



EDUCATION OTHERWISE

Home Education: Information for Local Authorities

SUMMARY

Education Otherwise is a charitable organisation which has been supporting home educating families for over forty years. Our information sheets are based on our knowledge and expertise, supported where appropriate by legal advice.

Key Messages

- 1) **Local authorities may make an informal request for information about home education:** Both precedent and the Education Act 1996 s436a allow local authorities to make an informal request for information about a child's education provision. This is not the same as a formal enquiry under the Education Act 1996 s437.
- 2) **Home education is not a safeguarding concern:** Local authority staff may meet with the suggestion that home education is a safeguarding concern, but this is not the case.
- 3) **Home educated children need not be seen by local authorities:** There is no requirement for a home educated child to be seen by local authority staff. However, they can choose to do so, if invited and if they so wish.
- 4) **Home educating parents are not required to register with their local authority:** Home educating parents do not have to inform their local authority that they are home educating.
- 5) **Home educated children are not required to follow set curricula:** Home educated children follow a wide range of learning approaches.
- 6) **Home educating parents are not required to share copies of their child's work:** A local authority may not insist on seeing samples of a child's work and may not serve a school attendance order based on refusal to provide samples of a child's work.
- 7) **Home education is of equal legal status to school education:** The Education Act 1996 s7.

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Introduction

Education Otherwise is a charitable organisation which has been supporting home education and home educating families for over forty years.

For most parents, the choice to home educate is a lifestyle choice, requiring significant commitment in terms of time and resources; it is not something that parents generally decide to do without a great deal of research and thought. The decision to home educate can be made for a great many reasons, such as: protecting the child's mental health, or their physical health, wanting to travel widely, wanting to spend more time together as a family, providing for a child's special interests, a child having special needs, being bullied, or simply a child being less well suited to a school environment.



Home education is a legal choice

The choice of how to educate the child is that of the parent, provided that the education is suitable to the child's 'age, ability, aptitude and to any special educational needs (the child) may have'¹. Parents who do not home educate their child can elect to discharge their duty to ensure that their child receives a suitable education, by registering their child into a school. Parents can and do decide to home educate their children at any, or all stages of the child's education.

Despite some functions of local authority education officers' work relating to home education, very few receive any training in the law and practice of home education². This can cause problems of interpretation and lead to a breakdown in relationships between local authority officers and parents. Such breakdown in relationships is not in the interests of parents, children or local authority staff and Education Otherwise is keen to improve this situation.

The information contained in this document is based on advice from Queen's Counsel. It relates to local authority officers in England and Wales and is intended to help to improve those officers' practice and relationships with home educating families.

¹ Education Act 1996 s7

² Mukwamba Sendall, F. (2019) 'Policy interpreted: the effect of local authority administration and officer perception and practice on national home-education policy implementation'. Doctoral dissertation, University of Lancaster.

Education is compulsory, school is not.

Education is compulsory for all children in England and Wales from whichever date is soonest of the 1st January, 1st April, or 1st September after the child attains 5 years of age. Education remains compulsory to the last day in June, in the school year during which the child attains 16 years of age, provided that the child is 16 prior to 1st September that year.

The duty to ensure that the child receives a suitable education is a duty upon the parent, regardless of how the child is educated and this derives from the Education Act 1996 s7:



‘The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—
(a) to his age, ability and aptitude, and
(b) to any special educational needs he may have, either by regular attendance at school or otherwise’.

This means that home education is of equal status in law to school education and a parent may elect to home educate at any point during the child’s compulsory education years. In fact, home education is the default position, as a child does not become a registered school pupil until such point as a parent elects to register that child in a school.

Parents of home educated children are not required to notify their local authority of their decision to home educate their child, nor are they required to register with their local authority at any point. Home educated children are not pupils at a school and are not required to follow school hours, school terms, or any set curricula.

Removal from the school roll

If a child has never attended school, the parent need not notify their local authority of an intention to home educate their child. However, if a child is on a school roll, the parent should notify the head teacher of the school, in writing, that they are removing the child from the roll.

This notification can take any form and need only be signed by one parent³. Immediately upon receipt of such a notification by the parent, the school must remove the child from the roll and make a return to the local authority confirming this action. Schools in England must make the notification to the local authority within 5 days and in Wales, within 10 days. **Local authorities may not instruct a school to decline to remove a child from the school roll.**

Where a child is enrolled at a school in accordance with a school attendance order, the child may not be removed from the school roll unless that order is revoked by the local authority. Of course, this does not apply to normal transition times when the child would no longer remain in any event.



Local authorities may not instruct a school to decline to remove a child from the school roll.



If the child is attending a special school under arrangements made by the local authority, the local authority's consent is needed for the child's name to be removed from the school roll. Consent may not unreasonably be withheld. If the child is attending a special school under arrangements made by the parent, the parent's right to withdraw the child from the roll in order to home educate him, is no different to that of a child at mainstream school.

Only a parent, or a person with parental responsibility, may register a child at school, regardless of whether the child has a school named on an EHCP, other than where a care or supervision order is in place. If the school were to register a child without the parent's consent, this would not be lawful.

Suitable and efficient education

The Education Act 1996 s7 places a duty upon the parent to cause the child to receive efficient full-time education suitable to his age, ability, aptitude and to any special educational needs he may have'. **A 'suitable' education is one which equips a child for life within the community to which they belong, rather than the way of life in the country as a whole, as long as it does not foreclose the child's option in later years to adopt some other form of life if the child so wishes**⁴. What this means is that the education must allow the child to fit into the society to which they choose to belong, as an adult. In order to achieve this, parents should provide a flexible education which adapts to the needs of a changing World and local authority officers should recognise that many different forms of education provision can meet this criterion.

³ Education (Pupil Registration) (England) Regulations 2006 and the Education (Pupil Registration) (Wales) Regulations 2010

⁴ R v The Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust. QBD The Times 12 April 1985, CO/422/84

The definition of 'efficient' is that the education 'achieves what it sets out to achieve'⁵. The education should be supervised, include appropriate resources and provide the child with enough opportunity for learning, in order to help them to achieve their potential.



In order to be suitable and efficient, home education provision must also be full time. There is no legal definition of full time and local authority officers may not specify set hours, set days or set dates for home education to take place.

Time spent in school is approximately 7 hours a day for 190 days, but much of this time is spent in organisation, moving between activities and breaks. In fact, an average primary school timetable demonstrates only 3 ½ hours of actual education daily. Independent schools must operate for 18 hours a week and children who receive local authority provision at home, usually receive around 4 hours provision each week. Home educated children receive 1:1, or small group provision; are educated throughout the day, every day; are often learning within the community and their families treat every experience as a learning opportunity.

Local authority oversight

The local authority may make an informal enquiry of the parent, in order to assist it to know whether or not its duties are triggered in respect of the child⁶. In addition, local authorities must make arrangements (so far as it is possible for them to do so) to enable them to establish the identities of children in their area who are of compulsory school age, but are not registered pupils at a school and are not receiving suitable education otherwise than at a school⁷. **This should not be taken to imply that the parent must 'prove' that education at home is suitable.** A reasonable and proportionate approach must be taken.

Schooling: generally a subject centric curriculum, where the child must adapt to the curriculum.

Home education: A child centric education, where the curriculum is adapted to the child.

⁵ Harrison & Harrison V Stevenson, Worcester Crown Court 1981

⁶ Phillips v Brown QBD (Divisional Court) NO 424/78: 20 June 1980

⁷ Education Act 1996 s436a

Parents are not required to:

- **Meet the education officer⁸;**
- **allow the education officer to come to the family home;**
- **provide a professional report to the education department, including a report by a professional actively involved with the home education provision;**
- **provide samples of the child's work, or**
- **to provide photographs of the child's work.**

As public bodies, local authorities must act in a reasonable and proportionate manner. A measure cannot meet the test of proportionality if the aim (always supposing that the aim itself is legitimate) could be achieved by a less onerous measure. In this case, it has long been acceptable practice throughout the UK for a parent to provide an education report, without additional material being provided. Clearly, a more onerous demand than a report from a parent, cannot meet the test of proportionality in all but exceptional cases.

Local authorities are subject to Guidance. In England this is the Elective Home Education Departmental Guidance for Local Authorities⁹ (EHEDGLA) and in Wales, the Elective Home Education Non-Statutory Guidance for Local Authorities¹⁰ (EHENSGLA). Such guidance is something which the bodies to which it is directed, here local authorities, must consider, must properly understand and should generally act in accordance with, unless there is good reason not to do so in the particular circumstances of the situation¹¹.

It is not lawful for a local authority to serve a school attendance order upon a parent, simply because that parent has not complied with a local policy

Unfortunately, some local authorities have created local policies which make demands for home visits, samples of work, or reports from education professionals directly concerned with the child's education. Some of these authorities serve school attendance orders on home educating parents, based solely on non-compliance with such local policies.

⁸ In highly exceptional circumstances, a refusal to meet with the local authority officer could justify commencement of formal notification to satisfy the authority that the education is suitable. *Tweedie v Pritchard* [1963] Crim LR 270; *R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie* [1963] Crim LR 639.

⁹ <https://www.gov.uk/government/publications/elective-home-education>

¹⁰ <https://gov.wales/elective-home-education-local-authorities>

¹¹ See for example: *Ali v London Borough of Newham* [2012] EWHC 2970 (Admin) (30 October 2012)

A local authority insisting on applying a policy requiring a home visit, samples of work, or a professional report, would be acting unlawfully.

Senior counsel advises that it is not lawful for an authority to serve a school attendance order simply because a parent had not complied with a local policy, unless non-compliance with the policy in question could properly be taken as showing non-compliance with the underlying legal requirements.

The DfE, when asked to confirm that '*A local authority should not insist on samples of the children's work being provided*', responded as follows:

'It is for the LA in each case to reach a conclusion as to suitability of education based on what information is actually available to it. It cannot reasonably conclude that the education is not suitable simply on a general policy as to the format of reports, or a lack of work samples. It must consider what information it has on a case-by-case basis'. (emphasis is in the original from the DfE)

Individual home educating parents have instructed legal professionals in judicial review in these cases and on each occasion of which Education Otherwise is aware, the local authority has withdrawn the matter prior to proceedings being commenced. It is apparent that in most of these cases, the matter has been settled following the authority legal department examining the issue.

All families, including home educating families, should be able to expect their local authority to act wholly within both the letter and the spirit of the law, without having to seek, or defend against legal action. It is the experience of Education Otherwise, that **the minority of local authorities who act outside the law are acting to the detriment of the majority of local authorities**, as such conduct creates a climate of distrust.

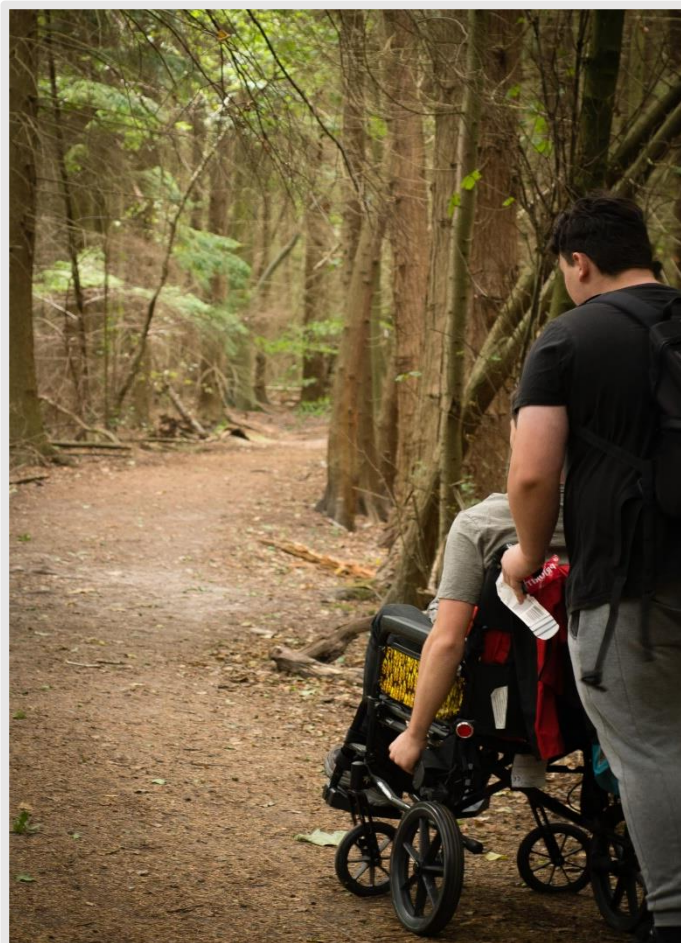
Of course, if after making an informal enquiry, it appears to the local authority that a parent's home education provision may not be suitable, they may serve a notice on the parent under the Education Act 1996 s437, requiring that the parent satisfy them as to the suitability of the education. Failure to satisfy the local authority may result in it serving a school attendance order upon the parent.

Reasonable enquiry

Local authorities are entitled to make a reasonable and informal enquiry of a home educating parent, in order to seek information in respect of the child's education. The salient word here is 'reasonable' and it is that test which causes the greatest amount of complaint from home educating families. Local authority officers may find it difficult to judge what is reasonable, particularly if their managers are inflexible in their approach, but where they are reasonable, relationships with home educating families are greatly improved and mutually respectful. Of course, most local authority officers are keen to foster good relationships from the outset.

The initial contact by a local authority officer, with a home educating parent, can make or break the relationship and it is crucial to get this right. Points for local authority officers to remember:

- Use an accurate title in letters, as generic letters using 'dear parent' are not well received.
- Be respectful, by asking the parent if they would like to meet, rather than stating a date for a meeting, without the parent's prior agreement to do so.
- If the parent does agree to meet with the local authority officer, they should ask the parent when such a meeting will be convenient.
- Accept that a parent can decline a meeting and that no adverse inference should be drawn from them doing so.
- Local authority officers should start as they mean to go on, by being friendly, approachable and accepting of different forms of home education provision.
- An initial letter which contains reference to School Attendance Orders, welfare checks, safeguarding checks, or other punitive action, is highly likely to alienate parents and make them reluctant to accept that the local authority officer is well intentioned toward home educating families.



A common mistake made by local authority officers is to treat an initial enquiry, as if it is a formal enquiry under the Education Act 1996 s437. This is a significant contribution to

An informal enquiry is not a notice to the parent to satisfy the local authority that education is suitable and must not be treated as if it is.

relationship breakdown between home educating parents and their local authorities. The process of enquiry is a two stage one, with an informal enquiry being a sifting exercise, to be used only to ascertain if it appears that the education provision may not be suitable. A competent local authority officer can readily ascertain whether home education provision is suitable, from reading a brief education report written by the parent. It would therefore be unreasonable to ask for more than that. Only if it appears that the education provision may not be suitable, may a local authority officer move to stage two, by requiring the parent to satisfy the authority that the home education provision is suitable.

Reasonable and proportionate enquires will be different according to several factors, including for how long the parents have home educated, whether the education has previously been found to be suitable and the individual circumstances of each case. A parent who has successfully home educated a child for more than a year or two, should not expect to be asked for information about their education on a routine basis. However, a parent who has only been home educating their child for less than a year or so, should expect the local authority to make an informal enquiry about the provision. Of course, if the local authority has information in its possession which confirms that the education is suitable, such as confirmation of examination success in respect of a clearly happy and well socialised child, an enquiry of the parent would be unreasonable.

A local authority must look at each situation on a case by case basis and may not insist on applying a block policy

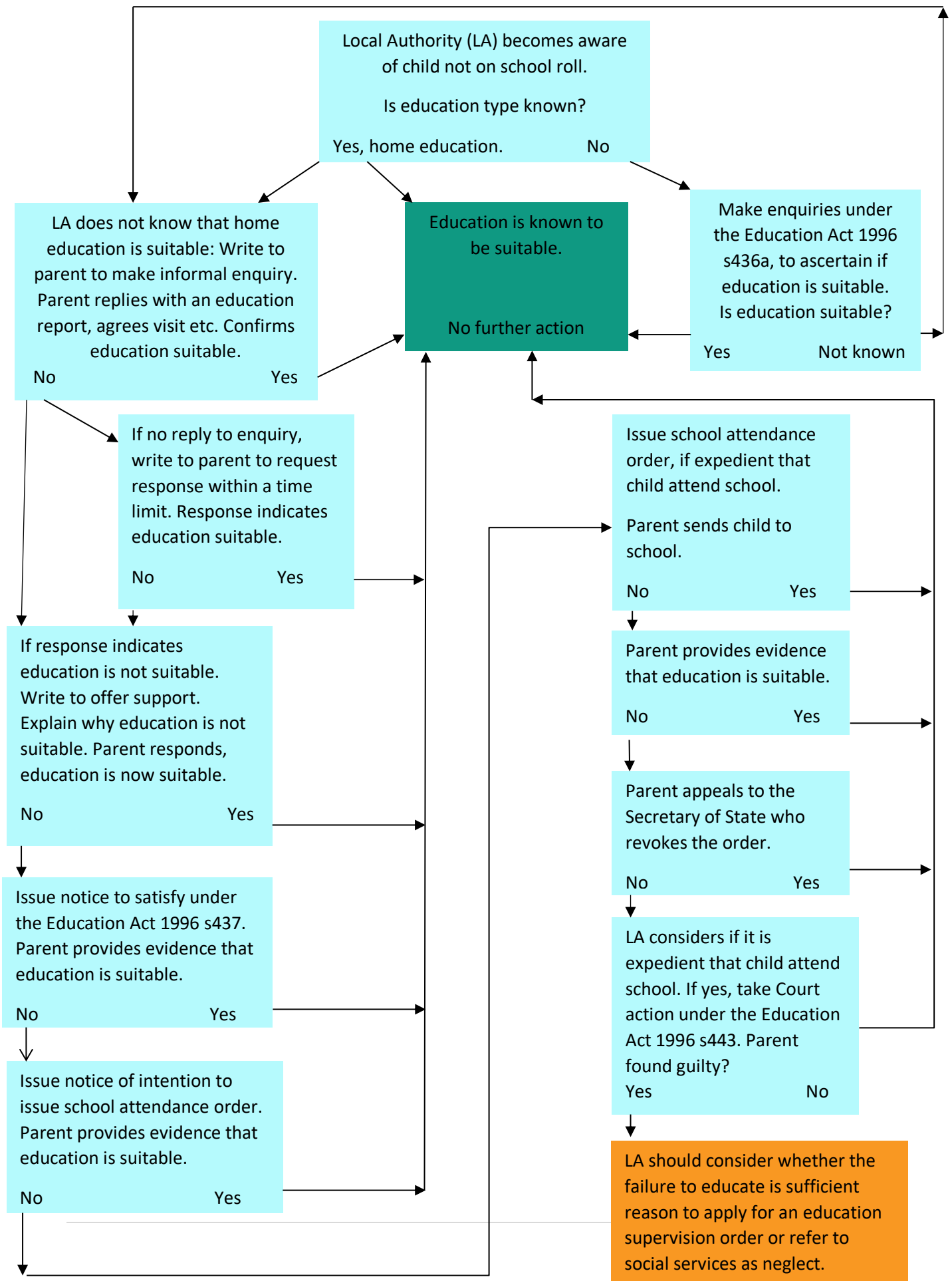
Crucially, a local authority may not have a block policy for dealing with home educating families, such as insisting that the family provide work samples, a third party professional report, or that they meet with the local authority officer. Significant amounts of legal precedent¹² exist to support the fact that each family's provision must be approached on a case by case basis and to do otherwise would not meet the requirement for proportionality.

A flow chart of how enquiries should be conducted is overleaf:

¹² See for example: *Walumba Lumba and Kadian Mighty v Secretary of State for the Home Department* [2011] UKSC 12 On appeal from: [2010] EWCA Civ 111



Flow Chart of Local Authority Actions in Home Education Cases



When education is not suitable

In the experience of Education Otherwise, by far the majority of parents provide their child with a suitable education and in fact, an excellent education which enables them to reach the peak of their potential. However, we recognise that in a small minority of cases the home education provision is not suitable. Of course, some parents may need support to provide a suitable home education and where it appears to the local authority officer that education may not be suitable, it is essential that proper steps are taken to address the situation.



It is essential that **where there are concerns in respect of a parent's home education provision, the local authority officer should explain those concerns clearly to the parent, in writing.** This is because it would be unreasonable to expect a parent to address concerns about which full detail was not given. Failure to provide information in respect of legitimate concerns about home education provision, is a significant factor in difficult relationships between parents and local authority officers.

Of course, declining a meeting (other than in truly exceptional cases¹³), or to provide a third party report, or to provide samples of a child's work, are not legitimate concerns and formal procedures may not be commenced on those bases.

The first step that a local authority should take when notifying the parent of education concerns, is to offer support in addressing those concerns. Where support is offered, local authority officers can maintain positive

relations, whilst assisting the parent to ensure that the child's best interests are met. Conversely, where the officer's response to concerns is to make immediate reference to taking school attendance proceedings, relationships become increasingly strained. This is not in the best interests of the local authority officer, parent, or child involved.

Only after informal attempts to address legitimate concerns have failed, should formal action be taken against the parent, by the local authority officer.

¹³ In highly exceptional circumstances, a refusal to meet with the local authority officer could justify commencement of formal notification to satisfy the authority that the education is suitable. *Tweedie v Pritchard* [1963] Crim LR 270; *R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie* [1963] Crim LR 639. In this case there was a mother who was paralysed, or at any rate in a wheelchair, a father in ill health, six children and previous education orders revoked on the basis that the mother agreed that she would allow home inspection

Home education myths

Home educated children are locked away, unseen, or invisible: Far from home educated children being 'locked away', 'unseen', or 'invisible', research finds that they are at least as well socialised as school children. In fact, some researchers have found that home educated children are better socialised than schooled children. Home educated children are uniquely visible and spend significant amounts of time within their communities. Home educated children socialise differently to school children and many parents consider the wider ranging nature of that socialisation to be more suitable for preparing the child for adult life, than school education is.

There is no requirement for home educated children to be seen by third parties, including by education officers, social workers and medical professionals, although of course, should a child require medical investigation that should be arranged. Despite this, Education Otherwise frequently sees letters from local authority officers stating that the child must meet with that officer as they have not been seen by a 'professional'. It is not lawful for a local authority officer to insist on professional oversight of a home educated child, solely on the basis of the child being home educated.



Home educated children are children missing education: Where a local authority has no information in respect of any child, that child is potentially a child missing education. However, immediately upon the local authority becoming aware that a child is in receipt of home education, that child ceases to be within that potential remit.

Home education is a safeguarding risk: Academic research has found home educated children to be significantly more likely to be assessed by children's social services as potentially at risk (primarily due to lack of understanding of home education), but to be less likely to be subject to child protection measures than are other children. Education Otherwise is aware that the conflation of home education and safeguarding risk is one of the greatest complaints that home educating families make about their local authority's conduct.

Home educated children must receive 'lessons', or follow a curriculum: Home educated children are not required to follow a set curriculum, receive a broad and balanced education



provision, or to study any particular subjects. In fact, the Education Act 1996 s7 is clear that the education must be suitable to the individual child, which set curricula are not.

Home educated children frequently learn autonomously, that is, the education is child led. Much of their provision is likely to be hands on and experiential, as opposed to formal, lesson based learning. Many younger children in particular, learn through play.

Local authority officers should be familiar with different forms of education provision and remember that all are equally valid.

Home educated children must attain school set standards: Home educated children learn different topics to school children and will often be at different stages to their school based peers. Home educated children are not required to attain a

particular standard and their education should be looked at in the round, rather than by reference to standards set for school children.

Home education groups and advisors provide poor advice: Education Otherwise ensures that all of the advice which is on our web site and provided to individual parents, is checked by our highly experienced trustees for accuracy and based on formal advice from senior counsel.

Education Otherwise actively encourages local authority officers to act within both the spirit and the letter of education legislation and guidance, as by doing so, relationships between local authorities and home educating parents are improved.

Education Otherwise positively welcomes contact by local authority officers and the opportunity to work collaboratively to improve policies and working practices.



The home education charity

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*Education Otherwise
Association: 61 Bridge
Street, Kington. HR5 3DJ. UK
Charity reg. no. 1055120.*

*Website:
educationotherwise.org*