

1

What is now expected of home educated families? Has the law changed in respect of the information we have to provide to the local authority?

The judgement confirms that parents need to satisfy a local authority that they are providing suitable education. In respect of what must be provided, the Judge has confirmed that there are no legal requirements to teach the National Curriculum, give formal lessons, mark work done by the child, formally assess the child's progress or set development objectives

2

Can the local authority reasonably expect more than a report and serve an NtS if a parent does not send more than a report?

The judgement is very careful not to be too prescriptive as to the information parents are required to provide. There remains a requirement for parents to show that the requisite education is, in fact, being received by the child and that it is suitable to his or her needs.

The local authority must simply satisfy themselves that the education is suitable to the child's age aptitude and ability. The local authority is not necessarily compelled to accept merely assertive statements by the parent, but there is nothing to prevent them from doing so and each case must be properly considered on an individual case by case basis.

Parents may for example provide:

- A detailed report covering what learning has taken place, the child's progress and level of comprehension.
- A report from a third party (this need not be a specifically qualified third party or one who tutors the child).
- Copies of the child's work.
- Copies of feedback from educational service providers.
- Images of the child engaged in learning.
- A meeting with the education officer.
- Some other form of information that indicates the suitability of the education provision.

The suggestion from the Judge is, without intending to be prescriptive, what may be needed in such cases *'could well involve a meeting with the child and/or an examination of the child's work, whether or not this work has been marked by the parent.'* This does not mean that a parent must agree to meet with the local authority, or to provide copies of a child's work to the local authority, but the parent must provide sufficient information (in a form of their choosing) to the local authority to enable it to be satisfied that the education is suitable

The guidance for local authorities is clear, there is no definition of a 'suitable' education in English statute law. A court will reach a view of suitability based on the individual circumstances of each child and the education provided.

The DfE guidance suggests that the term 'suitable' is assessed on the following grounds:

- it should enable a child to participate fully in life in the UK by including sufficient secular education.
- the home education provision does not need to follow specific examples such as the National Curriculum, or the requirement in academy funding agreements for a 'broad and balanced' curriculum, nor the independent school standards prescribed by the Secretary of State. Conversely, however, if the home education does consist of one or more of those, then that would constitute strong evidence that it was 'suitable' in terms of s.7;
- local authorities should interpret 'suitable' in the light of their general duties, however, there is no requirement on parents to actively promote the Fundamental British Values in the same way as there is for schools;
- a local authority may specify requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable, whilst accepting that these must be applied in relation to the individual child's ability and aptitudes;
- home education may legitimately cater specifically for particular aptitudes which a child has, even if that means reducing other content;
- it is not simply a matter of academic learning but should also involve socialisation;
- any assessment of suitability should take into account the environment in which home education is being provided.

3

Can the local authority now ask for even more, such as to meet the child or see the home?

The local authority can request that the parent meet with them or provide copies of the child's work. The parent is not obliged to do either of those things but must provide sufficient information to enable the local authority to be satisfied that the education provision is suitable.

4

Can a local authority maintain a policy which requires education to be broad and balanced, or to meet expectations required by schools, such as expecting the child to meet school standards?

The guidance is clear that:

'b. notwithstanding (a), the home education provision **does not need to follow specific examples such as the National Curriculum, or the requirement in academy funding agreements for a 'broad and balanced' curriculum**, nor the independent school standards prescribed by the Secretary of State. Conversely, however, if the home education does consist of one or more of those, then that would constitute strong evidence that it was 'suitable' in terms of s.7.'

5

What have local authorities gained from the Court's decision?

The local authority was successful in defending their position in so far as the Judge found that they were entitled to request further information and that a report would not necessarily be enough to satisfy a local authority that suitable education is being provided. However, the judge was clear that this was on the basis that the local authority would accept a report in some circumstances.

What is important is what is in the report and what follow up information the council would reasonably request. It logically follows that the more comprehensive and detailed a report is, the more likely it is that a local authority will be satisfied with a report from the parent.

Local authorities have not gained anything prescriptive from the judge's decision and each case will still be considered on a case-by-case basis.

6

Does his judgement now mean that what is suitable education is not a matter to be decided by the parent it is in first place a duty of the local authority.

Only in so far as the local authority must be satisfied that suitable education is taking place. The judge states: *'it is plain that a parent who receives an informal inquiry at this stage needs to respond to it in a meaningful way, if he or she is to avoid the necessity of responding to an NTS.'* However, the council must not be unreasonable when they seek to assess whether the education is suitable. The council should not demand that the education must involve formal lessons, work which is marked, or that the child is taught the national curriculum.

7

Does the judgement mean that the local authority need not explain its concerns to the parent?

No, in fact the Judge found that the complaint in respect of the failure by the local authority to specify concerns is misconceived. He found this on the basis that that the local authority specified that what was missing was any evidence of the children's reading and writing ability, or any evidence that the described educational programme is actually taking place and actually being received.

The local authority should always set out and explain their concerns to the parent and allow the parent to respond in a meaningful way. If they do not, then the parent can complain and they could challenge a decision to prosecute on the basis that the local authority did not enter into a meaningful process where its concerns were explained and the parents were allowed a reasonable time to respond.

8

As the council dismissed what parents report as just 'assertions' what is there to prevent it from dismissing other information, such as copies of work, as fabricated, or deceitful as well?

This is difficult to answer as it presupposes that the council will dismiss samples of work as fabricated. Each case will be different and the evidence in each case will be different. Any suggestion that information provided by a parent (including a piece of work) is fabricated would have to be based on a reasonable belief that it is fabricated based in the circumstances of that case.

9

What is a local authority lawful basis under GDPR for their information collection?

Article (6)(1)(e): Public task: the processing is necessary to perform a task in the public interest or for official functions (task or function has a clear basis in law).

Article 9(2)(g): Reasons of substantial public interest 'equality of opportunity or treatment' purpose condition from Schedule 1 of the Data Protection Act 2018 when relying on Article 9(2)(g) to process special category data.

Article 9(2)(j): Archiving, research and statistics 'Research' purpose condition from Schedule 1 of the Data Protection Act 2018 when relying on Article 9(2)(j) to process special category data.

If parents have a concern about data processing, they should make a formal complaint to the local authority and follow up with ICO if needed. The parents could ask when submitting information about their child, that the council do not share or pass it on to anyone outside of the council and that it is not used for any other purpose than for assessing suitable education in this case.

10

The parent is obliged to provide education suitable to the individual child, a failing school or inadequate would not do that. Could a parent sue the Council if their child is forced into school by means of a SAO and the school does not meet the parent's s7 duties?

If a child is in a school, there will be a complaint process within the school. If the local authority is failing to provide suitable education, this is capable of being brought before the court in judicial review.

11

Could a parent be prosecuted in that case (if the school does not provide a suitable education)? Or force the council to prosecute them to demonstrate that the SAO was inappropriate?

In theory a parent could be prosecuted for failing their EA s7 duty in this circumstance, but this would be unlikely to happen. No, an individual cannot force another party to prosecute them.

12

If a parent sends work and the council review the work being done by their children, what criteria do they legally have to compare it to?

They must simply satisfy themselves that it is suitable to the child's age aptitude and ability. The guidance for local authorities is clear, there is no definition of a 'suitable' education in English statute law. A court will reach a view of suitability based on the particular circumstances of each child and the education provided.

13

Does the judgement mean that a home educated child must work to school standards?

No, home educated children are not expected to work to school based standards.

14

Why was the judge [seemingly, to the untrained person] judging the claimant vs Portsmouth's policy, rather than Portsmouth's policy vs the law /guidance?

This is because the challenge had to be brought via the claimant's complaint, rather than in respect of the policy itself. The interpretation of the policy or application of the policy in an individual case is what the courts will look at, not an assessment of the policy in isolation.

15

Why was the judge able to say a signed affidavit was not proof enough, yet it is accepted in other courts of law?

The Judge does not say it is not enough, only that it did not provide the evidence being requested by the local authority (reading and writing ability, or any evidence that the described educational programme is actually taking place and actually being received) for them to determine suitable education.

Does the council officer reviewing this work have to have any sort of qualification to do so?

There are no set criteria for this role and this would be best considered through individual Elective Home Education policies. The DfE guidance recommends that each local authority:

- should provide parents with a named contact who is familiar with home education policy and practice and has an understanding of a range of educational philosophies;
- ordinarily makes contact with home educated parents on at least an annual basis so the authority may reasonably inform itself of the current suitability of the education provided. In cases where there were no previous concerns about the education provided and no reason to think that has changed because the parents are continuing to do a good job, such contact would often be very brief;
- has a named senior officer with responsibility for elective home education policy and procedures, and the interaction with other work on issues such as children missing education, unregistered settings, vulnerable children, and welfare;
- organises training on the law and the diversity of home education methods for all officers who have contact with home-educating families, possibly in conjunction with other authorities;
- ensures that those LA staff who may be the first point of contact for a potential home-educating parent understand the right of the parent to choose home education. It is very important that parents are provided with accurate information from the outset to establish a positive foundation for the relationship. However, parents are under no obligation to accept support or advice from a local authority, and refusal to do so is not in itself evidence that the education provided is unsuitable; and
- works co-operatively with other relevant agencies such as health services to identify and support children who are being home educated, within the boundaries established by data protection and other legislation.