



EDUCATION OTHERWISE

**Home Education:
Information for
Medical
Professionals**

SUMMARY

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

Key Messages

- 1) **School is not compulsory:** Education is compulsory, but school is not.
- 2) **Home education is not a safeguarding concern:** Medical professionals must respond to genuine and reasonable concerns about any child, regardless of education status.
- 3) **Home educated children are entitled to data confidentiality:** Medical professionals sharing data without consent could be in breach of data protection legislation.
- 4) **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.
- 5) **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.
- 6) **Home educated children are not hidden:** Home educated children are uniquely visible.
- 7) **Many children with special needs are successfully home educated:** Lack of special needs provision in schools is a common reason for parents choosing to home educate their child.
- 8) **Positive relationships build trust:** As with any members of the public, positive relationships with home educating families can help to build trust and confidence in medical professionals.



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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 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 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 all stages of the child's education.

Medical professionals naturally want to act professionally and appropriately in all circumstances. Home education is not something which is usually covered during medical training, which can make it difficult for medical professionals to know how to proceed, when they meet a home educated child in the course of their duties.

This information relates to medical professionals in England and Wales and is intended to help guide those professionals in respect of the relevant responses to make when they meet a home educated child in the course of their duties.

¹ Education Act 1996 s7

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.

Child Protection

Education Otherwise is regularly made aware of doctors, health visitors and other medical professionals treating a home educated child as if they are a child at risk of significant harm. This is almost always due to misunderstanding and lack of training, or awareness of home education law and practice. However, it can lead to medical professionals referring the family to Children's Social Services for assessment under the Children Act 1989 s47.

It is important that medical professionals are aware that home education is not a safeguarding concern and that any referral made to Children's Social Services, or any other agency without parental consent and solely on the basis of the child being home educated, would be a breach of patient confidentiality. Furthermore, such a referral could constitute a breach of the patient's rights under the Data Protection Act 2018, the GDPR and the Human Rights Act 1998 Article 8.



Safeguarding referral to Children's Social Services for any child, must meet the same high bar to be lawful



Where a medical professional breaches confidentiality for any patient, it can of course lead to breakdown of trust in that professional. This can in turn lead to the patient delaying seeking medical care and a consequent reduction in the patient's health care. In practice, the breakdown in trust can of itself result in the patient being put at increased risk of harm.

It is not unusual for medical professionals to question a patient about their home education during a consultation. This is most usually out of genuine interest in learning more about home education itself, on the part of the medical professional. Some home educating parents may feel concerned by this sort of questioning, due to an awareness within the home educating community of unwarranted referrals to Children's Social Services. Medical professionals met with a patient reluctant to discuss their home education provision, should be aware that this is quite likely to be due to concern that their confidentiality might be breached.

Of course, medical professionals should refer genuine safeguarding concerns for any child, to Children's Social Services, but home education is not a concern of itself and referrals should only be made for home educated children in circumstances where they would be made for any child, regardless of education status.

Medical professionals may not usually share home educated children's data

Data Protection

All patients have rights to data protection under the Data Protection Act 2018 and GDPR. Data can also be subject to protection under the Human Rights Act 1998 Article 8, which provides the right to privacy. Medical professionals handle sensitive data on behalf of their patients and must be scrupulous about ensuring that patients' rights are protected when sharing data.

Children have the same rights as adults over their personal data, which they can exercise provided that they are competent to do so. Where a child is not considered to be competent, an adult with parental responsibility may usually exercise the child's data protection rights on their behalf.

There are 6 lawful bases for processing Data:

- **Consent: the individual has given clear consent for you to process their personal data for a specific purpose.**
- **Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.**
- **Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).**
- **Vital interests: the processing is necessary to protect someone's life.**
- **Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.**
- **Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)**

It is important to note that consent under the GDPR must be true consent. What that means, is that the patient must be properly informed of the purpose of the data usage and that there should be no inducement, or coercion to obtain consent to share the data. Consent must be 'opt in' and cannot be assumed.

Patient consent for treatment, or to share healthcare records is not the same as GDPR consent

If a medical practice undertakes NHS work, it is most usually a 'public body' for the purposes of data protection.

In order to process special category data, medical professionals must meet one of the conditions for processing under the GDPR Article 9, as well as identifying a lawful basis under the Article 6. Special category data is data relating to:

- **personal data revealing racial or ethnic origin;**
- **personal data revealing political opinions;**
- **personal data revealing religious or philosophical beliefs;**
- **personal data revealing trade union membership;**
- **genetic data;**
- **biometric data (where used for identification purposes);**
- **data concerning health;**
- **data concerning a person's sex life; and**
- **data concerning a person's sexual orientation.**

Home education can of itself be classified as special category data, if the decision to home educate the child is based on philosophical beliefs. Consequently, the rules applying to special category data could apply to the child's education status and medical professionals should be careful to follow the requirements for processing that data.

Medical professionals must also maintain an awareness of the common law duty of confidentiality, as **any** information shared within the patient and medical professional relationship, is subject to confidentiality. This is important, because under common law, implied consent cannot be relied upon for sharing confidential health data with any third party, or organisation, which is not providing direct care to the patient and which does not have a legitimate relationship with a patient sufficient for the sharing of confidential data.

Patient consent for treatment, or to share healthcare records, is not the same as GDPR consent

The Welsh Assembly Government has recently published draft legislation which would require medical professionals to routinely share patient data with each local authority in Wales. Advice from Queen's Counsel is that if enacted, these regulations would be unlawful and would therefore not provide justification for sharing patient data.

The GDPR gives patients the right to object to their data being processed. This right applies unless the medical professional can demonstrate that they have compelling legitimate grounds for the processing. Most usually, the right to process patient data on the part of medical professionals, will be based on it being necessary to do so for the for safe provision of direct care, or that it is necessary to process the data in order to comply with a legal obligation.

Home education does not relate to direct medical care and therefore medical professionals may not share data relating to home educated children's education provision, just as they may not for other children.

Any information shared within the patient and medical professional relationship, is subject to confidentiality



There is no legal obligation upon which medical professionals can rely for sharing data relating to home educated children's education, unless that education is causing, or is at risk of causing, significant harm to the child sufficient to meet the requirements of the Children Act 1989 s47. Home education of itself, is not a safeguarding issue and may not be relied upon for sharing home educated children's data.

Healthcare professionals who are not employed by a medical practice can access patient data for direct care purposes. However, medical professionals must respect the right of patients not to have their data shared with another healthcare professional, such as a health visitor, or school nurse and must not share that data if the patient does not wish them to do so.

Home education is not a cause for concern and is not a safeguarding issue

Positive relationships

As with any families, relationships between home educating families and medical professionals rely on trust and the professionalism of the medical professionals concerned. Building positive relationships with patients can help to increase trust in medical professionals and help those professionals to provide a better service to their patients.

Medical professionals can build positive relationships with home educating families by:

- treating home educating families with respect, showing an interest in the parent's decision, without being intrusive and by reacting in a positive manner to being advised that the family is home educating
- making an opportunity to learn about home education and sharing good practice with colleagues
- offering services to home education families, such as clinics and advice available to other families
- Championing home educating parents in order to obtain the services they require and
- Maintaining patient confidentiality

Meeting medical professionals should be a positive experience for every child and how those medical professionals deal with home educated children can make a significant difference not only to the child's view of the medical profession, but also how those families are treated by other agencies and their local community.



The home education charity

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