



EDUCATION OTHERWISE

# Home Education: Information for Police Officers

## 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:** Police officers must respond to genuine and reasonable concerns about any child, regardless of education status.
- 3) **Home educated children are entitled to be out in public:** There is no restriction on home educated children being in public during school hours.
- 4) **A home educated child may not be detained, or taken away by the police, as a truant:** Home educated children are not truants and may not be removed during a truancy patrol
- 5) **Home educated children are not missing from school:** Home educated children are not school pupils and are therefore not children missing from school.
- 6) **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.
- 7) **A general concern for welfare does not give right of entry to a home:** Legal precedent is clear that a general concern for welfare is insufficient cause to enter a home uninvited.
- 8) **Positive relationships built trust:** As with any members of the public, positive relationships with home educating families can help to build trust in the Police.

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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'*<sup>1</sup>. 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.

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

This information relates to police officers in England and Wales and is intended to help to guide those officers in respect of the relevant actions to take when they meet with a home educated child in the course of their duties.

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<sup>1</sup> 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 of June in the school year during which the child attains 16 years of age.

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.

## Truancy patrols

Police forces in England and Wales conduct regular truancy patrols and these are usually conducted in association with the local authority for the area where the patrol takes place.

Police powers in respect of truancy patrols derive from the Crime and Disorder Act 1998 s16 (3):

**'16 Removal of truants and excluded pupils to designated premises etc.**

**(3) If a constable has reasonable cause to believe that a child or young person found by him in a public place in a specified area during a specified period—**

**(a) is of compulsory school age; and**

**(b) is absent from a school without lawful authority, the constable may remove the child or young person to designated premises, or to the school from which he is so absent'.**

This power only applies to children of compulsory school age who are registered at school. It does not apply to home educated children, as they are not registered at, or absent from a school. Police officers therefore have no power to remove a home educated child as a truant, either during truancy patrols, or at any other time.

A home educated child is entitled to be in a public place during normal school hours and to go about their lawful business unhindered. Police officers should take no further action where children indicate that they are home educated, unless they have reasonable cause to doubt that this is the case.



**A home educated child may not be detained,  
or taken away by the police, as a truant.**



A police officer may stop a home educated child (or any individual) and ask them their name, what they are doing in the area and where they are going. However, the child is not required to stop and is not required to answer questions asked by the officer. Refusal to provide information to a police officer is not cause for arrest or detainment of a child, unless that officer has reasonable cause to suspect that the child has committed an offence. A school child who truant has not committed an offence, because truancy is not a criminal offence.

## Police officers may not usually share home educated children's data

Police officers working with local authority staff during truancy patrols must not detain children in order to allow, or facilitate, the questioning of home educated children by those local authority staff. This is because the detention of a home educated child where there is no reasonable cause to believe that an offence has been committed, would be unlawful.

Information and documentation obtained by police officers during truancy patrols, in respect of home educated children, is subject to the Data Protection Act 2018 and the General Data Protection Regulations (GDPR). This legislation only permits data sharing without consent, in certain specific situations. Police officers may not share that information with local authority staff unless there is reasonable cause to suspect that the child is suffering from, or at risk of **significant harm**; the child is subject to a care, or supervision order, or the child is subject to a child protection plan.

Home educated children are not subject to truancy patrols. Consequently, police officers ordinarily have no legitimate basis for sharing those children's data.

It is frustrating for police officers dealing with young people to be faced with a child who has declined to give information. However, it is important to note that if a home educated child is detained by the police, or is taken away by the police, then a claim for wrongful arrest or false imprisonment might arise.

### Welfare Checks

Police officers are often asked to make 'welfare checks' on home educated children, by local authorities.

Local authorities have no legal right to meet with a home educated child and children are not required to be seen by any professional, or public body. They are not for example, required to see a GP, see a dentist, or register with any organisation. Notwithstanding, some local authorities do seek to enforce meetings with home educated children and their families, by inappropriately referring those children to the Police as 'missing' and seeking a welfare check.

The College of Policing provides guidance on dealing with missing persons, including dealing with children missing from school. Even where a child is missing from school, the local authority should not immediately refer the matter to the Police:

**‘A child may fail to attend school for a number of reasons, however their absence may indicate that the child is at risk of harm. The education authority should make reasonable enquiries to ascertain the child’s circumstances before reporting them as missing to the police’.**

A home educated child is not a child missing from school and there is a clear legal process that the local authority must follow if it appears that a home educated child may not be in receipt of a suitable education. The local authority should not be referring the child as missing and police officers should not act on a referral made by the local authority, solely on the basis that the child has not been seen by the local authority (or other agencies).



Of course, if there is reasonable cause for concern that a home educated child is missing from home, police officers should respond to those concerns as they would treat a report of any child missing from home.

A ‘welfare check’ occurs where police officers are tasked to attend an address and to check if any occupant is alive, immediately safe and well, that is to determine the ‘existence of life’ and report back to the requesting agency. Police officers have no general responsibility for ‘safety’ or ‘welfare’ of members of the public, including home educated children and should only carry out a welfare check if that check engages the core duties of the Police to:

- prevent and detect crime
- keep the Queen’s peace, or
- protect life and property

Police should only carry out a ‘welfare check’ (including for home educated children) when a request is made, if it is an emergency and there is a real concern that something serious is about to, or has already occurred to the relevant individual on the premises. This is because an individual may be in need of immediate assistance due to a health condition, injury or some other life threatening situation, or immediate vulnerability. Unless this threshold is reached, police have no duty, and therefore no power, to take any action.



If a local authority requests a welfare check on a home educated child where there is genuine and reasonable cause that the child has suffered, or is at imminent risk of suffering from significant harm, that request must of course be acted upon, as it would be for any child. Where no such reasonable cause for concern exists, police officers should not be making welfare checks on home educated children.

## Right of entry

It is understandable that police officers sent to make a welfare check on a child following a request from a local authority, may feel greater concern than they might following a request for a general welfare check from a member of the public, as the request could appear more well founded, or authoritative. Police officers may then feel frustrated if the child's parent refuses them entry, or sight of the child.

A police officer attending at the home of any child, including a home educated child, may sometimes have a right of entry under the Police and Criminal Evidence Act 1984 s17, but officers do not generally have a right of entry where the concern is a general concern for welfare.

Any police officer forcing entry to a home without reasonable cause to suspect that the home educated child was in a life threatening situation, or immediately vulnerable to harm, would not be acting lawfully.

Legal precedent (case law) is very clear that a general concern for welfare, which includes receipt of a request from a local authority officer, is insufficient cause to exercise powers under PACE s17.



***'It is plain that Parliament intended that the right of entry without any warrant should be limited to cases where there was an apprehension that something serious was otherwise likely to occur, or perhaps had occurred, within the house....Concern for welfare is not sufficient to justify an entry within the terms of section 17(1)(e). It is altogether too low a test'. Syed v DPP [2010]***

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

In the case of *Syed v the DPP*, the Court sympathised with the difficult situation police officers find themselves in when attending a home for a general welfare check and that situation will always be a difficult one for officers. However, police officers must comply with the law regardless of their understandable feelings of frustration in such situations.

Home education is not a safeguarding issue and a home educated child is not a vulnerable child by virtue of being home educated. If a home educating parent refuses entry to their home, or refuses to allow the police officer to see the child, that is not of itself sufficient cause to allow entry to the home under PACE s17.

Parents have many reasons why they do not wish police officers to enter their homes and parents are entitled to the privacy of their homes under the Human Rights Act Article 8. Parents need not justify refusing entry to a police officer and that refusal alone is insufficient evidence to allow the police officer to enter the home.

Of course, where an investigation relates to a report of child abuse and the Police have reasonable cause for concern that the child is in a life threatening situation, or is immediately vulnerable to harm, they should act as they would with any other child.

A police officer entering the home of any family including home educating families, without reasonable cause to do so under PACE s17, would be acting unlawfully and could face disciplinary, or legal proceedings.

## **Neighbour complaints**

It is not unusual for neighbours of home educating families to make complaints about home educated children. Most usually those complaints will relate to children playing outside during school hours, or not keeping school hours. These complaints may be malicious, as any neighbour complaint may be, but most usually they are based on a misunderstanding of the law relating to home education.

In such circumstances, police officers have no role in questioning the family about the child's education provision, once the parent has confirmed that the child is home educated.

Just as with other children, where such a complaint has been made, police officers have no legitimate basis for sharing data relating to home educating families, with any other individual or agency, unless there is reasonable cause for concern that the child may be suffering from, or at risk of significant harm.

Of course, if a police officer attends the home of any family and whilst doing so has reasonable cause for concern that a child is suffering from, or at serious risk of significant harm, as with any family the officer should refer the concern to Children's Social Services.

## Positive relationships

As with any families, relationships between home educating families and police officers rely on trust and the professionalism of the officers concerned. Building positive relations can help to increase trust in the police service and help police officers to provide a better service to their local communities.

Police officers can build positive relationships with home educating families:

**Engage:** 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.

**Explain:** by making an opportunity to learn about home education and sharing good practice with colleagues.

**Encourage:** by offering community services to home education groups, such as road safety events, or visits to police stations.

**Enforce:** Within the bounds of the law and only where necessary.

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



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