

# Elective Home Educating Parents in Portsmouth: Perceptions of Local Authority.

## Background

The Education Act 1996 s7 places a duty upon a parent of a child of compulsory school age to *'cause their child'* to receive suitable education. *'Suitable education'* means *'efficient full-time education suitable to (the child's) age, ability and aptitude and to any special educational needs (the child) may have.'* Parents can discharge this duty by enrolling their child into a school maintained by a Local Authority (LA), by enrolling their child at an academy school funded directly by the Secretary of State, by enrolling their child in a private school, or by educating their child at home. All of these options are of equal status in law, making none of greater value than any other. Parental choice to educate a child at home is known as Elective Home Education (EHE).

The Department for Education's statutory Elective Home Education Departmental Guidance for Local Authorities (EHEDGLA) makes clear that:

*'There are no specific legal requirements as to the content of home education, provided the parents are meeting their duty in s.7 of the Education Act 1996. This means that education does not need to include any particular subjects, and does not need to have any reference to the National Curriculum; and there is no requirement to enter children for public examinations. There is no obligation to follow the 'school day' or have holidays which mirror those observed by schools. Many home educating families do follow a clear academic and time structure but it should not be assumed that a different approach which rejects conventional schooling and its patterns is unsatisfactory, or constitutes 'unsuitable' education.'*

The Education Act 1996 s436a provides that:

*"(1) A local authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—*

- (a) are not registered pupils at a school, and*
- (b) are not receiving suitable education otherwise than at a school.*

*(2) In exercising their functions under this section a local authority must have regard to any guidance given from time to time by the Secretary of State.*

*(3) In this Chapter, "suitable education", in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have'*

This Act places a duty upon each LA to 'establish' whether the child is receiving suitable education. The Education Act 1996 s437 states:

*'(1) If it appears to a local authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.*

*(2) That period shall not be less than 15 days beginning with the day on which the notice is served.*

*(3) If—*

*(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local authority, within the period specified in the notice, that the child is receiving suitable education, and*

*(b) in the opinion of the authority it is expedient that the child should attend school, the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order.'*

There is a two-step process for any LA to enquire as to the suitability of EHE:

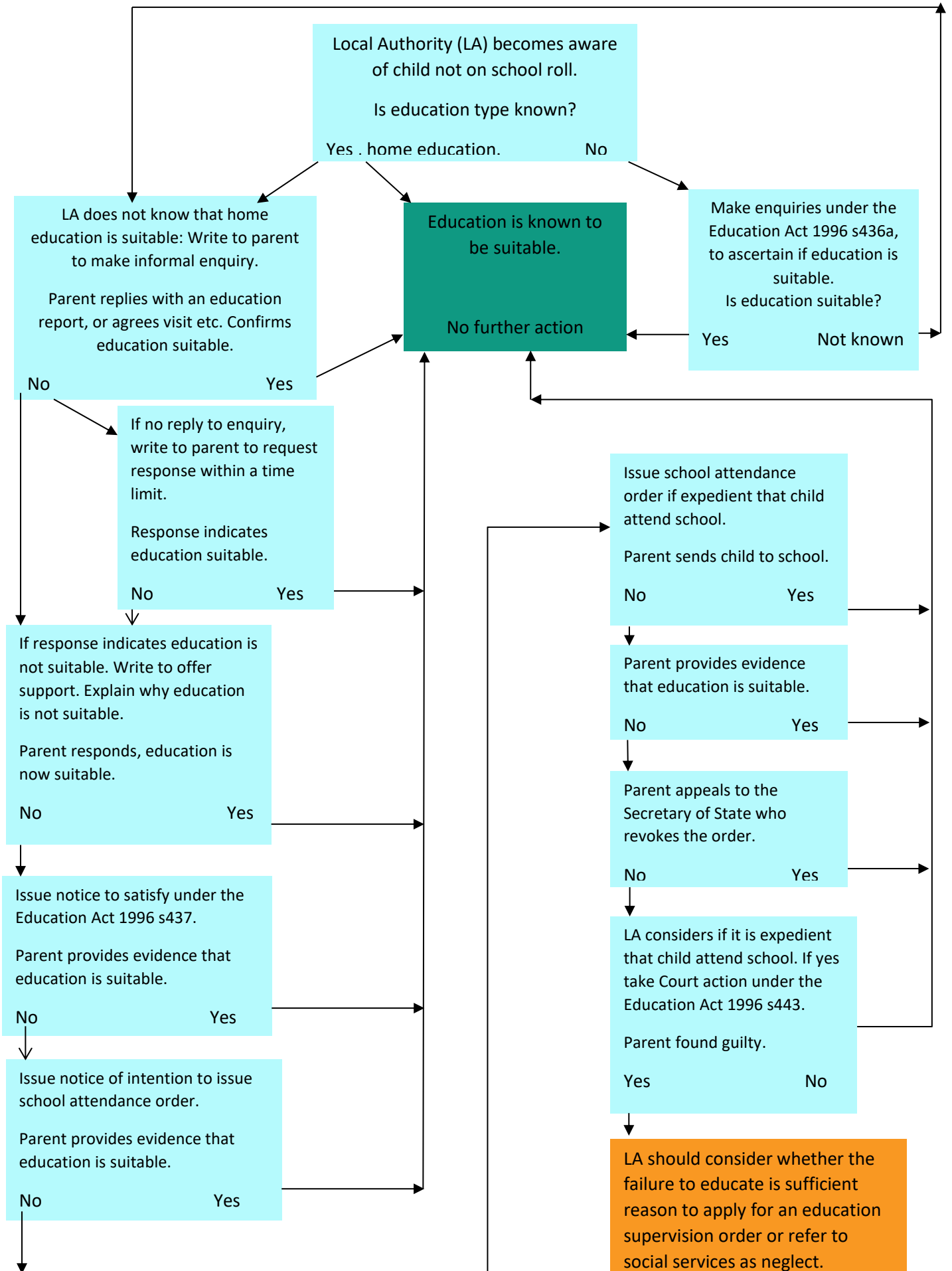
- 1) The LA makes an enquiry under the Education Act 1996 s436a (an informal enquiry), at which point it is satisfying itself.
- 2) If and only if it appears that the education provision is not suitable should it serve a Notice to Satisfy (NtS) under the Education Act 1996 s437.

The Education Act 1996 s443 goes on to state that failure to comply with a School Attendance Order (SAO) is a criminal offence. Consequently, the issuance of a NtS is the first step that an LA takes toward criminal prosecution of a parent who it believes to be failing in their duty under the Education Act 1996 s7.

It is a basic requirement upon all public bodies that their actions must be reasonable and proportionate. Proportionality on the part of a public body requires that only the minimum action necessary must be taken and every action must be legitimate and necessary. 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 context, a NtS should only be served when necessary and where there is a reasonable basis for that service. The EHEDGLA states:

*'6.4 The department's advice is that in all cases where it is not clear as to whether home education is suitable (including situations where there is no information available at all), the authority should initially attempt to resolve those doubts through informal contact and enquiries.'*

## Flow Chart of Local Authority Actions in EHE Cases



Portsmouth City Council (PCC) has recently come to public and media attention as a result of EHE families in the area taking action against it in Judicial Review (JR). Approximately 118 families in PCC currently EHE their children and their claim relates to the legality of PCC's approach taken to its duties under the Education Act 1996 s436a and s437.

The purpose of this survey is not to examine the validity of the JR case, but to examine the views and perceptions of EHE families within PCC of the stance taken by PCC in respect of its duties under the Education Act 1996.

## **Method**

A survey was circulated to parents who are members of EHE groups in PCC area. Not all EHE families belong to groups and it became clear that many of the families who are members were reluctant to take part. Where those expressing reluctance stated concerns, those concerns were in respect of perceived risk of retribution by PCC if they were identified. This perceived risk was not investigated further due to ethical considerations.

Some families approached the researcher independently to obtain a written copy of the survey in preference to using an online survey platform. Twenty-seven families in total responded to the survey, representing 43 EHE children. This is 24.17% of all EHE children in the PCC area.

The survey was anonymised to protect the identities of those taking part and identities were not known to the researcher except in those cases where the approach was direct. In those cases, identification details were neither recorded nor retained.

Parents were asked to state:

- What type of information they provided to PCC in response to an enquiry under the education Act 1996 s436a;
- Whether they subsequently received a NtS;
- Whether any further information was provided by them, to PCC and
- Had they done so, to give reasons why they provided further information.

Survey results were made available to EHE families by way of this report.

Using Freedom of Information (FOI) requests, data was obtained from all 151<sup>1</sup> LAs in England. LAs were asked to state how many children in their area were known to be EHE on 7<sup>th</sup> January 2021 (the first day of the school term) and how many notices each LA had served on EHE parents during the calendar year to 7<sup>th</sup> January 2021. Numbers of EHE children fluctuate throughout the year making the figure a 'snapshot' of the number, but by taking the data as at the same day for each LA, fluctuations do not affect the validity of the calculation.

A notice under the Education Act 1996 s437 can be served on each parent of a child, but LAs do not usually maintain data relating to the number of children to which notices served relate, in a readily accessible format. This data is consequently not available through FOI. However, where the data was provided in a form broken down into number of children to whom the s437 notices relate, the mean result was that 68% of the raw figure for NtS served approximates to the number of children for whom the notices were served. This figure was not used for the calculation as the majority of LAs did not provide a breakdown and comparative analysis would not be statistically valid where only a small number of LAs were included.

To maintain a true comparison between the 151 LAs, the number of NtS served by each LA was taken as a percentage of the number of EHE children in each LA. The percentage for each LA was then compared to form a database of rate of issuance of notices.

## Results

The EHE parents were, without exception, very clear that they considered the information provided by them to PCC to be sufficient for the purpose of an enquiry under the Education Act 1996 s436a. Most parents chose to provide an education report and some specifically noted that: *'An educational report is a very efficient way of sharing information. This should be an acceptable format.'*

Providing an education report to the LA is a long-established method for parents to use to respond to an enquiry. It is recommended by numerous LAs and by respected organisations such as Education Otherwise, a charity providing advice, support and expertise in respect of EHE.

Parents provided a wide range of information with 70.38% submitting more than one form.

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<sup>1</sup> During the course of this data collation, Northamptonshire has separated into North Northamptonshire and West Northamptonshire, resulting in there being 152 LAs in England. For the purpose of continuity, the figures for each have been added together as one amount.

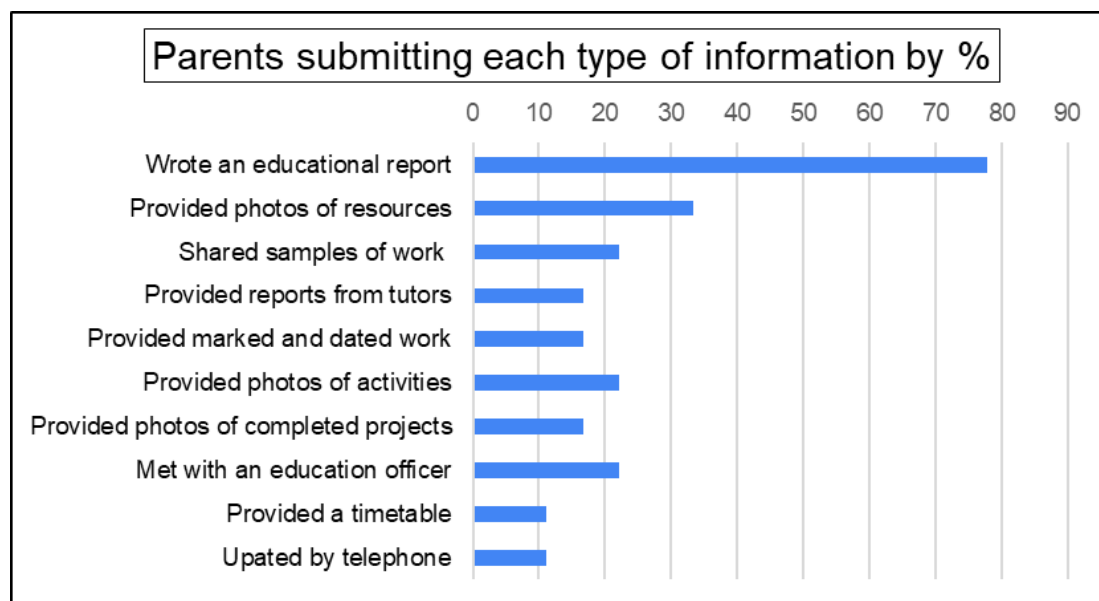


Table 1: Format of information submitted by parents by % submitting each form.

Of those parents responding to the survey, 29.62% initially provided an education report with no additional information. Parents responded who had submitted a report to PCC within a short timescale and who were therefore unable to state whether or not a NtS would be served upon them. Following completion of the survey each of these parents received a NtS. No question was asked as to the length and content of these reports, however, where respondents provided this information, reports ranged from 3,412 words to in excess of 8,000 words. All EHE parents who provided an education report to PCC, with no other form of information, received a NtS prior to the survey being taken, or within a few days afterward.

- Of those parents who submitted copies of the child's work marked and dated, none received a NtS.
- No parent who submitted copies of the child's work received a NtS.
- All but one of these parents submitted the samples of work, or marked and dated work, in addition to an education report written by the parent, by a tutor, or reports from both. The remaining parent submitted the work in addition to meeting with an education officer to discuss the education provision in person and to provide the officer with copies of the work to examine.
- Many parents submitted multiple types of information to PCC and of those doing so, 37.5% had submitted the information shortly before the survey was completed. These parents were excluded from the analysis, as the response from PCC had yet to be received.

- Of the remaining parents who submitted multiple forms of information to PCC, the average number of types of information submitted was 6.
- Only one parent who submitted multiple forms of information at this stage received a NtS (an education report accompanied by photographs of resources, projects undertaken and activities). This parent did not submit samples of work, or marked and dated work.
- Of those parents who received a NtS, 89% submitted further information to PCC. All of these 89% submitted further education reports.
- The mean number of additional forms of information submitted was 2.55.

Parents were asked to provide information relating to their motivation for providing the information that they provided to PCC (see table 2).

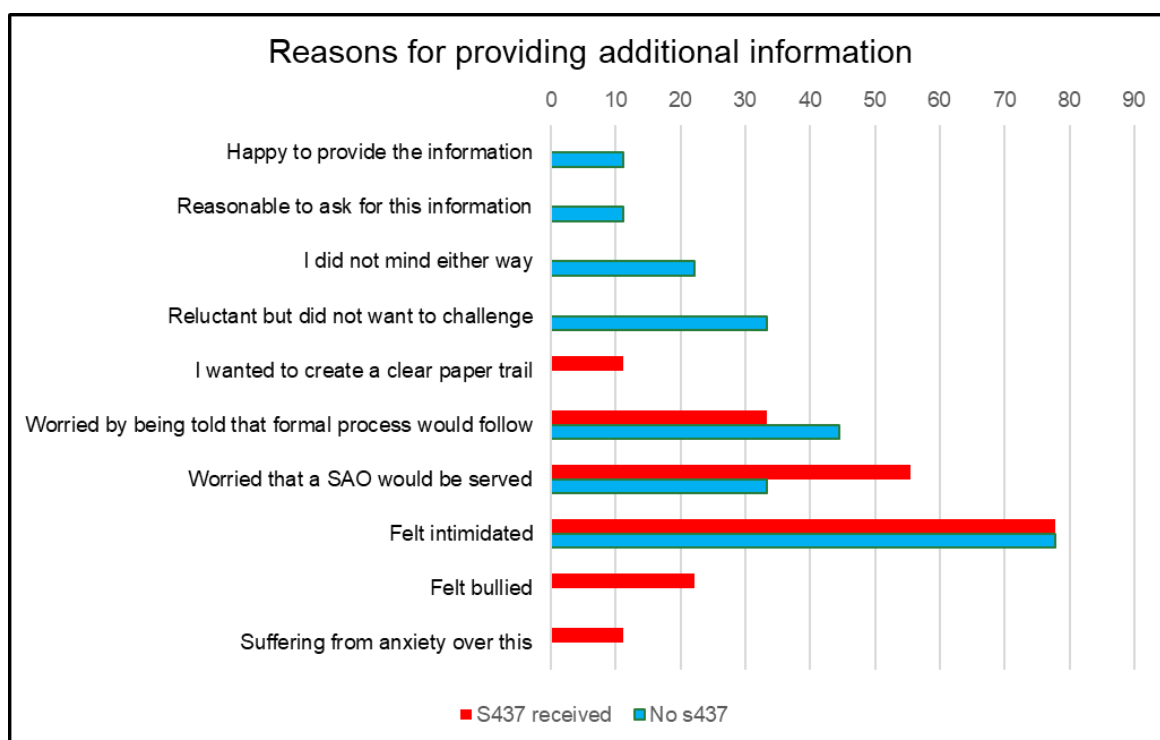


Table 2: Motivating factors for providing information to PCC.

Parents often cited numerous reasons for providing the information to PCC. The most frequently cited motivation for doing so, in the form provided, was that the parent felt intimidated by PCC's approach to them. Notably, this reason was cited not only by 78% of parents who had received a NtS, but also by 78% of parents who had not received a NtS.

Of those parents who had not received a NtS, 44% cited concerns over having been told by PCC that formal actions would follow as their motivation for providing the information and 33% cited worries that a SAO would be served upon them. 33% of parents cited reluctance to challenge PCC as their reason for submitting information.

Concerns in respect of perceived conduct by PCC (feeling intimidated, feeling bullied, feeling worried about and suffering from anxiety) were cited by 78% of parents who submitted information and did not receive a NtS. These reasons were cited by 89% of parents who did receive a NtS.

It was starkly notable that only one parent who took part in the survey cited any positive reasons whatsoever for providing information to PCC in the format chosen: *'I think it is reasonable for (PCC) to ask for his information'*. Two parents who chose to send multiple forms of information to PCC stated:

*'I felt that PCC is in a tricky situation and even though by law we are not required to show them any work we've done, or resources we've used, or even just have the chat online, in a way we help to educate their officers on being more familiar with our schooling style,'* and

*'We very much hope that we can find a way to have a friendly conversation with PCC and that they realise that they serve us and our children not the other way around.'*

This 'educative' approach to supporting PCC's understanding and ability to recognise their remit may indicate limited experience of the procedures used, or may simply stem from a belief in and trust of public bodies on the part of those parents.

Some parents who responded to the survey had been EHE for a significant period of time and had greater experience of PCC's stance in respect of EHE. One such parent was very clear that their purpose in providing an education report was to create a clear *'paper trail'* of communications, in the full expectation of being prosecuted at some point in the criminal court.

## **Discussion**

There is no doubt whatsoever that a small minority of parents who elect to EHE do not do a good enough job of it. This may be as a result of not having actively chosen to EHE, having come to EHE reactively in the face of one or more concern for which the parent could find no alternative remedy. A recent report found that:

*'38% of parents referred to negative reasons relating to schools as their main reason for home educating their children. This included that the parent felt the school curriculum to not be suitable, or relevant (6.25%), general*



*dissatisfaction with the school system (14.98%), the school being unable to meet the child's special needs (10.15%), lack of school places (1.05%) and bullying at school (5.57%). These parents frequently referred to safeguarding concerns related to school, particularly for special needs children being 'ignored', being physically restrained, being bullied, or not having staff available to assist with eating or toileting.'*<sup>2</sup>

Regardless of initial reason for a child becoming EHE the DfE confirms that: '*Most parents who take up the weighty responsibility of home education do a great job*.'<sup>3</sup>

Where a parent feels that their child is not safeguarded in the school environment, or that the school environment is not meeting the child's academic, social, or special needs, they may come to EHE with some reluctance. In these situations, it is understandable that enthusiasm, time, resources, or ability to provide a suitable education may be less than optimal. In these and in other cases where the LA has reasonable concerns that the EHE provided may not be suitable, it is wholly proportionate for the LA to serve a NtS. However, a NtS may only be served if informal enquiries and offers of support do not result in improvement to the EHE. Throughout England LAs are tasked with serving a NtS in these circumstances.

The JR brought by families in PCC area argues that PCC does not discharge its duties under the Education Act 1996 s436a in a proper and proportionate manner, but that it serves parents with Education Act 1996 s437 notices where it is not appropriate, reasonable, or proportionate to do so. This report does not address the JR, but seeks to examine the views of the affected EHE families within PCC, as to the effect of the stance taken by PCC on those families. Notwithstanding, it is essential to address the factual background to parental concerns in PCC and here, the data is informative.

- In the calendar year from 8<sup>th</sup> January 2020 to the 7<sup>th</sup> January 2021 the percentage of NtS served by number of EHE children in PCC was **40.22%**.
- The mean percentage served across all other 150 LAs excluding PCC was **1.75%**.
- Of the 151 LAs, 79 (52.31%) served no NtS whatsoever.
- The median percentage served was 0%.

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<sup>2</sup> Charles-Warner, W (2020) 'Home Education Trends, Preliminary Report'. Education Otherwise [Online] available from: <https://www.educationotherwise.org/wp-content/uploads/2020/12/Report-home-education-Trends-preliminary-report.pdf>

<sup>3</sup> Department for Education (2019b) Elective Home Education Departmental Guidance for Local Authorities. London: Stationery Office. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791527/Elective\\_home\\_education\\_guidance\\_for\\_LAV2.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_guidance_for_LAV2.0.pdf).

- Only 7 (3.97%) LAs served a total of NtS amounting to more than 10% of the number of EHE children.
- The second highest issuance rate was 26.4%; no other LA served over 20%.
- Of the NtS served by PCC during the calendar year, 59 (32.96% of EHE children) were served during the period from 1<sup>st</sup> September 2020 to 7<sup>th</sup> January 2021 (one school term).

The mean figure for service of SAOs by number of children across all 150 LAs excluding PCC was 0.23%. The figure for PCC was 8.58%. The next highest level of SAOs served across the 150 LAs was 2.52%. 105 LAs served no SAOs whatsoever.

Comparative analysis of data from 7<sup>th</sup> January 2021 to 30<sup>th</sup> April 2021 is not currently available for all 151 LAs. However, PCC served a further 56 NtS (32.18% of EHE children using the standard report comparison) during this period.

- The total issuance of NtS in PCC during the period 1<sup>st</sup> September 2020 to 29<sup>th</sup> April 2021 is 65.14% of the number of EHE children in PCC area.

In depth investigation of the reasons behind such a disproportionately large number of NtS and SAOs being served by PCC (compared to all other LAs in England) is not possible within the scope of this report, but no unique, or extreme social reason was readily found to explain this situation.

Parents of EHE children report feeling '*intimidated*' and '*bullied*' by PCC's stance in respect of its Education Act 1996 s436a and s437 duties. The disproportionately high level of issuance of NtS may go some way toward explaining parental perceptions, but respondents to the survey gave further insight in the free text section:

*'There is a bullish feel from PCC that we are only allowed to Home Educate if they deem fit. They have very poor communication skills, not only with the Home Ed community but just generally in their correspondence.'*

*'They show no signs of building a positive relationship or to even try to understand Home Education.'*

*'I have very little trust in them and their care for my child's well-being.'*

*'I feel like a criminal on the verge of being taken to court for choosing to tailor my child's education.'*

*'It all seems to be a numbers game for them, which is incredibly basic, considering the importance that education holds in a child's life.'*

*'I have been ignored when asking questions.'*

*'I do not believe the members of the team are fit for their roles.'*

*'This continued battle with PCC has taken up a lot of my personal time as well as family time. Had I informed my children of what is happening, they would be suffering greatly from stress and anxiety over the thought of being forced into an education system that does not fit them.'*

## Conclusion

It is clear from the survey responses that EHE parents in PCC area do not trust their public officials. Parents reported feeling 'bullied', 'intimidated' and anxious as a result of the conduct of PCC's education officials.

*'Trust is the foundation upon which the legitimacy of public institutions is built and is crucial for maintaining social cohesion. Trust is important for the success of a wide range of public policies that depend on behavioural responses from the public.'*<sup>4</sup>

Trust underpins the relationship between all citizens and the state. In a time of pandemic that trust is crucial, as when a public body is viewed by those it serves as unable to be trusted, it becomes increasingly difficult for it to implement its policies. Indeed, recent research finds that had trust in public bodies been greater fewer Covid 19 related deaths would have occurred<sup>5</sup>. As the Local Government Information Unit (LGIU) states: *'If competency and honesty and clear communication of values underpin trust, then the corollary may also be true.'*<sup>6</sup> Conduct on the part of PCC education officials may not of itself be a life and death issue, but the overall loss of trust in PCC as a public body, reported in this survey, bodes ill for future relationships between PCC and those that it serves. This in turn may affect implementation of policy in other areas of PCC's service.

Many parents referred to PCC making *'unreasonable demands'* of them, particularly for *'work samples'* and *'marked and dated work'*. Parents refer to incidents where NtS were served even where PCC had stated that it had no concerns in respect of the EHE provision. Furthermore, given the extraordinarily high rate of issuance of NtS, it

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<sup>4</sup> OECD (2021) 'Trust in Government'. [Online] Available from: <https://www.oecd.org/gov/trust-in-government.htm>

<sup>5</sup> Bargain, O. and Aminjonov, U. (2020) 'Trust and compliance with public health policies in the time of COVID-19' [Online] Available from: <https://voxeu.org/article/trust-and-compliance-public-health-policies-time-covid-19>

<sup>6</sup> LGIU (2021) 'You CAN handle the truth: How councils can build trust and recovery in an age of alternate facts'. [Online] Available from: <https://lgiu.org/publication/you-can-handle-the-truth/>

would be reasonable to expect that of those parents submitting other forms of information, some would be in receipt of an NtS. Parents logically argue that if the level of issuance was in line with an unusually high level of unsuitable EHE provision within PCC region, then a similar proportion of parents who provided work samples (marked or otherwise) would receive a NtS. However, of those parents who submitted copies of the child's work (marked or not), none received a NtS. This would indicate that levels of unsuitable EHE provision were not in line with the significantly higher than elsewhere in England issuance of NtS.

A significant majority of parents responding to this survey made clear that their relationships with PCC were founded on fear (intimidation, feeling bullied, feeling concern and being caused anxiety) and fear of public bodies leads to breakdown of trust in those bodies. Breakdown of trust in public bodies in turn leads to lowered compliance with all aspects of public policy, reduced social cohesion, increased public body costs in both financial and staff commitment, together with greater staff dissatisfaction.

In this age of rapid dissemination of information, where parents perceive a public body as unable to be trusted, that loss of trust can lead to a spread of perception of untrustworthiness to other authority areas, creating a domino effect of reduced social cohesion and policy compliance in a wider area than that in which the perceived problem rests. Indeed, during the course of this survey reports were received from EHE parents from elsewhere in England that their LA education officers had stated: *"Don't worry, we're nothing like Portsmouth"*, *"We are really nice, we're not like Portsmouth"* and *"We don't agree with how Portsmouth council is behaving to home educators."* These remarks would indicate that relationships between EHE families and LA staff outside PCC are being directly affected by the PCC situation, which could lead to increasing difficulties for all LAs if the matter is not addressed.

## **Limitations**

Members of the Portsmouth EHE group were free to choose whether or not to take part in this survey and any survey which uses a self-selecting group of respondents has inherent limitations. However, ethical considerations would not allow for contribution by coercion and as such, any survey will be subject to that same limitation. It is possible that some of those who chose not to respond would be more positively disposed toward PCC, but nothing within available information indicates this to be the case. The cost of the JR was raised through public appeal which received an exceptionally robust response, indicating a wider ranging dissatisfaction with the issue in PCC than is found just locally within the group surveyed.

It was not possible to survey PCC staff in respect of their perceptions of their relationship with EHE families. Consequently, the report cannot provide information in respect of staff satisfaction, officer perceptions of service user trust in PCC, or other

aspects of PCC officers' perceptions of the position that has arisen within the public body and EHE relationship.

## **Recommendations**

LAs and EHE parents would benefit from in depth research relating to relationships between those LAs and EHE parents to be undertaken in order to seek to close the widening gap of trust.

Given the extreme level of mistrust in PCC amongst its EHE families and the significantly disproportionate data in respect of PCC issuance of notices under the Education Act 1996 s437, it would be beneficial for PCC to commission independent research into its EHE policies and procedures in order to address the background to its widening trust gap.