide** whether it "appears" to it that the parents are in breach of ….’. That wording should be used here: CONSIDER AND DECIDE.

In Para 6.6 it is suggested that “a refusal to allow a visit can in some circumstances justify service of a notice under s.437(1) or even a school attendance order.” This is very misleading and Government guidelines have a responsibility to be extremely clear. Again, case law on inspection of a child’s education at home (Tweedie case[[4]](#footnote-4)) clearly says that the circumstances need to be WHOLLY Exceptional. So the wording of this para should be ‘a refusal to allow a visit can only justify…..in wholly exceptional circumstances’

Para 6.10 should highlight the legitimate reasons why a parent might not respond to a request for information. For example, if a parent has previously made a complaint against a particular Education Welfare Officer or indeed is being prosecuted by them for previous low attendance of their child prior to home education it may perfectly understandable that they will not reply to a request for information from them. If a family feels they have been treated unfairly in the past by the local authority EHE team they may also be unwilling to comply with requests for information. The results of a recent survey by ‘Not fine in school’ (an organisation which supports and advocates for the increasing number of children whose needs are not met in school and who present as school refusers as a result) are relevant here. 26.3% of parents whose children struggled with mainstream through anxiety, undiagnosed SEN etc reported that they have been threatened with a fine as a penalty for unauthorised attendance. Education Welfare Officers were found to be supportive by only 5.4% of parents and local authorities by only 13.7 %.[[5]](#footnote-5) This highlights the extent to which the education authorities are not viewed in a positive light based on parents’ experiences of them failing to support them and indeed of being all too eager to threaten punitive sanctions rather than help them. The proportionate way to ensure families are comfortable responding to requests for information is of course to treat them fairly, respectively and supportively but that is far from the norm.

A small number may not reply in principle because they do not agree with the proposition that the state should interfere in their child’s education and their private, family life AT ALL in any way without due cause. They are particularly mindful of the emphasis in international human rights conventions of the PRIMACY of parents in deciding the upbringing and education of their children. This should give local authorities pause for thought. Unless a local authority has actual evidence of concerns why criminalise an innocent family unnecessarily? The same issue arises in relation to 6.13.

In 6.12 we suggest you include a reminder as to data protection and human rights standards in relation to processing/sharing information.

In para 6.13 we strongly recommend inserting an exhortation to local authorities that: “A school attendance order should only be considered after all reasonable steps have been taken to try to resolve the situation.” Some examples of reasonable steps could also usefully be included.

In para 6.17 discussing strategies for prosecuting parents it is inappropriate to suggest adopting a legal strategy on the basis of what would be most effective against low income families. This is quite possibly discriminatory.

In Para 6.19 it is suggested that local authorities should be more eager to prosecute regardless of costs and their resources. This would surely fail any test of proportionality under human rights law. We would argue the opposite. They should indeed consider the costs and benefits of such draconian approaches and ensure they do not take a sledgehammer to crack a nut. Resources would arguably be better spent filling gaps in provision for children across the authority. Further it would seem inappropriate to use the guidelines to accuse parents of acting in bad faith by ‘deliberately withholding information’. This sort of negative, judgmental comment should not appear here.

**35. Comments on Section 7: Safeguarding: the interface with home education**

This section makes no reference to home education being necessary quite often on safeguarding grounds. This should be explicitly acknowledged by government and it would be wise to balance this new section with some discussion of this so that local authorities can bear it in mind when considering, among other things, whether SAOs might put children at increased safeguarding risk. One of the major drivers of home education is that parents do not believe their children will be safe in school. This is backed up by the personal experiences of our members and in statistic after statistic:

* In the last four years 2,625 sexual offences including 225 rapes involving under 18s abusing other children on school premises were reported to police forces across England.[[6]](#footnote-6)
* Over half of LGBT children have been subject to homophobic bullying in schools[[7]](#footnote-7)
* 24,000 counselling sessions were delivered via ChildLine relating to bullying in 2016-17[[8]](#footnote-8)
* Almost half of children aged from 12 to 16 in England feel sad or anxious at least once a week with worries about their future and school their biggest concerns, a recent survey by Barnardo’s has found[[9]](#footnote-9). By the age of 16, seven in ten (70%) report feeling sad or anxious at least once a week with nearly a quarter (22%) having negative feelings as much as once a day. School was cited as the main cause of stress for 65%. By the age of 16, stress at school was a worry for 83% of children in England.

We strongly believe that if you insist on including a section on safeguarding in these guidelines that you must also highlight the risks to children’s wellbeing associated with school attendance.

Paragraph 7.2 starts by rightly acknowledging that home education is not of itself a safeguarding issue and stating that there is no evidence of this but then makes the unevidenced statement, nay emphasises that “it must be acknowledged that a child being educated at home is not necessarily being seen on a regular basis by professionals such as teachers and this increases the chances that any parents who are using home education to avoid independent oversight may be more successful by doing so.” Where is the evidence for such an assertion? There is none! There is neither evidence that being seen by a certain type of professional decreases risk nor is there evidence of home education being used as a way of avoiding scrutiny. This sentence should be deleted. It plays into the myth that home educated children are isolated, nay ‘invisible’ when the opposite is true.

In paragraph 7.7 it is stated that in some cases – in deciding whether unsuitable education amounts to significant harm a local authority may need ‘expert advice from teachers or educational psychologists’. It should be made clear that any experts consulted should have in-depth knowledge and experience of home education otherwise there is a grave risk of injustice if their main reference point is school-based education.

**36. Comments on Section 8: Home-educated children with special educational needs (SEN)**

Para 8.4 suggests that local authorities will continue to check on the suitability of a child with SEN and refers to section 436A as well as section 437 of the Education Act. Once it has established education is suitable an authority should NOT continue to keep checking – there is no basis for that under s436A and under S437 they should only act if concerns are brought to their attention.

**37. Comments on Section 9: What do the s.7 requirements mean?**

This section begins by quoting Article 2 Protocol 1 of the ECHR and then undermining it in the following paragraph! The sentence ‘This means that the wishes of parents are relevant’ does not reflect the weight that should be given to parents’ right to ensure their child’s education is in conformity with their own religious and philosophical convictions. It is not just a question of ‘oh the parents’ feel this I suppose that is relevant’ rather they have a RIGHT to choose and implement an educational philosophy that accords with their convictions.

This section MUST reproduce the very helpful list of things in para 3.13 of the current Government guidance that parents are NOT required to do as part of their S7 duty since these have proved a vital safeguard against overcontrolling LAs and are well known and established, i.e:

“Home educating parents are not required to:

* teach the National Curriculum
* provide a broad and balanced education
* have a timetable
* have premises equipped to any particular standard
* set hours during which education will take place
* have any specific qualifications
* make detailed plans in advance
* observe school hours, days or terms
* give formal lessons
* mark work done by their child
* formally assess progress or set development objectives
* reproduce school type peer group socialisation
* match school-based, age-specific standards. “

Para 9.4 reveals a bias towards school-type education approaches. Three types of education are referred to which LAs are encouraged to consider suitable but there is no reference to alternative methods such as self-directed learning/autonomous education or indeed Steiner, Charlotte Mason etc.

Sub para d) requires amendment since it is not the case that a local authority may ‘specify minimum requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable’ – rather they may set out some general guidelines. We have seen advice from David Wolfe QC that a local authority which set rigid requirements would be acting unlawfully.

The Guidance should instruct local authorities NOT to make the sort of list which appears, for example, in South Gloucestershire’s EHE policy[[10]](#footnote-10) which implies listed items are somehow mandatory and that even if the list is not complied with the parent may still not be doing enough in the LA’s eyes to show their education is suitable and further includes a number of very school based considerations such as key stages, minimum hours, “core subjects”, examinations etc.

It should also make it clear to local authorities that the s7 duty is a parental one – it is parents who decide what education is suitable for their individual child and it must never be suggested they should follow a set of LA requirements. Whatever the LA thinks and says only informs its actions and does not determine the question

of whether the parents are acting lawfully.

Further it is rather odd, not to say chilling, to cite the Konrad case as an example of state discretion. Interference with rights under the European Convention need to be in accordance with the law meaning domestic law. Germany has a compulsory school attendance law and has outlawed home education since 1871. This law contributed to the way the Nazis were able to indoctrinate German youth so effectively and dominate German society. England does not and has never followed such an approach nor has any other nation of the UK, understanding the need to preserve educational freedom to uphold democracy and safeguard our open society; we have a different culture and our judges have consequently been wary of trampling over individual freedoms to further illegitimate state aims. As the judges in a recent Supreme Court case on Scotland’s ‘named person scheme’ stated:

“The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers’ view of the world. Within limits, families must be left to bring up their children in their own way.”[[11]](#footnote-11)

Sub para (f) is problematic on two counts. First, while most home educated children are extremely gregarious and tend to mix with a much wider cross section of people than schooled children a number choose or require a more reserved path – for example it must be understood that children with severe sensory processing issues or children who are transitioning may choose for very good reasons not to engage in a lot of social activities and this may be necessary to facilitate their wellbeing and social inclusion later on. LAs need to be very careful before judging a child to be socially isolated without understanding all the circumstances. Similarly reference to noisy or unsuitable environments risks inviting inappropriate value judgements unless you spell out what you mean in more detail. School classrooms and playgrounds are noisy and quite dangerous, unsuitable environments for many children with poor air quality[[12]](#footnote-12) yet schools are not at risk of criminal sanction for subjecting children to these.

Para 9.8 and 9.9: It is not helpful to invite comparisons between EHE and school education in relation to discussions of ‘full-time education’. If you insist on referring to the hours children have to spend sat at a desk at school please be sure to note how many hours are wasted each day in transition between classrooms, teachers having to deal with problems in the classroom and make a more accurate assessment of the actual time devoted to meaningful education. A primary school teacher who now home educates recently calculated that in home education just 51 minutes of learning per day, would achieve the same length of time spent learning, as a schooled child[[13]](#footnote-13). Please be sure too to highlight that children in local authority funded/arranged alternative provision are only deemed to need 5 hours a week of actual tuition. Please also make crystal clear that it would be unreasonable and indeed pointless for local authorities to demand details from parents on how long their children spend learning – children learn throughout their waking hours whether engaged in any structured activity or not. There is a big problem locally with Education Welfare Officers misleading parents and telling them – erroneously – that they should have their child ‘sat down doing work for at least 22-25 hours a week like in school’. The guidelines need to highlight this nonsense and insist local authorities stamp it out with a very clear exhortation that LOCAL AUTHORITIES CANNOT stipulate or insist on a particular minimum number or pattern of hours.

**38. Comments on Section 10: Further information**

Para 10.2 also needs to make it clear that s.17(4A) of the Children Act also does not permit local authorities to seek to interview the child to obtain their wishes and feelings as it is the duty of the parent to mediate the child’s wishes.

Para 10.3 This section MUST make it clear that prior to a local authority keeping an estranged partner ‘informed of what is happening’ if they are taking action against a home educating parent with care of a child they MUST ascertain first if such contact could constitute a risk to the parent or child. Say the parent with care had been the victim of domestic abuse. A local authority following this part of the guideline could provide an abusive partner with information that allows them to trace the victim and resume abuse.

Para 10.6 there is a highly prejudiced opinion ‘In many cases it is likely that the parent will be unable to provide proper home education, even if willing to attempt this’ which should be deleted as there is no evidence for such a patronising statement.

Paras on flexi-schooling 10.7 and 10.8: these are misleading. First if a child is flexi-schooled they are on the roll of a school and these guidelines don’t apply. Second, we have seen advice from David Wolfe QC that says just because a school may have no supervisory role or responsibility for welfare does not mean that a school is not necessarily in a position to “approve” of the home education being provided by a parent as part of a flexi-school arrangement. The school may well be in a position to do that and certainly can do it without taking on a specific supervisory role or responsibility for the child’s welfare out of school. In the end, it is for the head teacher to make an assessment as they think fit. The guidance should make that clear and certainly not mislead

Para 10.9 A number of our members have children in 14-16 provision at local colleges. Our children qualify for places because they are Electively Home Educated. The provision is geared to enabling them to take some GCSEs and/or prepare for a vocational route into further education. This seems quite different to flexi-schooling although we would argue local authorities should simply leave us alone once our children are in such provision. Indeed, our local authority has advised us that they would consider such children of no interest to them from a home ed regulatory point of view once on the roll at the college regardless of whether they were there full-time or part-time.

Para 10.10 Unregistered settings are not a home education issue. This agenda has no place in these guidelines.

Paras10.14-10.16 are incredibly important they should be right at the front of this guidance and given much greater emphasis, rather than slotted at the back as almost an afterthought. Understanding and appreciation of the issues in these paragraphs is key to ensuing fairness and proportionality.

It is rather telling that paragraphs on ‘support for home educators’ are also to be found at the back of a document predominantly geared towards suggesting creative ways local authorities can use to attempt to criminalise parents they deem to be failing in their duties and seize control of their children’s lives.

It would be nice to see an acknowledgment of how home educators support each other and an appreciation of the value of the national and local support groups who are the real sources of the advice and support for our families in the face of state indifference or indeed hostility. Indeed, local authorities should be instructed to provide contact details for their local groups to new home educators.

Para 10.22 Delete the word ‘necessarily’ in this sentence “Home education should not necessarily be regarded as less appropriate than in other communities”. The word ‘necessarily’ implies that home education in Gypsy, Roma and Traveller communities could be regarded as less appropriate and that could be in breach of the Equality Act as they are rightly a protected group.

**Draft revised DfE guidance on home education: for parents**

**This section invites comments on different sections of the draft revised guidance document about the current framework for home education, which DfE proposes to publish for parents. Copies of the draft document can be downloaded from the Overview page.**

**39. Comments on Section 1: What is elective home education (EHE)?**

Even before Section 1 the Introduction kicks off with a statement parents will find rather patronising and offensive namely this one: “Educating children at home works well when it is a positive choice and carried out with a proper regard for the needs of the child.” Why will people find this patronising and offensive? Some home educate because the education system has failed their children, in the first instance it may not have been a positive choice. They are doing an amazing job and do not need Government making negative, prejudicial value judgments about them. Here it is implied HE works well only if it is a positive choice. No, it can also work well even if we have been forced into it because we do what we need to do for our children and having begun a home educating journey parents tend to then say things like ‘I wish I had known about this earlier I would have done it from the start’ and become evangelical enthusiasts for home education! Further all home educators home educate because it is in the best interests of their child which means it is all about meeting their needs. This sentence implies that the Government thinks some of us are not carrying it out our home education provision with regard for the needs of the child. That is simply offensive.

Indeed, the document might more honestly be entitled “Elective Home Education: Things we hope will put you off it.”

**40. Comments on Section 2: What is the legal position of parents who wish to home educate children?**

Para 2.9 NO it is unreasonable for parents to be expected to ‘quantify and demonstrate the amount of time for which your child is being educated’. Children learn all the time whether they are engaging in an activity deemed to be educational or not.

This whole section is unnecessarily confusing and misleading for parents probably because the Department is trying – not very subtly – to influence parents to follow a certain path with the ploy of ‘you can avoid trouble from your local authority this way’.

It is wrong to tell parents “there should be an appropriate minimum standard which is aimed at” – standard of what? Where is this provided for in law? (2.10 a)

The apparent freedom signalled in para 2.11 is then entirely and confusingly undermined and subverted by para 2.12. ‘You have all this freedom’ says para 2.11 ‘you don’t have to do any of this long list of things’; ‘BUT ‘ says para 2,12 ‘if you don’t do what we think you should be doing i.e. provide a broad curriculum and assess your children’s progress you could get into trouble.’

**41. Comments on Section 3: So what do I need to think about before deciding to educate my child at home?**

Since the Department is keen for parents to address all the issues thoroughly before taking the plunge perhaps this section could include a warning that parents should investigate the attitude and practices of their local authority before deciding to home educate given that so many operate in an overbearing and oppressive fashion towards home educating families and indeed should bear this in mind in considering *where* they might want to home educate their child. A list of the worst authorities could be supplied or perhaps a league table to inform parents’ decisions.

Para 3.8 c) is misleading because it suggests that parents need to ‘teach’ their children. Education is about more than teaching indeed teaching or formal instruction can sometimes get in the way of learning. Those home educators who have adopted self-directed learning as their educational philosophy and approach do not attempt to teach or at least do not regard what they do as teaching. They facilitate, assist, encourage, source resources, explain and show when appropriate, engage in dialogue and discussion and generally provide a rich learning environment. If instruction occurs, it is because a child has asked for instruction in a specific area.

**42. Comments on Section 4: If I choose to educate my child at home, what must I do before I start?**

Para 4.1 This sentence is misleading: “However, it is strongly recommended that you notify your local authority of the fact, in order to facilitate access to any advice and support available. Some local authorities operate voluntary registration schemes which are linked to support arrangements.” It would be more honest to say, “Government strongly recommends that you notify your local authority, although home education groups may advise you there is no benefit to it”. Statements about advice and support should be qualified since these are not things local authorities provide much of and may come with strings attached. So, the document could say instead “Find out whether your local authority offers any useful support or advice for home educators and whether there are any conditions attached.”

**43. Comments on Section 5: What are the responsibilities of your local authority?**

LA responsibilities

Para 5.3- amendment is required here - as noted in our response to the local authority guidance it is not the case that local authorities can conclude from lack of information from a parent that education is unsuitable, rather they must consider and decide.

Para 5.4 is misleading and contains a veiled threat. On the one hand parents are told you are under no obligation to let a local authority into your home or show them your child’s work. That should be that but then comes a very heavy hint that things might not look good for you if you don’t. It might be worded in weasel fashion, but the implication is clear.

Re para 5.5 about local authority policies we recommend the Department includes advice to parents about what to do if they consider policies have not in fact be designed for the benefit of home educated children or to minimise the impact of monitoring and assessment on families who are known to be carrying out home education properly. How can inappropriate policies be challenged and how can parents seek effective redress?

Also in para 5.5 we are concerned at the suggestion that it is proportionate for an authority to ask for an ‘annual review’ with a specially assigned local authority officer – as discussed in our response to the local authority guidance we are very clear that annual contact (in order to be light touch and proportionate) should simply be about checking a child is still being home educated and asking the parents if there has been any significant change in circumstances.

Para 5.6 It is imperative that local authorities inform parents of SPECIFIC CONCERNS IN WRITING – this should be very clear in both sets of guidance. At the moment we can argue for this on the basis of the existing EHE guidelines and it is a check against harassment and bad practice.

In para 5.7 again as we highlighted in our response to local authority guidance on this point the local authority shouldn’t necessarily jump to the conclusion ‘oh no information, that’s unsuitable education’ as there may be very good reasons for parents not wishing to provide information to an Education Officer.

In 5.12 before ‘circumstances’ these words ‘wholly exceptional’ should be inserted (see our response to relevant section of local authority guidance.

Here we voice our strong objection to the disproportionate attention in both sets of guidance to what local authorities can do to parents in the worst-case scenario. In the current guidance, discussion of what local authorities can or should do in the case of unsuitable education is brief and limited to SAOs with scarcely a few lines on the subject. Now the Department has gone to town with detailed guidance on how local authorities can take control of children’s education and how they can use (or potentially mis-use) child safeguarding systems and law to get around the right to a private and family life. The guidance should be geared towards positive relations and proportionality, instead an obsession with overbearing oversight is evident and this will doubtless not be lost on local authorities who will doubtless regard the level of detail and advice about enforcement action as encouragement to undertake it more readily instead of taking steps to avoid it. Parents in turn receive the message: there are lots of ways the authorities can take legal action against you to take control of your children and indeed you risk having your children taken away if the local authority does not approve of your home education provision.

**44. Comments on Section 6: Further information**

This section needs supplementing with some more useful information especially around:

* national and local home education groups which are a vital source of support and advocacy for home educating families,
* advocacy and legal advice for parents given the obsession with SAOs, ESOs and misuse of child protection legislation.

**45. Do you think that anything in the revised guidance documents could have a disproportionate impact, positive or negative, on those with 'relevant protected characteristics' (including disability, gender, race and religion or belief) - and if so, how?**

The revised guidance documents will have a disproportionate negative impact on home educating families per se. We are not currently a protected group under the Equality Act – except where we fit one of the other protected characteristics – but such is the climate of prejudice against and misinformation about home education perhaps we should become one.

Elements of class bias have crept into the documents. For example, in para 6.17 there is the suggestion that ESOs should be taken out against low income families because fines associated with SAOs won’t be a relevant deterrent as they won’t be able to afford them and in the parents’ guidance at 3.8 c) is the loaded question – ‘do you have the resources to teach your child properly?’

The heavy-handed, disproportionate form of ‘oversight’ wrongly proposed would have a disproportionate impact on women since women carry out the majority of home education provision, burdening busy home educating mums with the unnecessary, stressful work of dealing with often hostile authorities.

In sections of the Local Authority guidance dealing with ‘Fundamental British Values and in para 6.14 of the guidance for parents concerning faith considerations there remains an unfortunate undertone of suspicion of people of different faiths which could perpetuate negative attitudes and less favourable treatment of Muslim home educating families and those of other faith communities.

Above we pointed out that the wording of para 10.22 could be discriminatory in relation to Gypsy, Roma and Traveller communities.

1. https://researchportal.port.ac.uk/portal/en/publications/muslims-home-education-and-risk-in-british-society(fefa0e35-8dd9-47f1-a72d-5f40ae4e8d89).html [↑](#footnote-ref-1)
2. https://www.teachingtimes.com/news/school-leavers-functionally-illiterate.htm [↑](#footnote-ref-2)
3. <https://www.gponline.com/confidentiality-when-gps-disclose-information-police/article/1430705> [↑](#footnote-ref-3)
4. ( Tweedie v Pritchard [1963] Crim LR 270; R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie [1963] Crim LR 639) [↑](#footnote-ref-4)
5. http://notfineinschool.org.uk/wp-content/uploads/NFIS-Survey-Results-Summary-2.pdf [↑](#footnote-ref-5)
6. https://www.theguardian.com/society/2017/oct/09/child-on-child-sexual-assaults-soar-police-figures-reveal [↑](#footnote-ref-6)
7. https://www.telegraph.co.uk/education/2017/07/10/nearly-50-per-cent-lgbt-pupils-bullied-school-report-finds/ [↑](#footnote-ref-7)
8. **Source:** Bentley, H. et al (2017) [How safe are our children? The most comprehensive overview of child protection in the UK 2017](https://www.nspcc.org.uk/services-and-resources/research-and-resources/2017/how-safe-are-our-children-2017/). [↑](#footnote-ref-8)
9. https://www.barnardos.org.uk/news/New-survey-shows-half-of-all-schoolchildren-feel-sad-or-anxious-every-week/press\_releases.htm?ref=128176 [↑](#footnote-ref-9)
10. http://www.southglos.gov.uk//documents/Elective-Home-Education-Policy-Procedures-November-2016.pdf [↑](#footnote-ref-10)
11. https://www.supremecourt.uk/cases/docs/uksc-2015-0216-judgment.pdf [↑](#footnote-ref-11)
12. https://www.recltd.co.uk/poor-air-quality-standards-outside-schools/ [↑](#footnote-ref-12)
13. https://monkeymum.blog/2015/09/13/time-is-precious/ [↑](#footnote-ref-13)