



PRACTICE NOTE- HOME EDUCATION & SAFEGUARDING

What is elective home education?

Elective home education is a term used to describe a choice by parents to provide education for their children at home or at home and in some other way which they choose instead of sending them to school full-time. The parents' right to educate their child at home applies equally where a child has SEN.

The primary responsibility for ensuring that children are properly educated belongs to parents; a local authority has a moral and social obligation to ensure that a child is safe and being suitably educated. If it is not clear that that is the case, the authority should act to remedy the position.

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.

When is a child of concern?

If a local authority is aware that a child of compulsory school age is not attending a state or registered independent school full-time the local authority's task is to find out how he or she is being educated and whether that education satisfies legal requirements. **Local authorities have the same safeguarding responsibilities for children educated at home as for other children.**

Home-educated children are NOT automatically 'vulnerable'; but some children educated at home do fall into that category, and evidence from many local authorities is that the proportion who do is increasing.

Under s.10 of the Children Act 2004, local authorities should have arrangements in place to promote co-operation between the authority and its partners who deal with children and under s.11, arrangements should be in place to ensure that functions are discharged with regard to the need to safeguard and promote the welfare of children. These arrangements should include information sharing protocols and it is possible for these to allow sharing of data on children who appear to be home

educated and about whom there is a concern as to the suitability of that education which amounts to possible neglect causing significant harm.

What should local authorities do when it is not clear that home education is suitable?

Families should be aiming to offer satisfactory home education from the outset as time lost in educating a child is difficult to recover. 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. The most obvious course of action is to ask parents for detailed information about the education they are providing. Parents are under no duty to respond to such enquiries but if a parent does not respond, or responds without providing any information about the child's education, then it will normally be justifiable for the authority to conclude that the child does not appear to be receiving suitable education and it should not hesitate to do so and take the necessary consequent steps. **Informal enquiries can include a request to see the child, either in the home or in another location but the parent is under no legal obligation to agree to this simply in order to satisfy the local authority as to the suitability of home education.** There are steps that the Education Welfare Officers can take for example, issuing a 'School Attendance Order' (SAO) and so you should also liaise with them as well as consulting Legal.

Safeguarding: the interface with home education

A situation in which a child is not receiving a suitable full-time education requires action by a local authority under education law **but it is important to bear in mind that unsuitable or inadequate education can also impair a child's intellectual, emotional, social or behavioural development, and may therefore bring child protection duties into play.**

There is no proven correlation between home education and safeguarding risk however, a child being educated at home is not necessarily being seen on a regular basis by professionals such as teachers and this logically increases the chances that any parents who set out to use home education to avoid independent oversight may be more successful by doing so.

A failure to provide suitable education is capable of satisfying the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm. 'Harm' can include the impairment of health or development, which means physical, intellectual, emotional, social or behavioural development, so the provision of unsuitable education clearly can

amount to this. The causing of significant harm need not be intentional or deliberate, but case law indicates that it must be 'considerable, noteworthy or important'.

Sometimes the local authority may not have been able to obtain sufficient information to determine whether the significant harm threshold is met and so you should launch an investigation under s.47 of the CA 1989, which requires an authority to make enquiries to enable it to decide whether action should be taken to protect the child's welfare, if it has reasonable cause to suspect that the 'significant harm' threshold referred to above is met. Reasonable cause can include the lack of any substantive information about a child's education. These enquiries can include taking steps to gain access to the child.

What if a parent refuses access to see the child?

As a local authority we have a number of options available which include applying to court for a **Child Assessment Order (CAO)** under **s.43 CA 1989**. For such an order to be made there must be reasonable cause to suspect that the significant harm threshold is met, the assessment must be necessary to determine whether the threshold is met, and it must be unlikely that an assessment would be satisfactorily made without such an order. In addition, we can apply for an **Education Supervision Orders (ESO)** under **s.36 CA 1989** will in any case be appropriate and sufficient. These orders give local authorities a formal supervisory role in the education of children who are subject to them. The High Court or the Family Court can make an order if satisfied that a child of compulsory school age is not receiving efficient full-time education suitable to the child's age, ability and aptitude and to any special educational needs they may have. Where a SAO is in force for the child but has not been complied with, there is a presumption that the child is not receiving a suitable education unless the contrary is demonstrated. The advantage of an education supervision order is that it continues to be in force so long as determined by the court (which may extend it beyond the initial one-year term); it is not a 'one-off' like prosecution for non-compliance with a school attendance order.

Use of an ESO does not depend on the 'significant harm' threshold being met, and under s.36(5) of the 1989 Act, unless it is proved that a child who is currently subject to a school attendance order is being properly educated, then it is assumed that he or she is not.

The local authority is under a duty, if an ESO is made, to give 'due consideration' to the 'wishes and feelings' of the child and the parent(s); and this might result in improved home education. However, an ESO imposes a duty on parents to allow the supervisor (the authority) reasonable contact with the child, though this need not necessarily be at the child's home - unless the court imposes a visit at home as a specific condition of the order. Persistent failure to comply with direction given under an ESO is an offence unless the parent can show that he has taken all reasonable steps to comply, or that the direction is unreasonable but in such cases the authority

should be prepared to first make clear to the parents that the result of this may be an application to the court for a care order under s.31 of the Children Act 1989.

Care orders

Whether or not an ESO is made, if it is concluded that the significant harm threshold is met but the parents continue to refuse to remedy the situation, it is highly unlikely that circumstances would make it appropriate to seek an emergency protection order however, it may be necessary in certain cases to apply for a care order under s.31.

Safeguarding – use of tutors by parents providing home education

Parents may choose to employ other people to educate their child, though they themselves will continue to be responsible for the education provided. As in all situations where parents themselves employ tutors, the suitability of those tutors in terms of access to children is for the parents to ascertain. Parents should be advised to satisfy themselves on this point by taking up appropriate references and ensuring that the tutor has a reasonably recent Disclosure and Barring Service (DBS) disclosure certificate.

Looked-after children

Local authorities acting as corporate parents of looked-after children should bear in mind that they assume the duties of parents under s.7 of the 1996 Education Act to ensure that the child receives a suitable full-time education; and local authorities in whose areas such children are placed by other authorities should take the same steps to ensure that the child is not missing education as they would for any other child resident in their area. It is legally possible for a looked-after child to be educated at home (for example by foster carers) if the local authority as corporate parent decides this is appropriate after discussion with the carers.

Relevant Guidance

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