

Home Education Feedback

Fiona Nicholson

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<http://edyourself.org/>

<http://ehe-sen.org.uk/>

fiona@edyourself.org

Here is my feedback on Shropshire Council's draft home education policy.

It is set out as follows:

1. Summary
2. Positives
3. Negatives
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I am also attaching a separate pdf where I have highlighted the most problematic sections.

Summary

I think the council really needs to decide where it stands on being responsible for the education of all children in the area. The draft policy doesn't provide any evidence to back this up, so perhaps it is something which the council "just knows" is true, even though it doesn't know why.

On the one hand the draft says that parents are not required seek approval for home education and that there should be an assumption that home education is efficient unless there is evidence to the contrary. This suggests that families will not have to prove themselves to the council.

On the other hand, the draft says that the council has a duty to ensure children are receiving a suitable education, and as a consequence of this belief, the authority wants to carry out some form of investigation in order to reach a judgement.

There is nothing in law to support the view that the council has a statutory duty to ensure that all children in the area are receiving a suitable education. On the contrary, it is parents who owe that duty to their own children.

The council's role is to act as "*a safety net or longstop to ensure that the education is not neglected of those who for any reason (whether 'illness, exclusion from school or otherwise) are not being educated at school in the ordinary way.*" <http://edyourself.org/articles/childsrighteducation.php>

Insofar as the draft policy DOES make reference to the law, it gets a number of things wrong, such as the interpretation of s 9 Education Act 1996 [pupils to be educated in accordance with parents' wishes] and of s 175 Education Act 2002 [exercise authority's functions with a view to safeguarding and promoting welfare of children]

In addition, the section on special educational needs reads as though there are no longer any statements of SEN. This is not accurate. There are no NEW statements but many existing statements have not yet been transferred.

Positives

There are many positive aspects in the draft.

Page 4 says

The responsibility for a child's education rests with their parents

This is correct.

Page 5 says

Parents are not required to register or seek approval from their local authority in order to educate their children at home with the following exceptions:

- i. consent to de-register a pupil must be obtained if a child is placed at a special school under arrangements made by the local authority*
- ii. when a child is registered at a school as a result of a school attendance order (SAO), parents must ask the local authority to revoke the order.*

This is correct.

Page 8 says

Previous irregular attendance at school is not of itself a sufficient cause for concern

This is a welcome positive point to make about irregular attendance.

Page 9 says:

5.9 The local authority should assume that efficient educational provision is taking place, which is suitable for the child, unless there is evidence to the contrary. There is no express requirement in the 1996 Act for the local authority to investigate actively whether parents are complying with their duties under Section 7.

This is entirely correct, although it is hugely disappointing that it is not sustained throughout the policy.

Page 11 says

Parents' wishes to educate their children at home should be respected and, wherever possible, efforts should be made to resolve issues about provision by a process of ongoing dialogue before Section 437(3) is invoked as a last resort. Only in cases, where the education is clearly not efficient and suited to the age, ability and aptitude of the child, or parents have failed to demonstrate that it is, should a SAO be served.

This is to be commended.

Page 12 says

Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education.

This is correct.

Negatives

However, despite the above, there is a counter-message running through the draft policy which asserts that the council has a duty to ensure that children in its area are receiving a suitable education.

There is no such duty or legal requirement placed on the council.

This is the biggest single problem I have with the draft policy.

Page By Page Comments

2.4 makes no sense. 2.4 cannot be derived from 2.3 because the premise of 2.3 is incorrect.

Section 9 <http://www.legislation.gov.uk/ukpga/1996/56/section/9> has nothing to do with home education.

S 9 is about protecting the state from parents' demands via the reference to public expenditure, as anyone who works in special educational needs is likely to be aware.

It is NOT about children ONLY being allowed to be educated in accordance with their parents' wishes if the local authority deems the parents to be providing efficient education and training.

There is no suggestion or implication in s 9 that the state should monitor what parents are doing. Indeed, s 9 refers explicitly to "**pupils**".

"In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State and local education authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure."

4.1 introduces the word "**effective**" - with the implication of someone evaluating the provision - which is entirely absent from the Government Home Education Guidelines.

Guidelines Paragraph 2.5 *"Local authorities should recognise that there are many approaches to educational provision, not just a "school at home" model. What is suitable for one child may not be for another, but all children should be involved in a learning process."*

<https://www.gov.uk/government/publications/elective-home-education>

Shropshire Council 4.1 *"There are many, varied approaches to providing a suitable education. What may be suitable and successful for one child may not be for another, but Shropshire Council*

believes that all children should be involved in **an effective** learning process."

4.6 contains two errors. Firstly it isn't accurate to say that the s 175 duty is to safeguard and promote the welfare of children. The duty is to take safeguarding and welfare into account.

"A local authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local authority are exercised with a view to safeguarding and promoting the welfare of children". <http://www.legislation.gov.uk/ukpga/2002/32/section/175> (as amended)

Secondly, there is a reference in 4.6 to a non-existent duty "**the local authority's duty to ensure every child of compulsory school age is receiving a suitable education.**"

There is no such duty in law.

It would be disappointing if these errors became more widespread by being shared with other agencies.

5.5 The 1995 Pupil Registration Regulations were superseded by the Education Pupil Registration Regulations 2006 (further amended in 2016). Since 2006 there has not been this 10 day delay. If this is what schools are being told, it is wrong. More information here <http://edyourself.org/articles/deregistration.php>

5.8 I am concerned by the phrase "*talk through what the requirements are.*" Could this be expanded a little? Specifically, I am concerned that parents may be told that the authority has a duty to ensure "suitable" "effective" "efficient" education or that it is entirely reasonable for the council to expect to check off the list at 5.14. I very much hope this isn't what happens.

5.12 With regard to participating in a meeting or submitting a written report, how does this fit with "the local authority should assume that efficient educational provision is taking place, which is suitable for the child, unless there is evidence to the contrary. There is no express requirement in the 1996 Act for the local authority to investigate actively whether parents are complying with their duties under Section 7"?

5.13 I don't understand why there is an expectation that parents must "**convince**" anyone. As it says elsewhere in this document [5.9] "*the local authority should assume that efficient educational provision is taking place, which is suitable for the child, unless there is evidence to the contrary. There is no express requirement in the 1996 Act for the local authority to investigate actively whether parents are complying with their duties under Section 7.*"

5.14 says that the local authority "*may reasonably expect*" home education to include elements of an itemised list. The impersonal wording implies that this is taken from elsewhere and is not something the council has decided for itself. As it happens, the list is derived the Government Home Education Guidelines.

This is what the Guidelines say:

"In their consideration of parents' provision of education at home, local authorities may reasonably expect the provision to include the following characteristics:

- consistent involvement of parents or other significant carers – it is expected that parents or significant carers would play a substantial role, although not necessarily constantly or actively involved in providing education
- recognition of the child's needs, attitudes and aspirations

- opportunities for the child to be stimulated by their learning experiences
- access to resources/materials required to provide home education for the child – such as paper and pens, books and libraries, arts and crafts materials, physical activity, ICT and the opportunity for appropriate interaction with other children and other adults.”
<https://www.gov.uk/government/publications/elective-home-education>

This is what the draft policy says:

In their consideration of parents’ provision of education at home, the local authority may reasonably expect the provision to include the following characteristics:

- consistent involvement of parents or other significant carers – it is expected that parents or significant carers would play a substantial role, although not necessarily constantly or actively involved in providing education
- presence of a philosophy or ethos (not necessarily a recognised philosophy) – it is anticipated that parents have thought through their reasons for home educating **ADDED**
- showing signs of commitment and enthusiasm, **ADDED** and recognition of the child’s needs, attitudes and aspirations opportunities for the child to be stimulated by their learning experiences
- involvement in activities – a broad spectrum of activities to cater for wide varieties of interests appropriate to the child’s stage of development **ADDED**
- access to resources/materials required to meet the objectives of the parents – such as paper and pens, books and libraries, arts and crafts materials, physical activity, ICT and the opportunity for appropriate interaction with other children and other adults.

The policy has added the following:

"it is anticipated that parents have thought through their reasons for home educating"

that parents are *"showing signs of commitment and enthusiasm"*

that home education should encompass *"a broad spectrum of activities ... appropriate to the child's stage of development"*

These are all presented as objective when in fact they are quite intensely subjective and in my view should be acknowledged as such. There is a particular problem with **"broad spectrum of activities"** since the Government Home Education Guidelines specifically say that home education does not have to be broad and balanced. There is also an issue with specifying that activities should be **"appropriate to the child's stage of development."** It sounds as though there is going to be quite a lot of value judgement happening.

In one sense, if the council does intend to be judgemental, then it could be seen as a good thing that parents are not kept in the dark over the criteria to be used.

On the other hand, I would return again to paragraph 5.9 *"the local authority should assume that efficient educational provision is taking place, which is suitable for the child, unless there is evidence to the contrary. There is no express requirement in the 1996 Act for the local authority to investigate actively whether parents are complying with their duties under Section 7."*

The SEN section comes across as a bit of a mishmash.

Some children might continue to have statements right up to April 2018 which is the current deadline for transferring, so the draft policy (unless I have misread it) strikes the wrong note in assuming that no child still has a statement. For all those who do still have a statement, the 2001 Code of Practice would apply. The council's conversion plan here

https://www.shropshire.gov.uk/media/1492533/V11-SEND_Conversion_timetable.rtf (via this page [https://www.shropshire.gov.uk/special-education-needs-and-disability-\(send\)/education,-health-and-care-plans-\(ehcps\)/statement-of-sen-conversions/](https://www.shropshire.gov.uk/special-education-needs-and-disability-(send)/education,-health-and-care-plans-(ehcps)/statement-of-sen-conversions/)) and suggests that many statements still do remain to be converted. (My home education and SEN website is here <http://ehe-sen.org.uk/>)

6.4 I'm not clear whether the proposed interim annual review takes place AFTER the child's name has been deleted from the school roll.

6.5 Some parents may want the statement or Plan ceasing once they are home educating, but the law says a child has special educational needs if they have a **“learning difficulty”** which calls for **“special educational provision”** to be made for them. A **“learning difficulty”** is where a child has a significantly greater difficulty in learning than the majority of children of their age or has a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools. This refers to mainstream state-funded school, so the fact that a child might be able to manage in home education (or in a private school with very small classes) is irrelevant. More information here <http://ehe-sen.org.uk/#def>