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Baroness Barran
Parliamentary Under-Secretary of State for the School System
Sanctuary Buildings
Great Smith Street
Westminster London
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Dear Baroness Barran,

Ref: **Government Response to the Education Otherwise Briefing Paper**

We write in response to your above document shared with us by a constituent of an MP to whom it was sent by you. We note that at no point has this been provided to us direct from your department.

Your responses are in bold:

Parents have a right to educate their children at home and the government continues to be fully supportive of that right, provided that the parents are providing a suitable full-time education if the child is of compulsory school age.

The Government has made this statement repeatedly, whilst repeatedly seeking to impose unwarranted burdens on home educating families. This without first commissioning independent research to ascertain whether those burdens are warranted or likely to achieve the stated aims of the Government. Education Otherwise calls upon the Government to dismount its charger in its war of attrition against home educating families, withdraw the Bill and to take action that is supported by credible research rather than the contrary.

The proposed registration system for children not in school, which is included as part of the Schools Bill introduced to Parliament on 11 May 2022, will help local authorities undertake their existing duties to ensure all children receive a suitable education and are safe, regardless of where they are educated.

Whilst this may be the intention of the Bill there is no research basis on which to

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suggest that the effect will be as intended. Research in regions where compulsory registration has been introduced, finds that registration leads to fewer children being known to authorities. Responses to registration which are viewed as punitive in nature, drive a significant reduction in known families. Specifically, one study suggests that up to 85 per cent of home educators in one Australian state are unregistered, often because of a registration system that is viewed as punitive in nature (see for example Moriarty 2017 and English 2021).

We hope that our response, below, to the briefing paper will help alleviate Education Otherwise's key concerns, and correct some misconceptions around the effect and intention of the proposals.

It is difficult to alleviate concerns in the face of a bill which relies to a great extent on the expressed intentions of the DfE, the validity of those intentions and more pertinently their reliability in the face of the facts.

Education Otherwise was assured (as were home educating families) that the insertion of section 436a into the Education Act 1996 would not be an issue of concern, because it did not apply to home educated children and there was no intention that it would. Notwithstanding, the 2019 Elective Home Education Departmental Guidance for Local Authorities bases its whole approach on the DfE's statement that s436a does indeed apply to home educated children and that the DfE will '*be happy to support local authorities to test the boundaries of current case law*', a statement to which it has adhered and has been content to use public funds to achieve a clearly politically motivated end. When this was raised with senior civil servants at the DfE, Education Otherwise was advised that the DfE is allowed to change its mind.

Education Otherwise hears daily from parents and other stakeholders who simply do not trust the DfE.

Firstly, the paper states that the legislation carries an implication of a requirement for consent to remove children from the school roll to home educate. This is not the case; parents normally do not need the permission of the school or local authority to home educate. Rather, parents that wish to withdraw their child from school to home educate them should notify the school that the child is receiving

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education otherwise than at school.

Education Otherwise is fully aware that there is no requirement to obtain consent to remove a child from the school roll to be home educated, unless the child is in a special school by arrangement of the local authority. Nonetheless, the Bill carries that implication. See Clause 48:

> *'(5) Condition C is that—*
> *(a) the child is not a registered pupil at a relevant school, or*
> *(b) the child is a registered pupil at a relevant school but the proprietor of the school has arranged or agreed that—*
> *(i) the child will receive education otherwise than at that or any other relevant school, and*
> *(ii) the child will be absent for some or all of the time when the child would normally be expected to attend the relevant school'.*

The clear intent of this part is that it will apply to children who are flexi-schooled (despite them being registered in a school already); intent does not remove implication. Documents that are covertly or overtly written loosely are the friends of those who wish to achieve their private ambitions despite reality.

You will be aware that the DfE produced a blog during Covid lockdown to state: '*If you think EHE might be in the best interests of your child, the Government expects your LA to coordinate a meeting with you involving your child's school and social workers where appropriate'*. The DfE confirmed unequivocally that such a meeting was the choice of the parent and yet, when asked to amend the blog to make this clear, has steadfastly declined to do so. The outcome of this badly written blog is that Education Otherwise frequently receives calls for help from parents for whom schools are refusing to remove the child from the roll unless they agree to a meeting. These parents receive threats of fines and attendance proceedings and they are subjected to unwarranted visits at their home by teachers demanding entry, or sight of the child and this despite acting entirely legally. The refusal of the DfE to write a clear communique whilst know of the confusion and distress that the lack of clarity causes is a clear indication of pursuing detrimental intent.

Legislation must be tightly drafted and not able to be misconstrued. The Bill must state that clearly that no consent is required.

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https://educationhub.blog.gov.uk/2020/10/20/all-you-need-to-know-about-home-schooling-and-elective-home-education-ehe/

The paper asks for domestic abuse survivors to be exempt from the duty to provide information. We fully appreciate the concerns of domestic abuse survivors in providing personal details, and have engaged closely with stakeholders on this issue to ensure the right safeguards are in place. The information held in registers will be protected under GDPR. The Bill only enables data to be shared with prescribed categories of persons, set out in regulations, when the local authority considers it appropriate to do so for the purposes of promoting or safeguarding the education or welfare of a child. The department will make data protection a strong focus in the local authority statutory guidance and will continue to engage with stakeholders on this topic and learn from existing safeguarding systems.

Whilst it is correct that the Bill only enables data to be shared *'when the local authority considers it appropriate to do so'* therein lies the rub. Education Otherwise is aware of recent and current cases where local authority staff have disclosed data to an abusive former partner, putting children and parents at risk. Furthermore, the DfE has announced its intention to ensure that all pupil data is held electronically and the ease with which such systems can be accessed is well known. This is compounded by the fact that local authorities have released sets of data in error on numerous occasions in recent years, including personal addresses of parents and children. Abuse victims cannot rely on the local authority to protect their data and should be exempt from any iteration of the Bill that we are left with.

The paper's claim that local authorities can ask for any other information they consider appropriate for their registers is inaccurate. LAs will only be able to require parents to provide them with the information prescribed in legislation. However, LAs may record any other information in their registers they consider appropriate and have collected through other channels (but this does not mean they can require families to provide any other information they consider appropriate).

Again, this relies on the DfE to set restrictions and its good intentions in doing so,

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neither of which can be relied on.

The Baroness is also, surely aware of the facts of local authority conduct in respect of details of children who have left their areas? When a parent leaves a local authority area, the local authority is entitled to record details of where the parent has moved to, but there is no duty upon the parent to provide that information to the authority. Notwithstanding, local authorities access data which they have no right to access such as medical, housing, benefits and council tax data, in order to locate the details of those families. This extends to deliberately misleading police officers and social workers into believing that the child is at serious risk of harm, purely on the basis that the local authority does not have a new address, in cases where that authority had no prior welfare concerns for the child. This conduct extends to cases where the parent has not only left the authority area, but where they have left the jurisdiction of the UK.

Local authorities will base demands for unwarranted information on this provision which should be removed from the Bill.

The paper suggests that the provision of information to local authorities creates duties on parents which the parent may not reasonably be able to fulfil. The duty requires parents to inform the local authority that a child is eligible for registration and provide the local authority with information prescribed in legislation, such as the child's name, date of birth, and home address. We will continue to engage with stakeholders to understand any practical difficulties that the minority of parents may face in providing this information to ensure that the registers work for everyone.

The fact remains that the Bill does create duties on parents which the parent may not reasonably be able to fulfil and in doing so creates reliance on the DfE to properly approach such cases in the future. That is simply not good enough as parents cannot rely on the good intentions of the DfE because experience supports the contrary. The time to consult on such requirements and to insert measures to alleviate this difficulty, is prior to the Bill being put before the House, not in retrospect. The Bill should be withdrawn until this matter is addressed.

On the paper's claim that the definition of out-of-school education providers is

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too broad, a threshold to be set out in regulations will ensure that the duty to provide information only targets those providers that are used for a substantial proportion of a child's education. Regulations will also create exceptions to the duty on providers of out-of-school education to provide information, so that some types of providers are not inadvertently subject to the duty; for example, we would intend to exempt groups of home-educating parents who come together to teach their own and their friends' children collaboratively. Furthermore, the information can only be requested when a local authority reasonably believes an eligible child or children are attending.

The Baroness again returns to the intentions of the DfE to exercise its discretion after the fact. We reiterate that evidence makes clear that such intentions cannot be relied on and the legislation should and must carry these exemptions.

To suggest that the reasonable beliefs of a local authority can be relied upon suggests that the nearly 19,000 parents who have raised concerns to our service in recent years, over local authority unreasonable behaviour, are wrong to be skeptical. Education Otherwise knows from experience that whilst some local authority staff are reasonable and in many cases excellent, alarmingly we can point to between 40 and 50 areas where this is simply not the case.

Where a parent or provider disagrees that a local authority's belief is reasonable or evidenced, they are able to contact the Local Government and Social Care Ombudsman if they believe a local authority has not acted as per law and guidance. The Education Act 1996 also gives the Secretary of State powers to intervene when a local authority exercises their functions under that Act unreasonably or fails to comply with duties under that Act.

Education Otherwise is at a loss to understand how this claim can continue to be made in the face of the evidence. The Local Government Ombudsman declines to examine most aspects of home education cases, save for those cases where it will agree to examine whether a local authority is following its own policy. It will not consider whether that policy is legal, or reasonable. Directing complainants in the direction of the Ombudsman is therefore disingenuous.

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The Secretary of State has not on any occasion acted to revoke a School Attendance Order (SAO) served on a home educating parent in the 8 years for which it holds records and, in our experience, it has not done so at any point in many years prior to those records. Local authorities are currently serving SAOs on parents for such 'reasons' as the parent exercising a right to decline to provide a copy of a GCSE certificate for a 15 year old child. The DfE has on a few occasions acted on the complaints of parents in recent years, but it is extremely rare for them to do so and only in the most blatant and extreme of cases.

There is no viable means of complaint for home educating families and Education Otherwise asks that they be given the right of access to first tier tribunal.

The paper claims that the new measures give local authorities the right to disclose information held in their registers to anyone they wish. This is incorrect. Data protection law applies to this information as it applies to other personal data, and the Bill only provides for it to be shared with prescribed persons, when the local authority considers it appropriate to do so for the purposes of promoting or safeguarding the education or welfare of a child. The persons to whom this information can be given will be set out in regulations after a consultation.

Again, home educating parents are left reliant on the reasonableness of local authorities and Education Otherwise has seen evidence that local authorities have unlawfully disclosed data to abusive former partners, outside agencies and on several occasions, sets of data have been sent in error to individuals. The Bill should not include such a widely drawn provision.

The paper raises that there are no real means to revoke a school attendance order (SAO). The Secretary of State considers each request to direct a local authority to revoke an SAO individually and makes a balanced judgement based on the information available. We want every child to be in receipt of a suitable education and in cases where there is sufficient evidence that parents can provide a suitable education outside of school, the Secretary of State will use the power to direct the local authority to revoke an SAO relating to that child's education.

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The Secretary of State has not on any occasion acted to revoke a School Attendance Order (SAO) served on a home educating parent in the 8 years for which it holds records and, in our experience, it has not done so at any point in many years prior to those records. Please note that the DfE could not locate the majority of relevant records when asked to do so. Education Otherwise and its trustees have made request for revocation on behalf of parents on numerous occasions over the years and in cases where the case for revocation is very clear. It is simply not credible to suggest that no single case has met the bar for revocation in many years.

Education Otherwise believes that parents should be given the right to go to tribunal in cases where they consider heir authority to have unreasonably served a SAO.

On the paper's further point that new section 436I (preliminary notice for school attendance order) provides too short a notice period to reasonably allow a parent to respond, we have engaged closely with stakeholders on this issue and believe that the time frame represents a reasonable notice period for parents whilst also ensuring that the time any child could be in potential receipt of unsuitable education is kept to a minimum.

Consultation responses from the majority of stakeholders disagreed with every proposal made by the DfE. The DfE nonetheless proceeded with every aspect of its proposals. To consult and ignore does not justify this shortening of time limits, particularly in the light of local authorities often posting letters to parents dated several days previously, putting them immediately into late response time.

The paper suggests that children will be punished for matters beyond their control because a parent has failed to comply with an administrative requirement, resulting in SAOs that mandate a child must attend school through compulsory school age. However, a parent would be able to apply to the local authority if they believe they are now able to evidence that a suitable education can be provided outside of school. The local authority can then amend or revoke the Order.

This response simply does not stand up to examination. The point made is that the parent who does not provide information to the authority, or (as the Bill stands)

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provides erroneous information, will be served with a SAO which requires the child to attend school. Notwithstanding the fact that 'erroneous' is not defined, this effectively punishes the child for administrative error of the parent.

The paper also raised concerns about the lack of description around the type of support that LAs can offer. The duty to provide support is not optional. Whenever asked to do so, the local authority will be required to provide some support to those that are registered, though it will be able to use its own judgement to decide the form of that support. As part of implementation of the Schools Bill, the department will create new statutory guidance explicitly stating what support should be provided. We will be engaging with stakeholders on this matter to ensure that the support offer is both useful to and desired by home-educating families.

Research carried out amongst local authorities both in 2019 and recently, indicates that in all but a handful of those authorities, 'support' to home educators is described as provision of monitoring. This is not support in any sense of the word and is therefore understandably not welcomed by families. The Bill leaves the choice of form of support to the authority.

The DfE may intend to put into place statutory guidance to specify forms of support but that relies upon the good will and intention of the DfE; experience demonstrates that both of which cannot be relied upon to be favourable to the home educating family. The Bill does as we have stated: it gives no real duty to offer support to families.

On the paper's concern that failure to comply with SAOs overturns the 'double jeopardy rule', this is not the case. The High Court confirmed in the case of Enfield v Forsyth [1987] 2 FLR 126 that the question of convicting someone for breaching the same school attendance order twice was not an issue of double jeopardy, it was simply a question of the correct interpretation of the legislation. Therefore, it will still be illegal to prosecute for the same offence twice. However, if an SAO is not complied with at a different time, this would be a new offence and can be prosecuted. LAs will still need to consider whether prosecution is appropriate, including taking into account whether the child is now receiving suitable education. However, they will be able to proceed straight to the SAO

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being breached if a suitable education is not being provided. This is to ensure all children are in receipt of a suitable education.

Here, we can do no better than to quote your department's own statement:

> '*Section 436Q(5) sets out that where a person fails have their child registered at a school in accordance with a School Attendance Order, and is convicted of an offence under subsection (1), they may be found guilty of the same offence again if their failure to register their child at the named school continues. This reverses the effect of a Divisional Court decision in the case of Enfield London Borough Council v Forsyth & Forsyth [1987] 2 FLR, which held that after a parent had been found guilty of breaching a School Attendance Order then they could not be prosecuted for any further breaches of the same Order, and the local authority had to go through the process of making a new Order before prosecuting them again'.*

The Bill makes no provision for the local authority to '*consider whether prosecution is appropriate, including taking into account whether the child is now receiving suitable education'*. It is essential that this requirement is included on the Face of the Bill as it cannot rely on the reasonableness of the local authority, particularly given that local authorities wholly define 'suitable education' to capture the essence a 'school education'. Education Otherwise therefore draws the attention of your office to the Education Act, which states that parents are responsible for their children's education, 'either by regular attendance at school or otherwise'; the fact is that education is compulsory, but schooling is not.

The paper states that the 'double jeopardy' rule protects individuals against the abuse of state power. There is no intention for these measures to harm children and families; rather, this will assist local authorities in achieving the best outcomes for children. By changing the process to allow for breaches of the same school attendance order to be prosecuted without making a new SAO, the duplication of effort will be reduced. This will allow local authorities to work on important broader cases instead of potentially the same cases again and again, where extensive resources are needed for repeated SAOs on the same person(s). This in turn allows for more children to be in education rather than becoming children missing education.

Whilst this may be the intention of the Bill there is no research basis on which to

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suggest that the effect will be as intended.

This response also assumes that local authorities are not only reasonable, but benign. With all due respect, they are not. Education Otherwise is aware of and has made the DfE aware of more than just an isolated number of cases where SAOs are served without just cause. In one instance a parent was served with SAOs on six occasions, on each occasion the parent was acquitted on the basis of the education being suitable and on each acquittal, save the last (the child ceased to be CSA), the local authority served a new SAO on the parent. This can only be interpreted as blatant harassment.

Concerns have been raised in the paper that the penalties are extreme and will harm children and families. These measures are necessary as there is currently an incentive for some parents to remove their child from school under the guise of home education and not provide a suitable education. This is because a breach of a School Attendance Order is currently punishable by a fine of up to £1,000, compared to a maximum fine of £2,500 for the offence of knowingly failing to cause a child to attend the school at which they are registered. By increasing the cost of a breach of a School Attendance Order and bringing the amount in line with failing to ensure a child attends a school, we can increase the deterrent and help ensure that as many children are in receipt of a suitable education as possible.

At no point has the DfE undertaken independent research to support the view that parents remove their children from school in the guise of home education in order to avoid fines. The mere fact that the DfE chose to cite this most peculiar reason in support does of its own demonstrate a degree of nefarious intent. Where is the properly conducted independent research?

It is clear that the proposed increase in fines is an unashamed act that is intended to impoverish home educating families. The DfE message is simpler, direct and has nothing to do with whether school or being home educated is in the best interest of the child: send your child to school or public funds will be used to drive the family towards poverty and ongoing harassment.

It has also been raised that exceptions to the duty on providers of out-of- school

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education to provide information do not go far enough and could bring in individual tutors, tutoring services, childminders, relatives or even some families. This will be mitigated by a threshold set out in regulations, which will ensure that the duty to provide information only targets those providers that are used for a substantial proportion of a child's education.

As the Bill stands, these very serious concerns are not mitigated and we are reliant on the exercise of the DfE of its discretion and its good intentions. Education Otherwise has witnessed how readily the DfE dispenses with its stated intentions and routinely abuses the trust of stakeholders by use of guidance. We simply cannot depend upon the DfE to treat stakeholders fairly because the DfE cannot be relied upon to act fairly with the best interest of all children as their mantra. Exceptions must be clearly set out in the Bill.

Lastly, the paper states that the Bill is introducing no system of oversight of local authorities. If a local authority is not acting reasonably in undertaking its Education Act 1996 responsibilities, of which the Children Not in School measures will be included, then the department can intervene. We are regularly meeting with the Association of Elective Home Education Professionals and home educators to address any issues across England. In our statutory guidance, we will also set out best practice within local authorities to reduce any inconsistencies in practice.

Meetings with the Association of Elective Home Education Professionals (AEHEP) together with home education stakeholders commenced only within recent weeks. The DfE has met separately with the AEHEP to our knowledge, on numerous occasions taking its lead from their requirements.

Education Otherwise reiterates that the DfE has not at any point intervened to revoke a SAO served on a home educating parent and has only acted on information provided in respect of the most extreme cases of unreasonable conduct by local authorities. Home educating parents should expect to be able to access a first tier tribunal to obtain independent adjudication in such cases.

This Bill presents a significant safeguarding risk to children by making a naïve assumption that local authority intervention is kindly, benign and is singularly

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focused on the education of home educated children. It is not. Every day of the week, Education Otherwise is dealing with grossly unacceptable behaviour by local authorities. We know that parents can be terrified of their authority staff, fearing months and even years, of draconian and frankly bullying conduct. The effect of local authority behaviour extends further, with parents fearful of their authorities, avoiding NHS services, dentists, birth registration and give birth to their babies unaided. This is happening now. The Bill, if enacted will raise this risk exponentially.

The Bill represents a huge power grab by the DfE which leaves home educating families exposed to further harm. To quote 2021 research (English):

> '*Registration is frequently seen in the home educating community as a blunt instrument of control and is re-traumatising for many families who have experienced trauma in schools. … there is no evidence that home educated children are less safe than schooled children. As such, the research in the field suggests registration needs to be considered very carefully, applied cautiously, mandated and managed gently, and always be considered in partnership with the home educating community*'.

Education Otherwise asks that Peers, MPs and the Baroness reflect on the facts of this Bill, not the intentions of the DfE, stated or otherwise.

Yours sincerely

Education Otherwise

References used:

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