

## Home Education - registration and monitoring proposals Education Otherwise Consultation Submission October 2009

**Question 1:** *Do you agree that these proposals strike the right balance between the rights of parents to home educate and the rights of children to receive a suitable education?*

**Selection:** No.

**Comment:** In English law, parents have a duty to cause their children to receive education. The question presents a false dichotomy and betrays a lack of understanding of the law. These proposals categorically do not represent a positive move towards greater rights for children. The parent is the child's best advocate and home education is an expression of the rights of the child. It would be ill-advised disproportionate and extremely damaging for the Government to proceed to legislation on the basis of a tiny minority of serious cases where the parent was not acting in the best interests of the child.

The proposals shift the decisions about education from the parent to the Local Authority in the case of home educated children and are in conflict with section 7 of the 1996 Education Act and with statutory guidance on Children Missing Education.

Barrister Ian Dowty states:

**"If as the Badman Report says in 3.5 and 3.6 the Talmud Torah test causes a further problem for local authorities, it cannot be solved by changing the position for home educators. The Talmud Torah test applies to schools and it is in that context that it is an expression of the law. A private or faith school supplies education suitable to age aptitude ability and special needs and within logistical limitations also to the preferences and values of the parent. If a parent can discharge their s7 responsibility by sending a child to such a school, then why should they not be able to home educate in accordance with the same principles. To decide otherwise would unfairly discriminate against home educators."**

It is clear from the proposals to involve schools in the planning of provision that school pedagogy will be imposed on home education. This is inappropriate for settings with a much higher adult:child ratio. Many families home educate because they disagree with the imposition of the national curriculum, the constant testing of children, the lack of a child's ability to shape their own provision and be a full participant in directing their own learning. The proposals negate the right of parents and children to define for themselves an appropriate education suitable to the age, ability, aptitude and any special needs of the child. The proposals will remove richness and diversity in current provision and instead will bring ever-increasing prescription and direction over the child's education at home.

The requirement for a twelve month plan in advance flies in the face of best practice in terms of encouraging reflective and responsive provision. This point was made in Oral Evidence to the Select Committee on October 14<sup>th</sup>.

The Badman Review has damaged innovative and constructive joint working between local authorities and home educators which does nothing to benefit children or to promote the rights of the child. Some families have felt compelled to withdraw voluntary co-operation with local authorities as a result of the Review. The Review places the relationship between home educating families and local authorities in an adversarial context, institutionalises mutual suspicion and does nothing to establish and address the reasons why some families choose not to have a relationship

with their LA. This point was raised in Select Committee Oral Evidence by Education Otherwise on October 14<sup>th</sup>.

The emphasis on producing work for inspection and the requirement for a child to “exhibit” learning show a fundamental lack of understanding of home education and the dignity and respect afforded to children by home educating parents. There are good reasons why some families choose not to have a relationship with local authority officials who undermine their provision and destroy the self confidence and self esteem of children through a lack of appreciation and awareness and a lack of respect for the child.

There appear to be a number of conflicting reasons for home visits and interviews with children: a safe and well check by observing the child, ensuring that the child is receiving suitable education and verifying that the child is able to answer questions about academic work undertaken during the year.

It also appears to be envisaged that the home interview would give the child an opportunity to disclose abuse to a trusted and familiar adult. These four objectives are counter-productive and wholly incompatible.

Should these proposals be implemented, we predict a barrage of complaints throughout the country, escalating through local council complaints procedure to Ombudsman level. Many home educating families have already been to talk to their MP about these proposals.

The present law is sufficient but there is no established framework for liaison between home education representatives, local authorities and the Department at a local authority level. Nor is there a framework or mechanism or channels of communication between the Department at a national level and home education organisations and local authorities. We suggest that regional and national conferences should be organised to bring together practitioners and stakeholders to investigate, discuss and disseminate best practice.

There has been inadequate central government guidance and a failure to educate local authorities in home education. Elsewhere in this consultation submission, Education Otherwise proposes that the Government take powers to put the 2007 Home Education Guidelines on a statutory basis.

The parent has a duty to cause the child to receive education via section 7 of the Education Act 1996. This can be done through school or outside the school system.

Since February 2007 the local authority has a duty via s.436A of the Education Act 1996 to make arrangements to identify children missing education. Paragraph 87 of the statutory guidance on Children Missing Education states that:

*“ local authorities should make inquiries with parents educating children at home about the educational provision being made for them. The procedures to be followed with respect to such investigations are set out in the EHE Guidelines, 2.7-2.11 and 3.4-3.6. “*

Section 437 of the Education Act 1996 requires the local authority to seek information from parents if it appears that a child is not receiving education. Ultimately if the local authority is not satisfied, it has a duty to serve a School Attendance Order.

The authority has further duties via the Children Act 1989 sections 17 and 47 in relation to establishing whether a child is in need of services and a duty to step in if the child is at risk of significant harm.

Section 10 of the Children Act 2004 obliges the local authority to co-operate with statutory partners to improve wellbeing of children in the area.

**Question 2:** *Do you agree that a register should be kept?*

**Selection:** Not sure

**Comments:** We have answered “not sure” because the question is ill-conceived and cannot be answered in the context of the Badman Report. Is this a question about the principle of voluntary registration, of compulsory registration, or of the specific licence-to-home-educate registration scheme proposed by Graham Badman and the DCSF? We are implacably opposed to the compulsory registration scheme proposed by Graham Badman. In the few areas where the local authority has been able to offer access to services and non-judgemental support to home educating families there has been an increase in the take-up of voluntary registration and a far more positive working partnership between home educators and the local authority.

We should like to query the term “register” rather than “database.” These proposals would create the offence of having an unregistered child. We are not clear whether the parents or guardians of a child entering the country for a holiday would have to register the child as home educated, since the proposals refer to residence but a timeframe is not defined. Nor is it clear how asylum seekers between the ages of 5 and 16 or children of no fixed abode might be brought into the scope of the proposed registration scheme. We would also have grave concerns about registration and disclosure for the children in families where there has been domestic violence since there has been no guidance or reassurance about shielding.

The proposals appear to be incompatible with recent statutory guidance on Children Missing Education which directs local authorities to follow procedures set out in the Government's Elective Home Education Guidelines. The complexities of a compulsory registration scheme create the potential for legal challenge.

On a technical point, there are security issues with locally administered databases which may not conform to a central agreed standard. All the security, data protection and data cleansing issues raised by ContactPoint are equally applicable to home education databases.

**Question 3:** *Do you agree with the information to be provided for registration?*

**Selection:** No

**Comments:** Education Otherwise does not support compulsory registration or conditional registration. We therefore object to all the information outlined in the proposal for compulsory registration.

We take particular issue with the statement of educational approach and the requirement to produce a 12 month plan as a condition of registration. We believe that this proposal was conceived in haste and we understand that Graham Badman's Expert Reference Group had serious reservations.

Registration and monitoring as specified in the Badman Report would be extremely costly. There has still been no Impact Assessment for the Government's proposals. In particular there has not been a Race Impact Assessment or Disability Impact Assessment or Equality Impact Assessment.

The Review did not adequately assess the benefits of voluntary engagement nor the corresponding danger that families will disengage if forced into an adversarial relationship with their local authority. We have also addressed this issue in our answer to the first question of this

submission and in our Oral Evidence to the Select Committee on October 14<sup>th</sup>.

A lack of engagement with the authority is not an indicator that there are difficulties, that the family is isolated or that there should be concerns for the children.

**Question 4:** *Do you agree that home educating parents should be required to keep the register up to date?*

**Selection:** No

**Comment:** It is not possible to keep such a register up to date and the question betrays a lack of understanding of home education. The place of education may change from day to day and the educational approach may of necessity and principle diverge from the statement contained in the 12 month plan. Under the Government's proposals parents would be committing a criminal offence if they failed to supply any part of this information to the authorities at the earliest possible opportunity in order not to break the law.

The proposals are in conflict with recent statutory guidance on Children Missing Education which directs local authorities to follow procedures set out in the Government's Elective Home Education Guidelines. The complexities of a compulsory registration scheme create the potential for legal challenge.

In the few areas where the local authority has been able to offer access to services and non-judgemental support to home educating families there has been an increase in the take-up of voluntary registration and a far more positive working partnership between home educators and the local authority.

**Question 5:** *Do you agree that it should be a criminal offence to fail to register or to provide inadequate or false information?*

**Selection:** No

**Comment:** We would strongly oppose any move to impose a criminal record on parents and we feel that the question is offensive.

Would local authorities be liable in law for failing to keep a comprehensive register and how might this be determined or enforced?

It is difficult to imagine the legal input to the Department in drafting this question since "inadequate information" is an impossibly subjective criterion for prosecution.

It is simply not possible to keep such a register up to date and the question betrays a lack of understanding of home education. The place of education may change from day to day and the educational approach may of necessity and principle diverge from the statement contained in the 12 month plan.

Home educators are not the only people to object to this proposal. Select Committee witnesses from the National Children's Bureau and the Association of Directors of Children's Services stated on October 14<sup>th</sup> that the case had not been made for criminalising parents and that other options were preferable.

How is it envisaged that the Government might enforce registration especially for highly mobile families?

It makes little sense to legislate for increased intervention in the area of home education and to appear to promise a menu of support to home educating families, without first assessing the cost of implementing these proposals. The Government is clearly not able to do this until the total number of home educated children is known. Therefore it is not logical to proceed to legislation in the absence of any reliable data.

There has still been no Impact Assessment for the Government's proposals. In particular there has not been a Race Impact Assessment or Disability Impact Assessment or Equality Impact Assessment.

This proposal should be withdrawn.

**Question 6 a):** *Do you agree that home educated children should stay on the roll of their former school for 20 days after parents notify that they intend to home educate?*

**Selection:** No

**Comment:** This will cause undue stress to families as the school puts pressure on the child to attend school during this period in order not to prejudice Ofsted-rated attendance targets, particularly persistent absence figures. The proposal undermines children's rights and is damaging to the welfare of the child.

Schools will seek to persuade parents not to take children off the school roll and to remain as pupils. Local authority officials will become involved in discussions over whether the parent is capable of producing a detailed 12 month plan at this stressful time. The potential for conflict and legal challenge is considerable.

This proposal is also in conflict with section 7 of the 1996 Education Act and with recent statutory guidance on s.436A of the Act and with the 2006 Pupil Registration Regulations.

This proposal is ill-conceived and should be withdrawn.

**Question 6 b):** *Do you agree that the school should provide the local authority with achievement and future attainment data?*

**Selection:** No

**Comment:** The case has not been made. We are unable to see why this is necessary or desirable. Schools do not routinely provide home educating parents with this information. It is not proposed that consent be sought from the parent or from the child. The reason for taking this information could only be to judge the parent's educational provision against school standards and projected school attainment targets.

We have feedback from members indicating that in some cases schools under-estimate a child's ability and future attainment, stating that the child will never be academically successful, that the parent is deluded or biased to think otherwise.

In other cases, members have been routinely misinformed by schools about the child's actual level of attainment and understanding based on the curriculum material covered in class which may not have been understood or assimilated by the child, necessitating a great deal of one to one remedial work at home once the child has been removed from the state system.

Moreover, the parent may not wish to adopt school-based values and a school-type curriculum but would come under pressure from the local authority to base the home education on the framework set out by the school. We already see this in many cases where the local authority interprets the

statement of special educational needs as imposing a requirement on the parent to deliver a particular form of education or to reach specific attainment targets.

**Question 7:** *Do you agree that DCSF should take powers to issue statutory guidance in relation to the registration and monitoring of home education?*

**Selection:** No

**Comment:** The Government should not take powers to issue statutory guidance on registration and monitoring. This is the wrong question about statutory guidance. We should have been asked for our views on statutory guidance regulating the rights and responsibilities of the parent and the local authority which was the focus of the Government non statutory Guidelines in 2007.

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The Badman Review did not seek comprehensive reliable information about local authority practice and procedure. Education Otherwise has begun much-needed research in this area. Philip Noyes giving evidence on behalf of the NSPCC the Select Committee on October 14<sup>th</sup> noted that the Badman Report was lacking in this respect.

The 2007 Government guidelines on home education were published after wide consultation and deliberation. The problem is that these non-statutory Guidelines were not publicised by the Government. Many local authorities either remained unaware of their existence or treated them as merely advisory since they were not statutory.

In Oral Evidence to the Select Committee on October 14<sup>th</sup> there was some discussion of what constituted suitable education and the local authority witness suggested that in home education there should be the consistent involvement of parents or other significant carers; recognition of the child's needs, attitudes and aspirations and opportunities for the child to be stimulated by their learning experiences.

These proposals are of course already contained in the Government Guidelines at paragraph 3.15 further demonstrating that there is no need to reinvent the wheel.

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The Review did not have sufficient time to investigate models of good practice nor did the Department for Children Schools and Families consider pilot studies. Much more work needs to be done in this area.

There can clearly be no headlong rush to legislation as there is no Impact Assessment for the Government's proposals. In particular there has not been a Race Impact Assessment or Disability Impact Assessment or Equality Impact Assessment.

**Question 8:** *Do you agree that children about whom there are substantial safeguarding concerns should not be home educated?*

**Selection:** Not sure

**Comment:** We have answered "not sure" since a yes/no answer is not applicable to this question and the subject demands further consideration. Recommendation 23-24 of the Badman Report propose that any "concerns" not otherwise specified could also be grounds for refusing home education registration. This is prejudicial to any meaningful discussion of question 8 and recommendations 23 and 24 should be withdrawn and redrafted. The current proposals are open to legal challenge.

If the child is considered to be at risk of significant harm there is legislation and guidance in place via section 47 of the 1989 Children Act and Working Together to Safeguard Children which sets out procedures to be followed. The mode of education is irrelevant. A child is either safe with the parent or not safe, yet this proposal would create a third category of child who is "safe to go to school."

Members tell us that where the child has special educational needs the school or local authority often raises "safeguarding concerns" as an obstacle to the family's home education, in some cases leading to a section 47 referral which remains on the family's record. The value and legality of home education is not adequately understood.

Children and families may be known to social care services for a variety of reasons. In some cases the child may be in need of services and therefore the family has approached social services or health services. This take-up of services is surely to be encouraged and not to be adduced as evidence that the educational provision made for tens of thousands of other children is in urgent need of inspection.

**Question 9:** *Do you agree that the local authority should visit the premises where home education is taking place provided 2 weeks notice is given?*

**Selection:** No.

**Comments:** The Badman Report conflates education, welfare, child protection and safeguarding. No justification has been given for imposing a duty to visit the home and question children without the parent present. The proposal is operating on the assumption that any and every child could be at risk and is a wholly disproportionate response to a minority of cases. The proposals also burden the local authority with additional liability in law in cases where the official has signed off the family and reported that there is no cause for concern.

It is illogical that the local authority should only visit the homes of children who are educated at home and not the homes of all children. Children spend more time at home than they do at school and are of course based at home for relatively long periods during the summer holidays, where the parent may be working away from home.

There appear to be a number of conflicting reasons for home visits and interviews with children: a safe and well check by observing the child, ensuring that the child is receiving suitable education and verifying that the child is able to answer questions about academic work undertaken during the year.

It also appears to be envisaged that the home interview would give the child an opportunity to disclose abuse to a trusted and familiar adult. A moment's thought should reveal how unlikely this would be.

These objectives are mutually incompatible.

A mass home visit scheme for 80,000+ home educated children would be astronomically expensive and would represent an extraordinary priority for the Government when there is still no funding for support or services to home educating families. There has been no Impact Assessment for the Government's proposals. In particular there has not been a Race Impact Assessment or Disability Impact Assessment or Equality Impact Assessment.

**Question 10:** *Do you agree that the local authority should have the power to interview the child, alone if this is judged appropriate, or if not in the presence of a trusted person who is not the parent/carer?*

**Selection:** No

**Comments:** The proposals to interview and question children in their home without a parent present have met with widespread and determined opposition and are unworkable.

The civil rights organisation Liberty has stated: ***"Any power of access to the home must be tightly regulated and a full explanation as to the power's necessity should be given."***

There appear to be a number of conflicting reasons for home visits and interviews with children: a safe and well check by observing the child, ensuring that the child is receiving suitable education and verifying that the child is able to answer questions about academic work undertaken during the year.

It also appears to be envisaged that the home interview would give the child an opportunity to disclose abuse to a trusted and familiar adult. We believe that these proposals lack clarity and that these objectives are counter-productive and mutually incompatible.

Should this proposal be implemented, we predict a barrage of complaints throughout the country, escalating through local council complaints procedure to Ombudsman level. Many home educating families have already been to talk to their MP and hundreds of home educating families visited parliament on October 13 to raise awareness of this issue.

There is absolutely no information about the procedure if the child does not want to be questioned without a parent present and it was this very question which Graham Badman said he most dreaded in evidence to the Select Committee on October 12<sup>th</sup>.

This proposal is causing a huge amount of concern, anger, distress and outrage. For children who have been bullied at school the home is a place of sanctuary and safety. The Badman Report does not address the issue of recommended procedure and the rights of the child if the child refuses to be interviewed. The proposal is open to legal challenge.

For safeguarding reasons we believe that many parents would not be prepared to allow children to be alone with unknown adult in position of power and authority. The child seems to be viewed both as a witness against the parent and also as evidence for the efficacy or otherwise of the parent's educational provision. A third view of the child is as potential abuse victim in all cases until proved otherwise. This is an extraordinary way to segregate and objectify children while allegedly promoting the child's right to be heard. Meanwhile parents are viewed with suspicion and mistrust, being characterised as likely to mislead or deceive the authorities or as being the last people who might know what their child actually needs.

Graham Badman does not want the parent present as an advocate for the child. Nevertheless the child needs an advocate chosen or approved by the parent and the child. An independent advocate is also necessary for the professional reputation of the local authority officer who should never see the child alone.

We note that there has been no Impact Assessment for this proposal.

**Question 11:** *Do you agree that the local authority should visit the premises and interview the child within four weeks of home education starting, after 6 months has elapsed, at the anniversary of home education starting, and thereafter at least on an annual basis? This would not preclude more frequent monitoring if the local authority thought that was necessary.*

**Selection:** No

**Comment:** The proposals to interview and question children in their home without a parent

present have met with widespread and determined opposition and are unworkable. There is absolutely no information about the procedure if the child does not want to be questioned without a parent present and it was this very question which Graham Badman said he most dreaded in evidence to the Select Committee on October 12<sup>th</sup>.

The civil rights organisation Liberty has stated:

***"Any power of access to the home must be tightly regulated and a full explanation as to the power's necessity should be given."***

A mass home visit scheme for 80,000+ home educated children would be astronomically expensive and would represent an extraordinary priority for the Government when there is still no funding for support or services to home educating families. There has been no Impact Assessment for the Government's proposals. In particular there has not been a Race Impact Assessment or Disability Impact Assessment or Equality Impact Assessment.

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It also appears to be envisaged that the home interview would give the child an opportunity to disclose abuse to a trusted and familiar adult.

Since February 2007 the local authority already has a duty via s.436A of the Education Act 1996 to make arrangements to identify children missing education. Paragraph 87 of the statutory guidance on Children Missing Education states that:

*" local authorities should make inquiries with parents educating children at home about the educational provision being made for them. The procedures to be followed with respect to such investigations are set out in the EHE Guidelines, 2.7-2.11 and 3.4-3.6. "*

Section 437 of the Education Act 1996 requires the local authority to seek information from parents if it appears that a child is not receiving education. Ultimately if the local authority is not satisfied, it has a duty to serve a School Attendance Order.

The authority has further duties via the Children Act 1989 sections 17 and 47 in relation to establishing whether a child is in need of services and a duty to step in if the child is at risk of significant harm.

Section 10 of the Children Act 2004 obliges the local authority to co-operate with statutory partners to improve wellbeing of children in the area.

The present powers are sufficient but poorly understood and the Department has not taken a lead in promoting the 2007 Guidelines.

Education Otherwise recommends that the Government should take powers to put the 2007 guidelines on a statutory basis.

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