



*Elective Home Education
Briefing for Children Young People and
Education Scrutiny Commission*

Date of meeting: 8 March 2022

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Date of DMT:23 February 2022

Lead director: Sue Welford

Useful information

- Ward(s) affected: All
- Report author: Ellen Collier
- Author contact details: 454 5518 / ellen.collier@leicester.gov.uk
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1. Purpose of report

To provide a briefing on Elective Home Education (EHE) with a focus on the regulatory framework, the duties, powers and the approach of the LA to this area of work, and the duty of parents in respect of their children's right to a suitable education. Also, to provide a summary of the key data, the impact of Covid and the management of work including pressures services are under due to gradual increase in the numbers of EHE children over the last decade and the rise in numbers during the pandemic.

2. Summary

- 2.1. The local authority has a responsibility to establish which children in the area are not on roll of a school and are not in receipt of a suitable education otherwise. This report explores how the local authority endeavours to meet this responsibility.

3. Recommendations to Scrutiny

- 3.1. To note the contents of the report

4. Report:

- 3.1. Under S7 Education Act 1996, it is the duty of the parent of every child of compulsory school age to ensure that their child receives an efficient full-time education suitable—
 - (a) to their age, ability and aptitude, and
 - (b) to any special educational needs they may have, either by regular attendance at school or otherwise.
- 3.2. Under the Education (Pupil Registration) (England) Regulations 2006, as amended 8 (1)(d), a child should be removed from a school roll when they have ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school.
- 3.3. Children who have Education Health Care Plans naming special schools are subject to S8(2) which states that the LA must agree to the removal of the child from the school roll and this requires that the LA is satisfied that the child's needs will be met.

- 3.4. The only other circumstances under which removal of a child from their school roll by a parent can be prevented is where there is a Care Order giving the local authority (LA) parental responsibility (PR), or, where the LA has issued a School Attendance Order.
- 3.5. Under S436A, LAs 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.
- 3.6. Where it appears to the LA that a child is not receiving a suitable education, if informal enquiries fail to resolve the concerns, the School Attendance Order (SAO) process is followed. Failure of a parent to comply with an Order requiring them to satisfy the LA that the child is receiving a suitable education otherwise and failing to register the child at the school named in the Order is an offence under S443.
- 3.7. The DfE published revised guidance for LAs and a parallel version for parents on EHE in April 2019 (see section 6). This guidance reflects the regulatory framework outlined above. The guidance is, however, not explicit about the evidence a parent should provide.
- 3.8. LAs are required to have a Policy on EHE; the LA's Policy was updated in 2020 and we have a revised January 2022 draft policy awaiting final legal approval. (The revision includes minor amendments which reflect a recent High Court ruling.)

The local authority process for children who are electively home educated is:

- i.) an Education Welfare Officer seeks to have a conversation with the parent about their decision (prior to removal from roll to confirm the reason for their decision; that there isn't an issue that might be resolved causing them to change their minds; ensuring that they are aware of the implications of EHE for example, that no tutor is provided),
 - ii.) the parent is then asked to complete a Plan setting out the arrangements they plan to make for the child's education,
 - iii.) the parent is asked for a Report at approximately the six-month point,
 - iv.) then again at the 12 month point and then
 - v.) annually thereafter. (Section 6 in the January 2022 policy.)
- 3.9. The DfE guidance includes very little detail of what constitutes a suitable education other than referencing case law which means that parents should ensure their children are able to succeed in wider society. The implication of this is that they should be educated in English and mathematics. The guidance is clear that parents do not have to follow the National Curriculum. There should be an element of supervision of the child's education by the parent.

- 3.10. In addition to the regulatory framework and the DfE guidance, there has been a recent Judicial Review resulting in a High Court Judgement in the case of *Christina Goodred - V - Portsmouth City Council and The Secretary Of State For Education*; the High Court confirmed that LAs are entitled to ask parents to provide more than a description of the education being provided to their child. This is also more than just an assertion that their child is receiving a suitable home education.
- 3.11. Our approach has been consistent with the above ruling; in September 2020 the LGO found in our favour when a parent claimed that we had acted outside of the law in asking her for evidence of her children's education. The report is available on the Local Government Ombudsman website at <https://www.lgo.org.uk/decisions/education/alternative-provision/19-014-258>
- 3.12. In common with national trends, there has been a gradual increase in the number of EHE children in Leicester over the last decade: the total number of school age children in the city who were EHE at any point during the academic year 2010/11 was 253, in 2015/16, 640 and in 2020/21, 948.
- 3.13. Prior to the pandemic, the total number of EHE children on 27th Jan 2020 was 536. On the same day in 2022, the total was 638. This represents roughly 1% of the total school age population in the city. The percentage increase between these two dates was not as high in Leicester as many other LAs experienced. Nonetheless, the turbulence is significant with high numbers of children being withdrawn by parents and then returning to school at a later point. The turbulence would most likely have been much higher still if it were not for the supportive, patient, and encouraging approach taken by the majority of the schools in the city who, at the request of the LA delayed challenging parents over their children's absence from school where there was anxiety related to the pandemic.
- 3.14. Additional data on the local picture was provided in the LA's response to the ADCS survey in October 2021, see Appendix 1
- 3.15. The majority of home educating parents undoubtedly provide their children with a suitable education. A small percentage however do not. Our process is designed to identify those children who are not receiving a suitable education, ie children who are missing from education; this is our statutory duty. There are however two key areas of challenge;
- some parents do not accept that the LA has the right to ask them to provide evidence that their children are receiving a suitable education. It sometimes takes time to assure them that we do have that right. Others are reluctant to provide sufficient information for the LA to be assured.
 - the number of children's cases that need to be followed up.
- 3.16. We have a limited resource of 1.5fte staff dedicated to supporting those who are EHE; a teacher trained EHE Adviser and an administrator.

- 3.17. During the pandemic, we were respectful of the position of home educating families – we took a less rigorous approach in asking for evidence from them, given that children on school rolls were not required to attend school for periods of time. Since schools fully reopened in March 2022, significant efforts have been made to follow our processes as closely as possible, in particular, where children have been identified as being vulnerable; we have a levelling system which identifies EHE children as potentially more vulnerable when there have been previous concerns, eg previously or currently open to social care.
- 3.18. In addition, last summer, having followed a digital transformation process, we implemented an electronic (E) system for engaging with parents. Increasing numbers of parents are responding to our E system requests although significant numbers prefer to communicate with us outside of the E system and some are reluctant to engage with us at all.
- 3.19. Data prepared for the ILACS Ofsted inspection demonstrated our approach to cases where the lack of information led us to conclude that the children appeared to be missing from education. In some instances, parents claimed they were home educating their children, but they had refused to share any information with us, or the information did not demonstrate that the children were engaging in learning. The inspectors found that our approach to using School Attendance Orders was appropriate and effective.
- 3.20. The Education Welfare Service continue to work closely with families and schools as children come off school roll. They seek to ensure that families stating that they are home educating have actively chosen that route and undue pressure has not been placed upon them to remove their child from a school roll (known as 'off-rolling').
- 3.21. An important aspect of the Education Welfare Service's work is to understand where children are attending other provision that is not a registered school. Children who are not on the roll of a registered school and who are being home educated will often access some provision with other children for part of a week. When this is more than 18 hours a week this can be considered full time provision and such provision must be registered as a school. If we suspect such provision is operating as an unregistered school, we have to report this to Ofsted who will undertake an inspection and determine whether or not it is operating illegally.
- 3.22. The outcome of a DfE consultation on EHE has recently been published. They plan to legislate for a registration process which requires parents to register their child's EHE status with the local authority by law. In addition, there will be a duty imposed on proprietors of specified settings that are providing a substantial amount of education to EHE children or children missing education within school hours to supply data to the register. There will also be a duty on local authorities to provide such support for families who educate their children at home as local authorities feel is appropriate. This could include, for example, offering advice to home educators, examination support, or support for home education groups. (Funding to LAs, under the New Burdens principles, will be required to enable

support to be provided.) DfE has yet to announce timescales for these legislative changes.

5. Financial, legal and other implications

5.1 Financial implications

5.2 Legal implications

5.3 Climate Change and Carbon Reduction implications

There are no significant climate emergency implications associated with this report.

Aidan Davis, Sustainability Officer, Ext 37 2284

5.4 Equalities Implications

5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

5. Background information and other papers:

[LCC Home Education Policy](#) on LCC website.

[DfE Elective Home Education; Guidance for LAs / Parents](#) on .Gov website

7. Summary of appendices:

Appendix 1 – Leicester City Council response the Association of Directors of Children’s Services survey on Elective Home Education

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

No

9. Is this a “key decision”?

No

10. If a key decision please explain reason

In determining whether it is a key decision you will need consider if it is likely:

- to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates.
- to be significant in terms of its effects on communities living or working *in two or more wards in the City*.

Expenditure or savings will be regarded as significant if:

- (a) In the case of additional recurrent revenue expenditure, it is not included in the approved revenue budget, and would cost in excess of £0.5m p.a.;
- (b) In the case of reductions in recurrent revenue expenditure, the provision is not included in the approved revenue budget, and savings of over £0.5m p.a. would be achieved;
- (c) In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme that has not been specifically authorised by Council.

In deciding whether a decision is significant you need to take into account:

- Whether the decision may incur a significant social, economic or environmental risk.
- The likely extent of the impact of the decision both within and outside of the City.
- The extent to which the decision is likely to result in substantial public interest
- The existence of significant communities of interest that cannot be defined spatially.

Appendix 1

ADCS Electively Home Educated survey 2021

The numbers of children and young people who are electively home educated are not routinely captured via a national data return.

Since 2016, ADCS has issued a survey to all LAs to understand more about this cohort of children, the support on offer to them and their families and how services are arranged. This year’s survey has a greater focus on the impact of Covid-19 during the 2020/21 academic year and the number of children and young people electively home educating.

In 2019 the DfE consulted on a register of all children and young people who are not educated in school and a duty on LAs to provide support to all EHE families who request it. We are still awaiting the outcome of that consultation, but the information gathered by this survey will help inform our ongoing conversations with the DfE. It is therefore vital that we receive as high a response rate as possible so please do complete as much of the survey as you can. The deadline for responses is Friday 12 November.

Please complete this survey using school census day (Thursday 7 October 2021) data.

Section1: Data

1. On 7 October 2021, how many children and young people were you aware of being electively home educated in your local area?

624

2. As of 7 October 2021, what percentage of your statutory school aged (5 – 16) population are electively home educated?

0.5% - 1.0%

3. How many formal notifications for elective home education were made between 1 September 2020 and 31 August 2021

397

4. How many notifications were made from mainstream schools?

266

5. How many notifications were made from special schools?

1

6. Please rank, in order from highest to lowest, the Key Stage groups with the highest number of notifications for EHE between 1 September 2020 and 31 August 2021.

1. Key Stage 1 - 57

2. Key Stage 4 – 81

3. Key Stage 2 - 116

4. Key stage 3 - 121

7. During 2020/21 academic year, how many local children were known to be electively home educated at any point across the academic year (the cumulative total)?

948

8. Please provide any further comments regarding emerging trends you are seeing, including any potential trends during the beginning of the 2021/22 academic year.

Significant numbers of new EHE cases were from independent schools (same in previous year). Many children have returned to school.

Section 2: Cohort

9. Please indicate the top 3 reasons given by parents/carers for choosing to electively home educate, as captured on 7 October 2021

Health/emotional health

Health concerns relating specifically to Covid-19

Philosophical or lifestyle choice

10. What percentage of the total number of children who are electively home educated have an education, health and care plan (EHCP) as captured on 7 October 2021?

0-5%

Section 3: Support for EHE families

11. Has your offer of support for children and families who are electively home educating changed as a result of the pandemic? If yes, please choose the most relevant option(s) below.

Telephone calls

12. Please provide any further comments you may have in relation to Question 11.

Due to pandemic and due to the number of cases, we moved to EWO contact being via telephone as first action. Then doorstep home visit if unable to contact. (Then referral to EHE Adviser as usual.

13. How many schools/education settings in your LA offer to host external candidates for exams?

0

14. How many other settings in your LA host external candidates for exams e.g. exam centres?

0

15. Is current national guidance for LAs on elective home education clear? If no, please provide comments. If yes, please leave blank.

It is clear that the guidance is not prescriptive about what constitutes a suitable education otherwise. What does assist is case law.

Section 4: Vulnerable children

16. Where an EHE child is identified as not receiving a suitable education, does your authority record this as a child missing education (CME)? If yes, how many were recorded as a CME? If no, please indicate this in your answer.

36

17. What percentage of your total elective home educating cohort are known (current) to children's social care e.g. are a child in need

0-5%

18. What percentage of your total elective home educating cohort are known (historic) to children's social care e.g. are a child in need

6-10%

19. Beyond children's social care, what percentage of electively home educating children are known (current) to wider children's services e.g. early help?

11-15%

20. Beyond children's social care, what percentage of electively home educating children are known (historic) to wider children's services e.g. early help?

11-15%

21. Are you aware of children who are electively home educated in your area attending unregistered or illegal schools? If 'yes', please indicate how many and provide any further comments.

We brought one provider to the attention of Ofsted and have worked closely with them. Latest position is that this is not an illegal provider (they reduced the hours of tuition)

Section 5: Arrangements of local services

22. What was the budget on co-ordinating and/or providing home education in the last full academic year (2020/21)?

£62,000

23. What was the actual spend on co-ordinating and/or providing home education in the last full academic year (2020/21)?

£65,000

24. How many FTE staff work in this area, co-ordinating and/or supporting home educating families?

1.5FTE

25. If the government introduced a statutory duty on LAs to provide support to EHE families, including an annual visit, how many additional FTE members of staff would you need?

3FTE

26. Please use this space to leave any additional comments you have on the national policy context or specific issues and trends in your locality, particularly in relation to the impact of Covid-19 on this area of work. Please also use this space to share details of local policies or practices you think might be of interest to others.

There were exam centres prior to the pandemic linked to independent schools but we understand that this is no longer available for EHE families.