



EDUCATION OTHERWISE

**Home Education:
Information for
Legal
Professionals**

SUMMARY

Education Otherwise is the charitable organisation which has been supporting home educated families for nearly fifty years. Our information sheets are based on our knowledge and expertise, supported where appropriate by advice from senior counsel.

December 2025

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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: protecting the child's mental health, or their physical health, 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 a child 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 any, or all stages of the child's education.

Legal professionals will most usually meet home educating parents when a local authority seeks to enforce a school attendance order, during Children Act proceedings, or in connection with judicial review. Home education is not something which is usually covered during legal training and that can make it difficult for legal professionals to know how to proceed, when they meet a home educating family in the course of their duties.

This information relates to legal professionals in England and Wales and is intended to help guide those professionals in respect of cases relating to home educating families. This advice is based on our experience, including legal experience, together with formal advice from senior counsel.

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. Home educated children are not pupils at a school and are not required to follow school hours, school terms, or any set curricula.

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. There is currently a Bill proceeding through Parliament to require registration of home educated children but, unless it is enacted, the current legal position must be followed.

Removal from the school roll

If a child has never attended school, the parent need not notify their local authority of an intention to home educate their child. However, if a child is on a school roll, the parent should notify the head teacher of the school in writing, that they are removing the child from the roll. This notification can take any form and need only be signed by one parent². Immediately upon receipt of such a notification by the parent, the school must remove the child from the roll and make a return to the local authority confirming this action. Schools in England must make the notification to the local authority within 5 days and in Wales, within 10 days.

When a child is enrolled at a school in accordance with a school attendance order, the child may not be removed from the school roll unless that order is revoked by the local authority. Of course, this does not apply to normal transition times when the child would no longer remain in any event.

² Education (Pupil Registration) (England) Regulations 2006 and the Education (Pupil Registration) (Wales) Regulations 2010

If the child is attending a special school under arrangements made by the local authority, the local authority's consent is needed for the child's name to be removed from the school roll. If the child is attending a special school under arrangements made otherwise than by the local authority, the parent's right to withdraw the child from the roll in order to home educate him, is no different to that of a child at mainstream school.

Only a parent, or a person with parental responsibility, may register a child at school, regardless of whether the child has a school named on an EHCP, other than when a care order is in place. If the school registers a child without the parent's consent, this would not be lawful.

Suitable and Efficient Education

The Education Act 1996 s7 places a duty upon the parent to cause the child to receive efficient full-time education suitable to his age, ability, aptitude and to any special educational needs he may have'.

A 'suitable' education is one which equips a child for life within the community to which they belong, rather than the way of life in the country as a whole, as long as it does not foreclose the child's option in later years to adopt some other form of life if the child so wishes³. The definition of 'efficient' is that the education 'achieves what it sets out to achieve'⁴.

'Education would still be suitable if it primarily equips a child for life within the community of which he is a member rather than the way of life in the country as a whole, as long as it does not foreclose the child's option in later years to adopt some other form of life if he wishes to do so'.

'Is that system of education "efficient"? A system in my judgement (and so I direct the court) is "efficient" if it achieves that which it sets out to achieve'.

Education should be supervised, include appropriate resources and it should provide the child with sufficient opportunity for learning, to help them to achieve their potential. There is no legal requirement for the Education to be 'broad and balanced,' but a very narrow curriculum may well not be suitable in terms of extant precedent, as it may well not equip a child for life in the community to which he or she belongs, or for wider life if he or she so wishes.

Local Authority Oversight

The local authority may make an informal enquiry of the parent, in order to assist it to know whether or not its duties are triggered in respect of the child⁵. This is not the same as a formal enquiry; it should be a 'sifting' exercise to ascertain whether or not further enquiry is required.

³ R v The Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust. QBD The Times 12 April 1985, CO/422/84

⁴ Harrison & Harrison V Stevenson, Worcester Crown Court 1981

⁵ Phillips v Brown QBD (Divisional Court) NO 424/78: 20 June 1980

‘Where an authority has a duty to take action in particular circumstances, it also has a duty to be alert in order to detect the possibility that those circumstances exist. It needs to know what children of school age live in its area in order that it may perform its statutory duty to provide sufficient schools (section 8 of the Education Act 1944) and to ascertain what children require special educational treatment (section 34). It knows which of these children attend its own schools. It follows that an L.E.A. will or should know that certain children in its area are in a different category -- namely being educated at other schools, being educated otherwise than by attendance at school or not being educated properly or even at all’.

‘What should it do? I do not accept that it should do nothing. This would rightly be criticised as an attempt to because like an ostrich -- to put its head in the sand in order that it should not learn of anything which might place upon it the burden of discharging its duty to consider making and, in appropriate cases, to make School Attendance Orders. The most obvious step to take is to ask the parents for information. Of course such a request is not the same as a notice under section 37(1) of the Education Act 1944 and the parents will be under no duty to comply. However it would be sensible for them to do so. If parents give no information or adopt the course adopted by Mr. Phillips of merely stating that they are discharging their duty without giving any details of how they are doing so, the L.E.A. will have to consider and decide whether it "appears" to it that the parents are in breach of section 36’.

In addition, local authorities must make arrangements to enable them to establish the identities of children in their area who are of compulsory school age but are not registered pupils at a school and are not receiving suitable education otherwise than at a school⁶. This should not be taken as implying that the parent must ‘prove’ that education at home is suitable. A proportionate approach needs to be taken⁷.

(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.

If, after making an informal enquiry, it appears to the local authority that a parent’s home education provision may not be suitable, it shall serve a notice on the parent requiring that the parent satisfy them as to the suitability of the education. Failure to satisfy the local authority may result in it serving a school attendance order on the parent⁸.

⁶ Education Act 1996 s436a

⁷ Elective Home Education Departmental Guidance for Local Authorities 2019.

⁸ Education Act 1996 s437

Parents are not required to:

- **Meet the education officer⁹;**
- **allow the education officer to come to the family home;**
- **provide a professional report to the education department, including a report by a professional actively involved with the home education provision;**
- **provide samples of the child's work, or**
- **to provide photographs of the child's work.**

As legal professionals are aware, 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 case, it is acceptable practice throughout the UK and has been for a great many years, for a parent to provide an education report. Clearly, a more onerous demand cannot meet the test of proportionality where the local authority has no specific concerns in respect of the education provision being made by the parent. Conversely and logically, where it does have specific concerns, the Court has found that a local authority need not necessarily accept merely assertive statements by the parent¹⁰. A report could, for example, be lacking in detail, poorly written raising doubts about parental capability or simply give little or no information.

'The fact that a parent may, for example, not teach the National Curriculum, give formal lessons or mark the child's work does not absolve the parent from the practical requirement to show that the requisite education is, in fact, being received by the child and that it is suitable to his or her needs. Nor does it mean that the local authority is necessarily compelled to accept merely assertive statements by the parent. 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'.

It is important to note that this finding was made in an individual case where the Court found that the local authority did have specific concerns and that it did not have a policy of issuing a notice under the Education Act 1996 s437a in circumstances where it has no specific concerns.

Although framed in the negative, the Court found that the local authority must not have a block policy of finding education unsuitable solely on the basis of its preference to receive copies of 'work'¹¹.

⁹ In highly exceptional circumstances, a refusal to meet with the local authority officer could justify commencement of formal notification to satisfy the authority that the education is suitable. *Tweedie v Pritchard* [1963] Crim LR 270; *R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie* [1963] Crim LR 639.

¹⁰ *Christina Goodred v Portsmouth City Council and The Secretary of State for education* [2021] EWHC 3057 (Admin)

¹¹ *Christina Goodred v Portsmouth City Council and The Secretary of State for education* [2021] EWHC 3057 (Admin) Judgement in application to proceed.

‘The Defendant is not restricting the evidence which it asks for; it is not demanding copies of work, for example, or certificates obtained. It is not therefore restricting the definition of a suitable education to something like that provided in a school’.

Local authorities are subject to Guidance. In England this is the Elective Home Education Departmental Guidance for Local Authorities¹² (EHEDGLA) and in Wales, the Elective home education non-statutory guidance for local authorities¹³. Such guidance is something which the bodies to which it is directed, here local authorities, must consider, must properly understand and should generally act in accordance with unless there is good reason not to do so in the particular circumstances of the situation¹⁴.

Enforcement of School Attendance Orders

One of the most usual occasions when a legal professional receives a request for instruction from, or on behalf of a home educating parent, is when a local authority has served a School Attendance Order (SAO) and is seeking to enforce that SAO against the parent.

Enforcement is made under the Education Act 1996 s443 and the only available defence to the parent is that the education is suitable:

(1) If a parent on whom a school attendance order is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child to receive suitable education otherwise than at school.

It is important to note that **legal aid is available** for such cases (provided that the parent qualifies financially) and that these cases often qualify because they can result in loss of livelihood, they centre around the welfare of a child, it is a complex area of law and the case is highly likely to require cross examination including of expert witnesses.

Legal professionals working in the criminal sector may possibly meet with home educating parents who are seeking to defend against a school attendance order served on an unlawful basis. Most usually, bringing this to the attention of the Court will not result in any advantage to the parent, save to delay the enforcement if the Court requires the authority to properly serve documentation.

It is of note however, that it is not uncommon for a case to reach the Court with significant error having been made on the part of the local authority. It is important to be alert to these errors. Recent examples include local authorities naming schools in School Attendance Orders which

¹² <https://www.gov.uk/government/publications/elective-home-education>

¹³ <https://gov.wales/elective-home-education-local-authorities>

¹⁴ See for example, *Ali v London Borough of Newham* [2012] EWHC 2970 (Admin) (30 October 2012)

had been closed for several years¹⁵, whilst giving evidence that the school had been contacted by the local authority (case dismissed); serving a School Attendance Order without first following the required preceding steps and, serving a School Attendance Order on a child who had ceased to be of compulsory school age and serving an order for a child of senior school age to attend a primary school (cases dismissed or withdrawn following counsel bringing attention to this fact).

Legal professionals should be alert to a significant lack of understanding of home education by Courts and a tendency for some Courts to seek to assess the suitability of the home education on school based criteria. This should be challenged robustly.

Home education is not required to mirror school style education, subjects or levels¹⁶.

‘The education the child was receiving was efficient without deciding that it was as efficient as he would have received at a public elementary school’.

Education Otherwise has been advising families, public bodies and NGOs in respect of home education for approaching fifty years. Our trustees have significant experience of legal cases in respect of home education and we are available to offer our support on 0300 124 5690 (please specify that you are a legal professional).

Children Act Matters

Following relationship breakdown, it is not uncommon for one parent to apply to the court for the child to attend school, even when that parent has previously supported the choice to home educate the child, or even been enthusiastic about doing so. This is particularly the case when a parent has no, or limited contact with their child, or when the parents disagree about other issues relating to the child. Home education can become an issue in some cases, due to the parent failing to see the wood for the trees. In such cases, addressing the primary concern will often resolve any objection to home education on the part of the Applicant parent.

Legal professionals may wish to consider advising home educating clients to contact their local authority immediately they become aware of a court application by the other parent. This is in order to arrange a home visit for the education officer to assess the child’s home education. Many parents prefer not to meet with their local authority to discuss their home education provision, however, a positive report from the local authority can be an invaluable piece of evidence in Children Act cases and it is our experience that they can reduce the amount of time and resources directed to resolving that aspect of a case.

¹⁵ Portsmouth City Council v Elizabeth Edwards. Unpublished.

¹⁶ Bevan v Shears, 1911 2KB 936 see also EHEGDLA and 9 above at para 99.

Legal professionals handling Children Act cases will have experience of the many day to day issues concerned, but it is the experience of Education Otherwise that very few have had significant exposure to cases where home education is raised as an issue. In light of this, we have produced a fact sheet for home educating parents who do not agree to home education, which explains the preliminary and legal processes involved, in easy to understand terms. This may be a useful guide for clients: <https://www.educationotherwise.org/resources/fact-sheets/>

Expert Evidence

Education Otherwise recommends that parents facing Children Act applications should invite the local authority to assess the education provision. Not only does this give professional evidence to the court, but it may in some cases reassure the Applicant parent, leading to that aspect of the case being settled. This is not always the case and at times, expert evidence may be required.

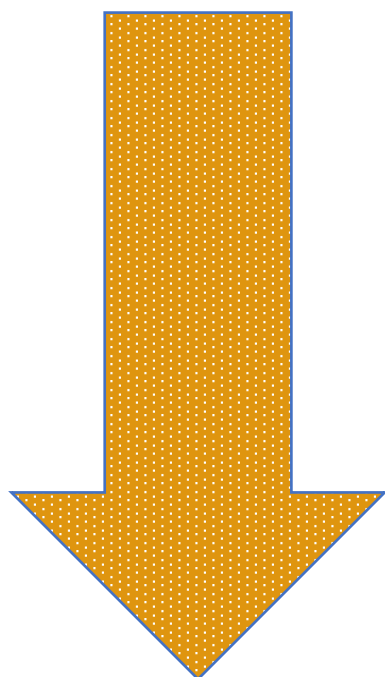
Choice of court experts is always a carefully balanced matter, however, in cases where home education is the subject of the report it is the experience of Education Otherwise that **the choice of an expert with experience of home education is crucial**. This is because the majority of experts lack knowledge of the basis of home education being a child centric provision, as opposed to a curriculum centric provision. Put simply, a child centric provision adapts the education to the child, and it can look very different to school-based education; children will often be at different levels to their school-based peers and experts will most usually assess using tests scaled against a school curriculum based provision. A home educated child having fun whilst learning, or following their own interests, at their own pace, may not be viewed as a child receiving a suitable education.

Home educated children often have what are referred to as 'spiky profiles' when judged against school-based criteria. Most usually they will excel in areas of particular interest whilst being 'behind' their school peers in subjects which do not interest them. For example, it is common for home educated children to start to read and write far later than school children do, but to be performing far ahead of school standards in numeracy. Home educated children also frequently study subjects outside the National Curriculum which will not be picked up by traditional education psychology approaches. The important message here is that the legal professional should choose an expert with demonstrable, elective home education experience and to be clear that their client's child should not be judged against school based criteria.

Please contact Education Otherwise and ask to speak to the Patron if you require recommendations for suitably qualified expert witnesses. enquiries@educationotherwise.org

It is the experience of Education Otherwise that the following factors can be influential in Children Act cases:

Some influential factors



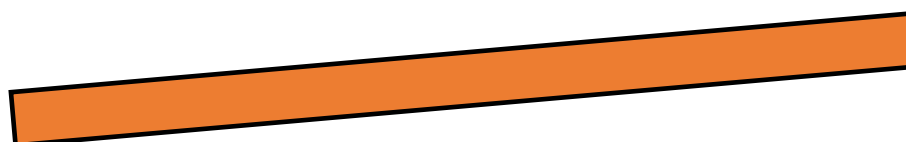
Unschooling, or limited formal education
Previous, or current social services involvement.
Previous, or current drug addiction, or alcohol addiction

Previous proceedings for school attendance
The school write a report saying that the child was happy at school and thriving.

Contact difficulties with other parent. Courts very often deny home education when the parent with care is inflexible over contact.

Short time since home education commenced as a status quo has not been established.

Child with behavioural problems with which the parent is not coping well.



Excellent court statement and good quality evidence.

Parent's own academic qualifications.

Demonstrable commitment.

Well thought out plans.

A timetable with formal lessons for a significant period.

Using recognised bought in programmes, or recognised materials which are respected.

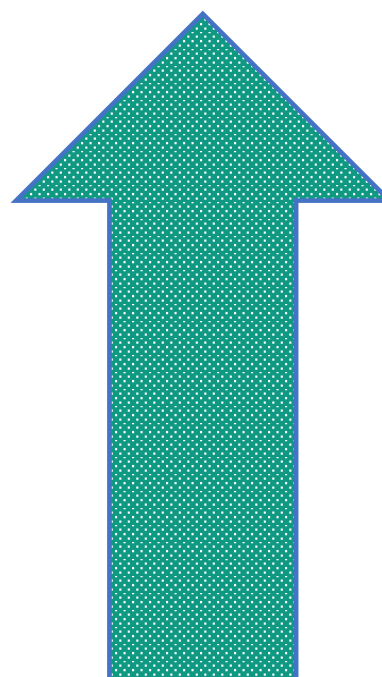
Demonstrable and varied social opportunity.

Using at least one weekly outside agency such as scouts, brownies, or local authority provided class.

Good contact arrangements with the other parent.

A good report from the local authority.

Mature child who can express their preference for home education in a well reasoned way





The home education charity

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