

All Party Group Home Education Meeting November 27th 2012 SEN and Disability

Now with Postscript December 20th 2012

<http://edyourself.org/notesapgnov2012SEN.pdf>

Chaired by Lord Lucas

Amanda Farris, Policy Advisor to Graham Stuart MP

Jane Lowe, Home Education Advisory Service (secretariat)

Fiona Nicholson

Ian Dowty

Tricia Farey, speaker, Home educating parent, Lancashire

Peter Harwood, speaker, Head SENAS Birmingham Council

Stephen Smith, speaker, former Head of Developing Special Provision Locally at Hertfordshire Council

Stephen Kingdom Director SEN Disability DfE

Ipsa

Home educating parents

Local authority officers with responsibility for home education/SEN

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Executive Summary

A meeting was held at Portcullis House, Westminster, on Tuesday 27th November 2012 at 6pm to discuss **Special Educational Needs and Disability** with an opportunity to talk to Stephen Kingdom, Deputy Director SEN and Disability at DfE. The aim of the event was to raise awareness and to identify [key issues with the new SEN legislation and funding which will impact on home educating families.](#)

Contributors identified positives and negatives in the Draft SEN Bill which is currently being scrutinised by the Education Committee and is set to be introduced to parliament in the New Year. The meeting also heard how families with SEN and disabled children find that services and support are immediately removed once a child starts to be home educated.

There was an explanation from Ipsa of how the current statement system should work; section 3 of statement is for the authority to provide and LAs shouldn't evade their duty to make provision by saying that the child is out of school. Whilst welcoming the clarification concerning access to services, home educating parents at the meeting wanted to make it clear that some/many families preferred to find their own ways of meeting their child's needs without input from the council.

Local authorities at the meeting asked DfE for a clear exposition from the Government of how the High Needs Block could be used for children in elective home education. It was pointed out that local authorities still Have time to use Alternative Provision Funding For SEN Support (deadline January 2013). The general

view was that Personal Budgets were not going to be an answer for many families.

Preface

We were discussing the current system with statements and Alternative Provision Funding and we were also looking ahead to the changes which are set to be introduced firstly with the High Needs Funding Block for SEN, which comes in from April 2013ⁱ and secondly with the new law on special needs, notably the EHC Plan to replace statements of SENⁱⁱ.

The proposed legal changes are contained in the Draft SEN Billⁱⁱⁱ which was published in September 2012. It is currently in draft and is being scrutinised by the Education Committee^{iv}, with the report due before Christmas. The SEN Bill will then be introduced to parliament some time in the new year and builds on the changes initially proposed in the SEN Green Paper^v which was published in March 2011, though not everything has been carried forward from the Green Paper.

We may need something about home education in the Education Committee Report on the Draft SEN Bill, because we would hope for the wording of the draft Bill to be tightened up, to avoid possible negative but apparently unintended misinterpretation before the Bill actually appears before Parliament. (see Action Points)^{vi}

Draft SEN Bill: Potential Positives And Negatives

1/Clause 34 potential negative: problem could outlaw home education

Current wording Draft SEN Bill

34 Special educational provision otherwise than in schools, post-16 institutions etc

- (1) A local authority in England may arrange for any special educational provision that it has decided is necessary for a child or young person for whom it is responsible to be made otherwise than in a school or post-16 institution or a place at which relevant early years education is provided.
- (2) An authority may do so only if satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place.
- (3) Before doing so, the authority must consult the child's parent or the young person.

Ipsa says in blog that this is same as current legislation. See

<http://www.ipsea.org.uk/AssetLibrary/News/IPSEA%20commentary%20on%20draft%20SEN%20provisions.pdf>

"Clause 34 NEW s319 CURRENT Special educational provision otherwise than in schools, post-16 institutions etc. As is."[Ipsa]

Current Law (s319 Education Act 1996)

319 Special educational provision otherwise than in schools.

- (1) Where a local education authority are satisfied that it would be inappropriate for—
 - (a) the special educational provision which a learning difficulty of a child in their area calls for, or
 - (b) any part of any such provision, to be made in a school, they may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school.
- (2) Before making an arrangement under this section, a local education authority shall consult the child's parent

<http://www.legislation.gov.uk/ukpga/1996/56/section/319>

Barrister Ian Dowty doesn't like that it says the authority is "responsible for" in proposed draft SEN Bill clause 34. Parents are responsible. In current legislation it says "in their area" (section 319 Education Act

1996) Elsewhere in draft SEN Bill clause 4 (1) says "A local authority in England is responsible for a child or young person if he or she - (a) is in the authority's area, and (b) has been identified by the authority or brought to the authority's attention as someone who has or may have special educational needs."

Ipsa comments on clause 4 as follows: '*Currently confined to those children who probably need a statement, for whom it is "necessary for the authority to determine SEP which any learning difficulty he may have calls for". This new provision refers to all children whatever level of support they may need. No longer acts as test for triggering assessment but is now responsibility for all children who have "been identified by the authority or brought to the authority's attention as someone who has or may have SEN" – so includes School Action and School Action+. Potential issue 1: omits specific test for triggering a statutory assessment of a child's/young person's needs which is the only way to access an EHC Plan^{vii}. Potential issue 2: only covers children with SEN. Omits disabled children without SEN from duty (possibly 25% of disabled children)^{viii}*

2/Potential positive?

Section 36 could specify elective home education as part of local offer. Ipsa saying what about specify elective home education as choice/option in SEN Draft Bill, eg in s.36

Current wording Draft SEN Bill clause 36

36 Fees for special educational provision at non-maintained schools and post-16 institutions

- (1) Subsection (2) applies where—
 - (a) a local authority maintains an EHC plan for a child or young person,
 - (b) special educational provision in respect of the child or young person is made at a school, post-16 institution or place at which relevant early years education is provided, and
 - (c) that school, institution or place is named in the EHC plan.^{ix}
- (2) The local authority must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place in accordance with the EHC plan.

Possible re-wording??? adding *education otherwise than at school*

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 - (b) special educational provision in respect of the child or young person is made at a school, *otherwise than at school*, post-16 institution or place at which relevant early years education is provided, and
 - (c) that school, institution or place *- including education otherwise than at school -* is named in the EHC plan.
- (2) The local authority must pay any fees payable in respect of education or training provided for the child or young person at that school, institution or place *- including education otherwise than at school -* in accordance with the EHC plan^x.

SEN Draft Bill Is At Pre-legislative Scrutiny Stage

Stephen DfE pre-legislative scrutiny designed to discover flaws in drafting. Deadline Education Committee to report on SEN Draft Bill before Christmas says Stephen. Not intended s34 to make LA able to refuse home education or to refuse services/support if home educated or for the local authority to say "SEN can only be met in school" Needs looking at. Government wants to bring in the SEN Bill some time after Christmas/in the Spring. Once it is an actual Bill, not just a Draft Bill, it will be scrutinised by Parliament.

Denied Access To Services And Support Because Home Educating

Respite care: Tricia is denied respite care because her son with SEN and disability is out of school. All services removed the day after she deregistered her son from school eg OT, physiotherapy. Speech therapy only carried on till end of term and then stopped. Has friend whose access to services and support for 3 year old with disability was denied on basis that she was “thinking about home educating”. The statement of SEN was modified to say that provision was “wrapped round a school.”

Local Authorities Still Have Time This Year To Use Alternative Provision Funding For SEN Support (deadline January 19th 2013)

Local authorities could be using Alternative Provision Funding^{xi} (AP Funding) for SEN support^{xii} during the current academic year (deadline January 2013) One LA rep said can sometimes put EHE children on to CME to access provision in schools. Home educator commented that being in school could be traumatic. Was better than nothing but not answer for everyone. LA talked about current local offer, local policy, local rules defining already who could get statement, what criteria would be. We can't find out why services/support are denied. No-one ever actually seems to have made the decision, it is just “policy”. (see Action Points)^{xiii}

How Current Statement System Works

Statement in lieu query. Seeing more of these. Ipea said these had no force in law. (SEN Code of Practice paragraphs 8.20 and 8.21^{xiv}) Peter from Birmingham said spike in statement numbers, possible reason was people trying to get in under current terms and conditions before proposed changes were implemented. High water mark. Already the local offer may mean that local authority has eligibility criteria for SEN statements so you could get in one area but not in another. How will transition work from statement to new EHC plan? Re-evaluate all current statements? Stephen DfE preferred to talk about how it would work from scratch in the future.

Ipea quite clear that section 3 of statement is for LA to provide and shouldn't evade duty by saying child is out of school. The authority has duty to make provision, because there should be a clear correspondence between Parts 2 and 3 before Part 4 place of education is ever filled in.^{xv} Home educators were clear they wanted choices, access to support/ choice to reject intrusion. Whilst welcoming the clarification concerning access to services, home educating parents at the meeting wanted to make it clear that some/many families preferred to find their own ways of meeting their child's needs without input from the council. (see Action Points)^{xvi}

Personal Budgets Not The Answer For Many Families

What if parent is given personal budget but can't buy in at right price, gets less than is meant to have (gave personal example of respite care, either has to top up herself or buy fewer hours) “Not assessed by need”.

Personal Budgets only apply to children with EHC plan, and we don't know the eligibility criteria yet, but likely to be subset of those currently getting a statement and therefore very small proportion of electively home educated children will benefit (as many with SEN don't have statement or statement not maintained) Can't say it's an answer to getting funded support or access to services. Authority with commissioning power and budget. Can buy in bulk at £30 an hour but parents are charged £65.

How High Needs Block Funding Is Calculated

The local authority gets unit of funding per child, based on previous spend, not funding for what individual child's needs actually would cost to meet. Low incidence high cost, you can't predict that from indices of deprivation, but a child with high needs has bigger cost implication for the authority and this won't be catered for in new High Needs Funding Block system^{xvii}.

Stephen DfE said in future look at better predictors eg low birth weight, but at present it's based on previous spend for allocating LA budget for SEN. Wants to reduce perverse incentives to place in special school or issue statement to get more funding. Says this might help home ed cos LA wouldn't refuse home education (or refuse statement or new plan for home educated child) on basis that LA would get more money if child was in school.

Stephen Smith expressed hope for ending adversarial relationship between LA and parent and recounted one situation where a cooling off period was beneficial and the child was re-admitted to school.

Clear Explanation of How High Needs Block Could Be Used For Children In Elective Home Education

Local authorities need something clear about High Needs Funding Block being used for EHE children. Meeting didn't get any clarity about how it would work. Local authorities wanted clear explanation of how High Needs Block could be used for home education. Money not based on need but on indices of deprivation + former spend on SEN, not on current number of statements, Stephen K said wanted to avoid turbulence as transitioned to new funding. Can't win by spending more this year so get it counted next year as figures have already gone in to DfE. All said why would councils spend on home ed if they didn't have to, if they weren't getting any new money?

LA saying how can we help families on the ground but find themselves blocked higher up in council. With Alternative Provision Funding there had to be FAQ^{xviii}, worked out with local authorities and with DfE Perhaps adapt this idea for High Needs Block Funding and home education, because we can put the questions together ourselves.

DfE has already done FAQ for new funding system^{xix} which is linked on my website, it has 1 mention of home ed re college, says DfE not decided yet. Perhaps DfE could add a couple of questions about Elective Home Education funding under new system? (see Action Points)

Could Sonrise could be funded. Feeling at meeting was that it was too expensive. Peter H said looking at greater flexibility. (Future APG event^{xx} about flexible access to provision). LA talked about access to services and support when children are home educated. Suggestion from LA that Ofsted might monitor quality and provision of LA services to EHE.

Safeguarding And Seeing The Child

Safeguarding came up. Not seeing the child at Annual Review of statement. Stephen said Department had written about SEN and home education to local authorities a couple of years ago, might have meant DCSF letter on my website from March 2010.

<http://edyourself.org/articles/helaw.php#specialneedsstatementAnnReview>

<http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100317w0002.htm>

<http://edyourself.org/articles/notmandseechildSENreview.doc>

Home educators point about intrusion into family life, safe and private space for traumatised child, in answer to LA point about safeguarding and how could they know what was really happening if only had written reports from parent at time of Annual Review but never saw the child. (Child would be seen in school...)

Positive Example Of Local Authority Dialogue Between SEN Department And Elective Home Education

Peter: currently 24 EHE [electively home educated] children with a statement of Special Educational Needs. Across the board in Birmingham, not just in EHE, the largest primary need for those with statements is for ASD [autistic spectrum disorder] which is continuing to rise from 13% in 2005 to 24.3% in 2012. The number of children with profound and multiple disabilities has increased by 3% since 2005.(from 1.1% to 4% in 2012) Socio-economic status appears to have a greater impact on disability prevalence than ethnicity and genetic risk. The SEN population is predicted to increase by approximately 10% in line with population growth by 2021.

Within the current population of EHE or those on the cusp of becoming home educated, the following drivers are most common: parental choice often unspecified but preventing no significant issues or concerns, dissatisfaction with special provision or preference for specific specialist interventions not currently available through the local offer; transition between mainstream and specialist and issues with placements;

specific anxiety/phobias/mental health issues that impact secondary transition; transience/moves within or between countries and or waiting on tribunal outcomes; planned re-integration following disruption as a consequence of a crisis; terminal illness

With the rise in numbers and pressure on provision and significant rise in specific areas of need more children will effectively become home educated through "crisis. Access to broader support is currently an issue and is not likely to be enhanced by reforms. Eligibility criteria for access to health and social care support – Not yet clear with regard to EHC plans for EHE children. Concern that services are only delivered through schools and that in future this will be the same. 0-25 pathway planning is enhanced but EHE children will need specific additional support to navigate in and out of provision. Relationships between EHE parents and Local authorities are often challenging – Mediation is desirable but specific expertise and resourcing needed if the platform for effective mediation is to be put in place.

Action Points

1. Look at Draft SEN Bill as soon as possible and send comments to Amanda Farris for Graham Stuart. Share with Ipsea.
2. Write to DfE: consider adding couple of questions to DfE FAQ on new funding, to cover EHE.
3. Promote awareness of Alternative Provision Funding still in place for current academic year (deadline January) DfE making transitional arrangements.
4. Query with Ipsea how to use Part 3 to get access to services and support eg OT when child is home educated. Is it always necessary to go to tribunal?

References

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/writev/631/m43.htm>

Fiona Nicholson submission to Select Committee SEN Draft Bill Inquiry, October 2012

<http://www.ipsea.org.uk/AssetLibrary/News/IPSEA%20commentary%20on%20draft%20SEN%20provisions.pdf> IPSEA's commentary on draft Bill (linked from my SEN page)

<http://www.ipsea.org.uk/Apps/Content/News/?id=465> useful IPSEA starter page

<http://ipsea.blogspot.co.uk/> IPSEA blog on SEN changes (mainly written by Chris G who was at meeting)

<http://www.legislation.gov.uk/ukpga/1996/56/section/319> section 319 current legislation (LA duty to make provision for SEN outside school)

<http://www.legislation.gov.uk/ukpga/2002/32/section/175> section 175 Education Act 2002 (safeguarding and promoting welfare)

<http://www.education.gov.uk/publications/eOrderingDownload/DfES%200581%20200MIG2228.pdf>
Special Educational Needs Code of Practice

Postscript December 20th 2012

On December 18th the Education Committee published its report on [Support For Home Education](#) which included recommendations for greater support to children with SEN who are home educated. [The Press Notice](#) comments on "some worrying evidence that provisions were not being fully met as they would be for schooled children".

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/publications/>

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/news/support-for-home-education-substantive/>

Mr Stuart explained, "Local authorities have a duty to see that provisions in Statements are met regardless of whether or not the young person attends school. They should seek to support families in meeting their children's needs, not withdraw altogether. We urge the DfE to investigate these issues and to make the responsibilities of local authorities very clear in this and other areas concerning home education."

On December 19th the Committee published its [Pre-legislative Scrutiny of the Draft SEN Bill](#) which recommended "that the Department for Education examine with close attention the written evidence provided to our inquiry on issues not covered in our report and give careful consideration to the points

raised by witnesses in drafting the Bill which is to be presented to Parliament."

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/publications/>

A Working Group set up after the APG meeting sent a memo to the Education Committee which can be read [here \(Ev w559 page 566-567\)](#) and also met with the SEN Division, Funding, and Legal team at DfE on the day the Committee published its SEN Draft Bill scrutiny to discuss the issues raised.

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/631/631vw.pdf>

On December 20th Graham Stuart MP held [a live web chat](#) where Tricia said: *"The Bill claims to make parents more central yet parents are hardly mentioned. In fact, if anything, the Bill erodes the position of parents. Will you be encouraging the DfE to remove any wording which appears to conflict with S.7 of the Education Act, after all it is the parents' responsibility to ensure their child's SEN are met, the LA should just be enabling them to do so, not being made responsible themselves?"*

<http://www.talkaboutautism.org.uk/page/liveevents/draftchildrenbill.cfm>

Graham Stuart replied: *"The Minister told us that nothing in the Bill will aim to reduce the centrality of parents in making decisions for their children. **I am particularly concerned to ensure that, for instance, home educators don't find LAs using the legislation to seek to change the balance in relationships and will maintain a dialogue with the Government to try to head off inadvertent changes.**"*

There was a follow-up question commenting *"**Clause 3 gives LAs the excuse they've been looking for to see all home educated children to check if they may have SEN. Is that really the intention, if not, how will you ensure LAs will be prevented from doing so. We know they'll be likely to ignore any clarification in guidance?**"*

Graham Stuart replied *"I'm determined to ensure that this doesn't happen. Obviously it is Ministers, not the Committee, who decide but I have already spoken to Ed Timpson and he agrees that nothing like this should be allowed to happen. Stay watchful, however, because, as you know, these things have a way of creeping in"*

Fiona Nicholson spoke to Andrew Wye at the Funding Unit, DfE with a view to clarifying the use of High Needs Block Funding where children with SEN or disability are home educated. DfE will consider adding an illustrative case study to the documentation/FAQ on the High Needs Block.

- i <http://edyourself.org/articles/sengpdfemay2012.php>
- ii <http://edyourself.org/articles/sengpdfemay2012.php>
- iii <http://www.official-documents.gov.uk/document/cm84/8438/8438.pdf>
- iv <http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/inquiries/parliament-2010/sen/>
- v <http://edyourself.org/articles/SENGreenPaper.php>
- vi Action Points
- vii EHC plan <http://edyourself.org/articles/SENGreenPaper.php#endstatementSEN>
- viii <http://www.ipsea.org.uk/AssetLibrary/News/IPSEA%20commentary%20on%20draft%20SEN%20provisions.pdf>
- ix EHC plan <http://edyourself.org/articles/SENGreenPaper.php#endstatementSEN>
- x EHC plan <http://edyourself.org/articles/SENGreenPaper.php#endstatementSEN>
- xi Alternative Provision Funding Guidance <http://edyourself.org/articles/APguidance2011-12.php>
- xii Using AP Funding for SEN support children not on school roll, DfE FAQ November 2011
<http://edyourself.org/articles/AltprovFAQ.php#SENsupport>
- xiii Action Points
- xiv SENCoP paras 8.20 & 8.21 <http://www.education.gov.uk/publications/eOrderingDownload/DfES%200581%20200MIG2228.pdf>
- xv SENCoP para 8.42 and 8.54: Part 4 of the statement MUST be left blank when proposed statement is issued
<http://www.education.gov.uk/publications/eOrderingDownload/DfES%200581%20200MIG2228.pdf>
- xvi Action Points
- xvii High Needs Funding Block <http://edyourself.org/articles/sengpdfemay2012.php#fundingreform>
- xviii Alternative Provision FAQ from DfE November 2011 <http://edyourself.org/articles/AltprovFAQ.php>
- xix Department for Education FAQ for new funding system <http://media.education.gov.uk/assets/files/doc/f/funding%20reform%20faqs%20%20%2031%20july%202012.doc>
- xx Future All Party Group Home Education Events <http://edyourself.org/articles/allpartygrouphomeeducation.php>