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# A SUITABLE EDUCATION FOR EVERY CHILD

Parents and children first in  
education: children do not  
belong to the state

## **PRESENTED BY**

The Centre for Self  
Managed Learning and  
the Primacy of Parents  
and Children in  
Education Association



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# FOREWORD

## Who we are

The Centre for Self Managed Learning is an educational charity that has been in existence for over 30 years. It has supported leading-edge learning programmes in most of the UK's largest companies as well as Government departments, the NHS and a number of local authorities. In the last 20 years it has provided educational programmes for children out of school as well as programmes inside schools and for local authorities.

The Primacy of Parents and Children in Education Association (PPCE) has been formed recently in order to bring together academics, scholars and practitioners with expertise in the education of children both inside and outside school. Its work is based on upholding the existing law as well as utilising the best available evidence from research.

## The Rationale for this Report

Our two organisations have become increasingly concerned about the seeming lack of regard for fundamental education legislation by the Department for Education, the Children's Commissioner, Ofsted and the House of Commons Education Select Committee, amongst others. A growing narrative – supported by many in the media – disregards the fact that parents<sup>[1]</sup> are responsible, in law, for the education of their children. Additionally, it frequently overlooks the fact that children have rights as regards expressing their views on their education and having those views taken into consideration.

We were developing this report when the Schools Bill 2022, was launched in the House of Lords. We are relieved that the Bill has been withdrawn, however the underlying pressures to disregard current education law are still present. The Bill demonstrated a clear intent to undermine parents' and children's rights. A subtext of these attacks was specifically directed at children who are educated 'otherwise' than at school. An accompanying but more longstanding narrative has been to defend schools as though they were the ideal setting for every child, and also to defend local authorities where they have demonstrably failed many children and their parents. We show in this report that schools, as currently organised, are unsafe places for a high proportion of children, possibly even as high as 30% of children. In some instances, Ofsted has identified a whole school as being an unsafe place for children. (Ofsted 2022)

Approximately 1% of children are educated outside school. The volume of attention and criticism directed at this small minority is staggering, particularly when there is no evidence that this approach to education is intrinsically unsafe or harmful to children. We show in the report that the opposite is true – that for thousands of children the escape from a failing school environment has been a lifesaver. One could even speculate whether the repeated attacks on successful education outside school were designed to divert attention from the manifestly proven failings by schools and children's social care.

There has been considerable comment and speculation about children educated outside school, where opinions have clearly not been supported by any credible evidence or research findings. This report seeks in part to address that problem by showing how we need to base policy and actions on proper research and not on assumptions or fabricated evidence.

[1] Throughout this report we speak of parental choice, but we recognise that for some children such decisions will be made by guardians or other care givers. The term 'parent' should therefore always be read to include this broader meaning.

The report also demonstrates that there is no credible evidence for some of the draconian measures that were proposed in the 2022 Schools Bill. Intimations that education outside of school is a hotbed of radicalisation and child abuse are completely unfounded and false; indeed, these problems are usually more likely to be found within the school system than outside it (Spectator 2021). It is also clear that allegations about thousands of children in illegal schools are completely false. After over eight hundred Ofsted investigations of education settings that are not registered as schools (because legally they are not schools), over the last five years, there have been only six prosecutions. Reports and investigations have shown no evidence to support opinions that there are thousands of children in illegal schools.

The law is very clear that the responsibility for providing a suitable education for children lies with the parents. Interestingly, this fact was emphasised some twelve years ago in the final House of Commons debate on the Children, Schools & Families Bill in April 2010 by Phil Willis MP (then Lib Dem spokesperson on Education, now Lord Willis.) He said:

“My last comment is on home education. There is a fundamental flaw in our thinking in this country – this was brought home in the debate with the home educators – that it is the state's job to educate our children. It is not; it is the parents' job. The Education Act 1944, and indeed Forster's great Act of 1870... both state that it is the parents' duty to educate their children, and that the state acts as a convenient default mechanism when necessary, which most of us, myself included, have used.”

(House of Commons 2010, 08 Apr, 1233)

Yet we are still seeing attempts being made today, without any credible evidence, to reduce or minimise parents' responsibilities and to undermine the existing legal framework. It is a fact that parents fulfilling their legal obligation have two equally valid options. Either they can send their child to a school, or they can arrange a suitable education otherwise than in school. In law both options are equally valid. The law does not say that school is the preferred option, even though most people might assume this.

Long-standing case law going back to the 1960s has shown that a legal and effective mode of education can take place outside school (Shute 2008). Indeed, it could even be argued that if parents are to fulfil their legal obligation to provide a suitable education for their children in circumstances where, for instance, a school is judged as inadequate by Ofsted, they may sensibly want to take their children out of such a school and find a suitable alternative. This report will show that there are plenty of instances where schools can be unsuitable and where parents quite reasonably meet their legal obligations by taking the child out of school.

This report is both a challenge to Government to support educational choice in its policies and to local authorities to implement the law fairly.

Dr Ian Cunningham, Editor, with input from

Randall and Mary Hardy, Joanna Merrett, Dr Harriet Pattison, Alison Sauer

# EXECUTIVE SUMMARY

The Report is in two halves. The first part analyses issues raised specifically about Elective Home Education (EHE). The second section considers the balance between the responsibilities of parents and the state, then examines the effects of state education on children.

As we point out, there is no reference in law to ‘home education’ as such. The legal framework for the education of children is that there are two equal options. A child (of school age) either goes to school or is educated ‘otherwise’. It is very important to note that this choice is a matter for parents, and that although school is the choice made by the majority, the alternative, or ‘otherwise’ option is completely legitimate and should not be considered as inferior to school.

Yet the debate, as witnessed in Parliament and frequently featured in the media, is often fundamentally confused – and confusing. Categories are unhelpfully conflated. For instance, the parents of children who are not attending the school where their names are on the roll, or parents of children who have been permanently excluded from a school are not availing themselves of the ‘otherwise’ option. These children are not being electively home educated. They are simply not attending school – in many cases as a result of failings by schools or by children’s social care.

A climate of unwarranted concern about EHE has developed, fuelled by unhelpfully inaccurate allegations about EHE in high profile cases from some in positions of authority. Official documents such as those emanating from Serious Case Reviews have also erroneously implicated EHE when this was factually incorrect or not a significant factor in the case.

Because the connection between education and school is so ubiquitous in the mind of the average person, it is imperative to ask and answer some key questions:

- Is education really the same as schooling?
- Are experts or professionals really the only people able to deliver or facilitate education?
- Parents are the people with the most long-standing and fundamental relationship with their own children – what is their role in education?
- Where is the evidence that schooling is the most effective model?

Recent years have seen several factors motivating parents to opt for EHE. There has been an increase in the number of families withdrawing children from school because of institutional failures – unmet needs, unaddressed problems (such as the absence of special needs provision), bullying, school attendance difficulties, mental health issues, gang culture or risk of sexual exploitation/assault in school.

Sloppy use of words plus a hostile media narrative have enhanced the confusion, potentially leaving those unfamiliar with the realities of EHE under the erroneous impression that home education involves children staying in the house all day. Nothing could be further from the truth; the vast majority of electively home educated children are actively engaged both in their local communities and with other home educating families.

The idea of an isolated, unsocialised child who spends their entire life in the confines of their own home is the antithesis of the reality of the broad landscape of a home educated child, where the parents take advantage of a world of opportunities centering around the child’s interests plus life’s opportunities to

create a bespoke education.

A home education is frequently compared to a school education in a pejorative way, leaving the impression that the home educated child will always be at a disadvantage. The time has come to refute what one could call the 'deficit model' – the idea that home education cannot possibly provide what school can – in favour of the 'positive model' – which utilises the inherent strengths in family-based learning, and the possibilities and opportunities it offers which a school setting cannot provide.

As they say, parents are the experts in their own children, but we live in times when there is a broader societal acceptance that the state should have more oversight of parents, to the point now where parents' natural and historic freedom to exercise choice in many spheres of their children's lives is under threat.

Nowhere is this more evident than in the matter of education. Providing a service for those parents who wish to avail themselves of it is one thing. Imposing rigid controls on those parents who do not wish to do so is quite another.

The conflation of education and welfare, as expressed through the increased emphasis on safeguarding, has also contributed to the pressure for representatives of the state to justify (and demand) increasing levels of intervention in the lives of families. In respect to home education, this is also driving the demand for governments to define exactly what constitutes 'a suitable education.'

Standardised education is not a good fit for all children. It also removes agency from both parents and children and renders the family peripheral rather than central to the process of meaningful learning. This is a very important change of emphasis, which runs counter to the wisdom and practice of centuries across many different cultures. Traditionally, parents, along with the community they are part of, have been the ones who have prepared their children for taking their place as adults in that society. Faced with such incursions, many parents have woken up to the problems of conceding the right of unrestrained oversight to the state and are reclaiming their primacy of choice.

When this delicate balance is disturbed, official expectations become the opponent of every parent's right to provide suitable education for their children as unique individuals. There is a need to push back against this, by emphasising and defending parents' historic position as their child's natural champion in many aspects of life, such as education, well-being, and safeguarding.

In a democratic society, our ultimate goal must surely be the widespread acceptance of a pluralistic (rather than a singular) model of education, where every pathway to a genuine educational experience is viewed as equally valid socially, legally and practically. Governments should be required to act with equity in regard to education. A parent opting to fulfil their required educational responsibility 'otherwise' should encounter no discrimination against them or their child.

The long-standing negative media narrative about EHE has done no favours to the public's perception of such matters. Fearmongering and the use of emotive language have successfully convinced the average person of two things: that a child in school is 'safe' and that those being educated within their family are 'in need of safeguarding'. This is not an accurate perception or true by any means – in actual fact, most of the issues reported by the media and in serious case reviews concern problems endemic to the school system.

To put it in the simplest terms – proactive parents who aim to provide a suitable education for their children outside the system and raise them to be capable, independent, thinking adults unsettle the system. States are much more comfortable with an inclusive one-size-fits-all educational approach.

In the second part of the report we show that many children are failed by the school system and that in some cases long-term harm results from attendance at school. In our view the authorities would do better to direct their attention onto institutional failure within the schooling system rather than chasing imaginary failings of education outside school.

We will mention here just one example of the problems with school from this part of the report, namely that of bullying. The actual figures for school pupils bullied in any one year vary from around 25% to almost 50%, depending on the method of calculation. One aspect that is beyond doubt is that bullying is prolific, especially in secondary schools. Even on the lower end of the extent of bullying, we are talking about at least 1 million school pupils bullied every year in the UK. The worst short-term results are pupil suicides. However, the long-term effects are startling. All follow up studies of children bullied in school show that there is generally a long-term impact on mental health for badly bullied pupils, including serious psychosis.

On a broader front the evidence from research on adults shows that institutional education (school, college, university etc) provides very little useful learning. Indeed, most studies suggest that at most 10-20% of the learning that makes someone effective at work or in their communities comes from institutional education. The idea that such institutional settings are a sine qua non for becoming a good human being is debunked by all the available research evidence.

Learning is a central aspect of what makes us human. It occurs as part of our daily lives. The notion that a person has to be in a classroom being taught is not supported by rigorous research.

We conclude this report with some simple recommendations. These are summarised here.

# SUMMARY OF RECOMMENDATIONS

1. There is no justifiable or evidenced basis for a register of children who are educated otherwise than at school.
2. The role of local authorities in relation to EHE (electively home educating) parents and children needs to maintain the balance which was established through the 1944 Education Act. This identified two means by which parents may fulfil their educational responsibilities towards their children – at school or otherwise. These have equal standing, and local authorities should thoroughly respect this at all times and not simply acknowledge it in policy statements whilst acting to the contrary.

Progress should not be evaluated by standard metrics, nor should there be any required equivalence with the National Curriculum.

Safeguarding and education are two separate issues and should not be conflated. Confusion of these two has been responsible for children ‘falling through the cracks’. Local authorities need to ensure that any genuine child safeguarding concerns are dealt with appropriately by the relevant service.

The prime responsibility for education has always rested with the parents, and indeed parents are the decision makers for all aspects of a child’s life. The state’s offer to provide free education for children contributes to the parents fulfilling their responsibilities. The state must therefore respect that parents have the best interests of children at heart, and should not step into the role of decision maker. There are already systems in place for both education and welfare should the parent fail to provide a suitable education or fail to act in the child’s best interest.

3. The responsibilities and rights of parents who choose education otherwise than at school should be recognised, including access to a wide range of learning resources including part-time settings. These settings need to be regarded as important and completely legitimate – provided they comply with normal health & safety requirements – just like other organisations which provide services independent of the state.

# A SUITABLE EDUCATION FOR EVERY CHILD

We are committed to the notion that all children need a suitable education that can meet their needs. We fully support the law in this matter. Our basic stance is that if all children are to get a fair deal for their education, there must be freedom of choice available to all. Currently parents with available finances can access and use independent schools outside the state system and we see no reason why all parents and children should not continue to have the established and legitimate option of education outside of school. We are aware that all children are different. Even within the same family, parents recognise that siblings can be very different from one another. We should value those differences, as they are essential for a healthy society. It is estimated that around 25% of children can be identified as neurodiverse (Baron-Cohen 2022). For a high proportion of children categorised in this way, school has been shown to be an environment in which it is impossible for them to flourish. Hence if each child is to have a suitable education where they can achieve and flourish, we must have a system in place that recognises and supports choice.

In regard to safeguarding, we fully support the view that the state has a clear responsibility to intervene if there is genuine evidence that a child is at risk of serious harm as defined in legislation.

## Not fit for purpose

Section 19 of the Education Act, 1996, states:

“Each local authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.”

Note that this arrangement does not apply to children who are deemed to be electively home educated. Under Section 19 there are many, many children whose numbers have not been included in the Government statistics as they are in ‘limbo’ and their families and carers can find themselves anxiously waiting months for support to ‘kick-in’ from the state education system. In a number of cases parents have won financial compensation from local authorities on the rulings of the Local Government Ombudsman for gross failings to carry out their legal duties. These children want to be in school and may have the support from their school and various agencies, but a place is not available due to lack of spaces, lack of school finances, lack of SEND trained staff and long waiting lists for assessments.

The current system cannot meet the needs of these children including their mental well-being. The Schools Bill 2022 proposed to increase the pressure on the already failing system and on staff by forcing many electively home educated children into a school system that does not best meet their needs or capabilities.

The parents and carers of electively home educated children strive for excellence for their children’s mental well-being and educational needs, and research and statistics prove they do a consistently brilliant job. The measures in the Schools Bill, if implemented, would have increased both financial and physical pressure on a state school system that is struggling to deal with the children already in it.

# REBUTTING FALSE NARRATIVES ABOUT EDUCATION OUTSIDE SCHOOL

## The nature of Elective Home Education

As explained, EHE is one of several modes of education which fall into the category of 'otherwise'; that is, education taking place otherwise than at school. EHE covers a wide spectrum of approaches to learning, but in essence it is a family-based, whole-life, relational learning experience. Some EHE parents may opt to use school-type curriculum resources, others may not.

But the myth that so called home education takes place solely and exclusively within the confines of the home needs dispensing with once and for all. Neither does EHE consist purely of the delivery of a school curriculum in the home.

Research has shown that parents who educate their children outside school use a wide variety of modes and resources that, in general, are richer and more extensive than schools and 'tailor-made' to suit the individual child's needs. There are at least 57 different ways that children and young people can learn, of which the school classroom is only one (Cunningham 2021) Schools tend to see teaching in the classroom as the main source of learning. When given a free choice, children out of school do not wish to replicate the classroom as a mode of learning (Cunningham 2021).

Sloppy use of words plus a hostile media narrative have enhanced the confusion, potentially leaving those unfamiliar with the realities of EHE with the erroneous impression that home education involves children staying in the house all day. Nothing could be further from the truth; the vast majority of electively home educated children are actively engaged both in their local communities and with other home educating families. They make connections with people of all ages in the course of their normal day to day lives and are far more comprehensively 'socialised' than the average school child, who spends their school days in the company of children in the same school year as them. They are also motivated to participate in wider society and many take a lively interest in current affairs, stemming from the stimulating discussions which take place within the family.

The idea of an isolated, unsocialised child who spends their entire life in the confines of their own home is the antithesis of the reality of the broad landscape of a home educated child, where the parents take advantage of a world of opportunities centering around the child's interests plus life's opportunities to create a bespoke education. For this reason, new descriptors are called for – not just a different term for Elective Home Education per se, but broader terms which more clearly identify and convey the variety of the freely chosen different educational options which exist.

One significant resource for EHE parents and children are the growing number of modes for part time support. These include community-based microschools, tutor-based groups and learning communities. Many are charities with a long-standing commitment to support children who are being educated otherwise than at school. It is startling that these supportive entities can be seen in a negative light by state organisations. In other sectors of our society organisations that are independent from the state, but interact with state agencies, are given a high status. Examples would include lifeboat stations and hospices. These organisations are hugely important in our society. In the educational world there are exam centres that provide for EHE and others outside school to take public exams such as GCSEs and iGCSEs.

These are also a valued resource. Community groups that support parents and children being educated outside school need to be recognised for their important work in providing small settings that can support each individual child.

A home education is frequently compared to a school education in a pejorative way, leaving the impression that the home educated child will always be at a disadvantage. The time has come to refute what one could call the 'deficit model' – the idea that home education cannot possibly provide what school can – in favour of the 'positive model' – which utilises the inherent strengths in family-based learning, and the possibilities and opportunities it offers which a school setting cannot provide.

Also noteworthy is a government suggestion that the best way for children to catch up on what they might have missed during the Covid pandemic is to use individual tutors, rather than increased classroom use. The use of one-to-one tutors by parents who send their children to school is extensive and appears to be growing. So, even within the school system, many parents are aware that there are better ways to learn than in the standard classroom. Reith Lecturer Stuart Russell affirmed this in one of his 2021 lectures on Living with Artificial Intelligence:

"We know for example that if you tutor a child individually and you have a skilled human tutor, they can learn about three times as much as they do in a normal classroom..." (Russell 2021)

The final point to make here is that Elective Home Education is chosen by parents. If a child is in school and the parents wish to home educate, they must formally tell the school that they are electing to do this. These parents invest a great deal of time, money and effort to ensure their child gets an education, and research shows most of these electively home educated children get good exam grades, repeatedly higher than their peers in state and private schools and are involved in groups acting for the good of society.

## What Elective Home Education is not

Clarification of Elective Home Education is essential because of the level of confusion which exists in the minds of both children's professionals and the media. Such conflation has been unreasonably negative and unfair, and it has given genuinely Elective Home Education a negative press.

The descriptor 'home educated' has been used as something of an umbrella term for a number of sub-groups of young people who are 'not in school', as illustrated by the 2019 Children Not in School consultation. Therefore, besides seeking to define what EHE is, it has become increasingly important to state what it is not.

There are frequent allegations made by supposedly sensible people, who claim to know the law, that a child not in school (and not the subject of a parental choice to electively home educate) is automatically classed as home schooled or home educated, when in reality this is not correct. In fact, statistics show that there are a large number of these children and their parents waiting to get a school place, as they want to be in school, but there are not the facilities in place to support them.

These children come into the Section 19 category. Section 19 of the Education Act, 1996, states:

"Each local authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them."

[Note that this arrangement does not apply to children whose parents state that they are electively home educated.]

It is important therefore to have a clear understanding that children in the following categories are not being electively home educated:

- a child that fails to attend school for a significant period of time
- a child that is excluded from school
- a child subject to 'off-rolling' (deregistered under pressure from the school)
- a child who is awaiting a school place
- a child in receipt of EOTAS (Education Other Than At School – a provision under Section 19)
- a child in Alternative Provision or a Pupil Referral Unit

However, because some of the above groups have been conflated with EHE, it now finds itself guilty by association with the failures of the state-funded education system. Thus, without justification, EHE children are now frequently referred to as 'vulnerable'.

Home education has also been unjustifiably associated with potential radicalisation, whereas in fact it seems school is the risk factor here. A Home Office report on the Prevent Strategy published in 2011 states:

*The Prevent Strategy noted that although there was no evidence of a 'systematic attempt to recruit or radicalise people in full time education, supporters of terrorism had actively sought and secured roles in schools* (Home Office, UK Government 2011)

Supposed concern about radicalisation was one of the factors which motivated Lord Soley to bring forward his 2017 Home Education (Duty of Local Authorities) Private Member's Bill and which motivated part of the Schools Bill 2022. Though genuine evidence of this connection is lacking, the narrative has done its work. (UK Parliament 2018), (Soley 2018)

In our search for real evidence, however, we did come across cases where the boot was on the other foot. Parents had removed their children from school due to attempts by other pupils to radicalise them. We have no reason to doubt the veracity of statements made by these parents. (Pattison, Muslim Home Educators in the Time of Prevent 2020)

It should now be apparent that a clearer understanding of what Elective Home Education is and is not is essential. This is because of the confusion which exists in the minds of both children's professionals and the media.

The conflation of EHE with other issues or groups has been unreasonably negative and unfair, and it has given genuine Elective Home Education an undeservedly negative image.

One pertinent recent example is the Centre for Social Justice (CSJ) report 'Out of sight and out of mind. Shining a spotlight on home education in England' (The Centre for Social Justice 2022, Nov). This is quite typical of reports on home education produced by those who have not carefully researched the field and have not engaged with home educators themselves.

It appears that the authors relied on a small selection of research that mostly does not feature home educated children specifically. They also spoke to just 10 local authorities (out of 152), but failed to consult with organisations representing home education. Neither did they reference any of the specific research on home education. We cannot comprehend this departure from their standard practice, when their modus operandi specifically speaks of developing an understanding of a research topic 'from the ground up'

I through consulting with those expert in that particular field. The only conclusion one might draw from this is that the compilers of this report did not approach this topic with a genuinely open mind.

Most of the concerns raised seemed to be about children missing school and not at all about genuinely home educated children, a further example of the problem of conflating categories of 'children not in school' noted elsewhere in our own report. For instance, the CSJ report makes repeated reference to educational outcomes from a research study of 16 year-olds which showed that 3.5% could not be accounted for and were therefore logged as 'no destination found.' The authors chose to relabel this group as 'no final destination' and then leapt to the conclusion that this showed 'the attributes of the home education cohort' (p.19) – namely that home education produces children with 'no final destination'.

They went on to say, 'The data from FFT Datalab [the research organisation consulted, (FFT Education Datalab 2021)] also highlights how persistent absence appears to be a precursor of moves into home education' (p.19). Again, as in a number of places, the research they reference is about 'no destination found' i.e., the original researchers did not know the destinations of those persistently absent, so no conclusions could be drawn. (In all probability, a more likely conclusion for 16-year-olds might be NEET not EHE). The conclusion cited in the section concerned is blatantly untrue, as are many other assertions in the report. We find this ironic, coming from an organisation which claims to base its suggested reforms "on what has been road tested and proven to work on the ground," and says it aims to prevent the development of policies which are "detached from reality".

## Conflation of safeguarding issues with home education

In this quote from Amanda Spielman, Ofsted Chief Inspector, an unjustified link was made between the death of a child in tragic circumstances and the 'need' for a register of EHE children.

*'We should also remember that sadly a small number of parents have darker motivations for taking their children away from their teacher's sight.*

*It's tragic that Arthur Labinjo-Hughes never returned to school after lockdown. He was supposedly being educated at home.'* (Spielman 2022)

Spielman linked this tragic case to the 'need' for a register of children who are electively home educated. Yet the boy in question was not electively home educated. He was on a school roll and known to Children's Social Care, who had visited the family two months earlier – and the social workers judged that there were no safeguarding concerns. Unfortunately, Spielman is not alone in making such false statements, though it is very worrying that the head of Ofsted is prepared to make erroneous statements to justify their position. Much of the erroneous comment on the dangers of home education has been based on complete falsehoods. There is no credible evidence that home education, in and of itself, is automatically a danger to children. Nor should it automatically be raised as a safeguarding issue. Later in this report we will also cite credible research that shows that in contrast schools are a demonstrable danger to many thousands of children.

# REASONS WHY PARENTS ARE RESORTING TO ELECTIVE HOME EDUCATION

Elective Home Education is one of several modes of education which fall into the category of 'otherwise'; that is, education that takes place otherwise than at school. EHE is a family-based, whole-life learning experience, not to be confused with the delivery of a school directed or facilitated curriculum-based education in the home. This is why, in the UK, we actively avoid using the term 'homeschooling' as it leads to confusion.

Because the conflation between education and school is so ubiquitous in the mind of the average person, it is imperative to ask and answer some key questions. Is education really the same as schooling? Are experts or professionals really the only people able to deliver or facilitate education? Parents are those people with the most long-standing and fundamental relationship with their own children – what is their role in education? And where is the evidence that schooling is the most effective model?

Prior to the last fifteen years, most early home educators opted to do so for philosophical, ideological or religious reasons. Such parents also recognised the great benefits of providing a personalised education to their children. The fact that second-generation (and even third-generation) home educators now exist bears out the fruit of this; individuals who were home educated themselves as children, now, as parents, home educate. This is because they wish to replicate the positives of their own experience of home education in the lives of their children.

Recent years, however, have seen other factors motivating parents to opt for EHE. There has been an increase in the number of families withdrawing children from school because of institutional failures – unmet needs, unaddressed problems, such as the absence of SEND provision, bullying, school attendance difficulties or mental health issues.

During the last three years, keeping children at home due to fears generated by Covid-19 has also been conflated with genuine EHE. Those children who have been kept away from school have remained on the school roll so cannot be counted as EHE. The alleged 120,000 'ghost children' beloved of politicians and the media are nothing of the sort, since the vast majority are known to the schools on whose roll they remain. Indeed it could be claimed that these children are not 'ghost children' but children who have been 'ghosted', as they have been ignored and let down by state services.

In a democratic society, our ultimate goal must surely be the widespread acceptance of a pluralistic (rather than a singular) model of education, where every pathway to a genuine educational experience is viewed as equally valid, socially, legally and practically. Governments should be required to act with equity in regard to education. A parent opting to fulfil their required educational responsibility "otherwise" should encounter no discrimination against them or their child.

# CAN THE EFFICACY OF EHE BE QUANTIFIED?

Elective Home Education has always prompted strong reactions from those hostile to the concept, but it has taken on further negative overtones over recent years for the reasons noted above. More recently the practice has also been conflated with pandemic-induced school at home.

One of our team, Dr Harriet Pattison of Liverpool Hope University, has provided some helpful reflections on this phenomenon in a research paper from Jan 2022, "Lessons from lockdown: could pandemic schooling help change education?" Her analysis discusses how parents reacted and adapted to the stresses of pandemic-induced school at home, including adjusting their ideas around education. Interestingly, she sees similarities to adjustments made by parents who were home educating pre-pandemic, particularly in the areas of "greater flexibility, personalisation and child autonomy in education." Even when parents began with the mindset of "delivering school at home," the realities of life and their deep knowledge of their own children as individuals soon caused them to depart from a rigid model to a more relational, fit for purpose one. As they say, parents are the experts in their own children. (Pattison, Lessons from lockdown: could pandemic schooling help change education? 2022)

The factors already noted about the individuality of EHE should illustrate that trying to use standardised metrics to evaluate a non-standard, personalised education will be totally inappropriate. A key reason many parents opt for EHE in the first place is because they feel the requirements of a school curriculum approach is not well matched either to their child's particular needs or learning style or to their family's approach to education and learning.

A classic example of how a standardised approach does not fit all children concerns the varied ways in which children learn to read, and the different ages at which they do this. Dr Harriet Pattison has conducted extensive research in this area and shown that children learn to be effective readers at different ages when they are home educated. Also, the opportunity to learn to read through different modes is facilitated by home education which is responsive to the child's needs – as opposed to schooling, which tends to operate with defined and imposed approaches (Pattison, Rethinking Learning to Read 2016). Crucially, Pattison's research showed that even with a later reading age by 11 years old there was no notable difference in ability compared to age related peers in school.

# WHOSE SONS AND DAUGHTERS ARE THEY? THE IMPORTANCE OF PARENTS AND THE ROLE OF THE STATE

Before the advent of state schooling (a comparatively recent development in the long view of history), families were responsible for children's education. Their right to choose the mode of education for their children continues and is now enshrined in legislation: The Education Act 1996, Section 7. It is also recognised in Human Rights legislation, UDHR Article 26 and ECHR Article 2, Protocol 1. The Education Act 1996 also sets out the responsibilities of Local Authorities.

Parents have grown increasingly accustomed over recent decades to the idea that the state makes various provisions for them and their children. Hence the awareness of their own responsibilities can diminish. They may lose sight of the legal responsibility that they have for the education of their children. But along with this has come a broader societal acceptance that the state should have more oversight of parents, to the point now where parents' natural and historic freedom to exercise choice in many spheres of their children's lives is under threat.

Nowhere is this more evident than in the matter of education. Providing a service for those parents who wish to avail themselves of it is one thing. Imposing rigid controls on those parents who do not wish to do so is quite another.

Additionally, we now find ourselves in a position where the state has assumed the role of defining 'good' and 'quality', hence becoming the arbiter of measuring standards and methods of delivery of education. When the body determining the content and method of delivery of education is so large, the model becomes too unwieldy, too prescriptive and too anonymous to work well. All the elements of a meaningful, personalised education which starts where a child is at, are lost.

Standardised education also removes agency from both parents and children and renders the family peripheral rather than central to the process of meaningful learning. This is a very important change of emphasis, which runs counter to the wisdom and practice of centuries across many different cultures. Traditionally, parents, along with the community they are part of, have been the ones who have prepared their children for taking their place as adults in that society. Faced with such incursions, many parents have woken up to the problems of conceding the right of unrestrained oversight to the state and are reclaiming their primacy of choice.

None of the above, of course, should be taken to obviate the state's clear role to intervene should a child be at risk of serious harm, by, for instance, abuse by parents.

American writer and former schoolteacher John Taylor Gatto [1935–2018] had much to say about the difference between education and schooling. He saw some value in schooling when the teachers cared for and tried to understand their pupils, but his definition of an education was a much broader thing (Gatto 1998)

*"Let's get it clear in our minds that schooling is not education – you can easily compensate for lacking a schooling, but there is no way to make up for the damage that occurs without an education. Without that you are smaller than you would have been."*

*Plenty of brilliant and famous people have lacked a schooling – George Washington, Benjamin Franklin, Admiral Farragut, Thomas Edison, Margaret Meade and many more – but all of them had a fine education.*

*Schooling takes place in an environment controlled by others, through procedures and sequences more or less controlled by others, and for the purposes of others. There's a value to this when the teachers are people who care for you and struggle to understand you, but schooling is never enough.*

*Education describes efforts largely self-initiated for the purpose of taking charge of your life wisely and living in a world you understand. The educated state is a complex tapestry woven out of broad experience, gruelling commitments and substantial risk taking.*

*In our own society, schooling can help or hinder learning, encourage or discourage education."*

Another feature of Gatto's writing concerns what he calls 'enforced schooling.' He sees this, in the majority of cases, as a conformist model which seeks to educate the masses in line with prevailing political ideology. It is therefore not hard to deduce why home educating families are easily perceived as a threat to social cohesion and stability.

Many EHE families will have encountered the attitude that anyone whose children are not in school is a problem. It is widely believed that the children of those who opt out of the system will not be being taught as they 'ought to be' or be learning what they 'ought to learn'.

This shows how far public perception has moved from education being the responsibility and choice of parents. In fact, a position has now been reached whereby public education is widely thought of as necessary in order to address various issues of social inequality, with school being seen as 'the normal, common-sense thing to do'. In other words, as a kind of social homogeniser or equaliser.

But when this public conversation is driven too far, it becomes an opponent of every parent's right to provide suitable education for their children as unique individuals. There is a need to push back against this, by emphasising and defending parents' historic, and original, position as their child's natural champion in many aspects of life, such as education, well-being, and safeguarding.

# TODAY'S SOCIETAL CONTEXT AND HOW WE GOT HERE

Recent decades have seen significant changes of attitude in UK societies regarding people's values, world views and most particularly their expectations of the role of the state in the lives of its citizens. One factor pertinent to this discussion is the way in which politicians and children's professionals have begun to speak of children as though they belong to the state.

Such underlying themes form the backdrop to political developments concerning home education over recent years. The ongoing debate is framed by the tension between the state and parents' wishes about the education of their children, and the children's own wishes. These issues should also be viewed against the wider landscape of changing thinking in the world of education as a whole.

Perhaps we should recall a seminal speech delivered by Labour Prime Minister Jim Callaghan at Ruskin College, Oxford in October 1976. It is interesting to read his words with the benefit of hindsight, as this speech is widely considered to have initiated or at least stoked the 'Great Debate' about the nature and purpose of public education, the roles of parents and the teaching profession. (Callaghan 1976). As far as the relationship between parents and state was concerned, the Every Child Matters initiative launched in 2003 and the Children Act of 2004 substantially altered the landscape. The desire to tighten up anomalies in the state's right to prescribe in what form education should be provided and how it might assess children's progress was evident in 2007. In January of that year the Education Minister, Alan Johnson and the Under Secretary of State for Schools, Lord Adonis stated in two separate letters that the arrangements around the supervision of Elective Home Education were "an anomaly in regard to the 2004 Children Act".

"The state does not currently prescribe what form of education parents should provide, whilst all maintained and independent school provision is prescribed in legislation and subject to inspection. This anomaly is at odds with Every Child Matters reforms, supported by the Children Act 2004, which set out the Government's aim to improve educational outcomes for all children, regardless of where they are educated..." (AIM-Home Education 2007)

As far as EHE was concerned, this was not followed through until 2009, when the Secretary of State for Children, Schools and Families, Ed Balls, asked Graham Badman to conduct a review into home education. This resulted in a section of the Children Schools & Families Bill 2010 devoted to the registration and monitoring of home educated children. There was widespread relief amongst home educators when these proposals intended for inclusion in that Bill were dropped in the run-up to the 2010 General Election. This was merely a lucky break caused by a hastily called election, as it was clear to anyone with eyes to see that the issues had not gone away.

In 2017 the heat was turned up again, with Lord Soley's Private Member's Home Education (Duty of Local Authorities) Bill. This was accompanied by an increasingly hostile media environment which saw home education unjustifiably associated with an ever-expanding range of societal ills such as the claim that home educated children were being radicalised, abused, or trafficked.

The long-standing negative media narrative has done no favours to the public's perception of such matters. Fearmongering and the use of emotive language have successfully convinced the average person of two things; that a child in school is 'safe' and that those being educated within their family are 'in need of safeguarding'. This is not an accurate perception or even partially true – in actual fact, most of

the issues reported concern problems endemic to the school system – but the prevailing message still does its work. This resulted in proposals within the Schools Bill 2022 to introduce a Children Not In School Register, along with associated measures.

*Whatever EHE families may experience individually in the way of adverse reaction to their non-standard educational choices, this is also reflected more broadly in the way that blame for a whole range of problems and difficulties keeps getting laid at the door of home educators en masse.*

*Home educators, together with other parents who, for whatever reason, found that school was not a good fit for their child, have found themselves in the midst of this rapidly changing environment. The average family in this position may first start to reflect on the matter of state overreach through their dealings with their local authority, whose task it is to interpret and then implement government rulings.*

*The conflation of education and welfare, as expressed through the increased emphasis on safeguarding, has contributed to the pressure for representatives of the state to justify (and demand) increasing levels of intervention in the lives of families. In respect to home education, this is also driving the demand for governments to define exactly what constitutes ‘a suitable education.’*

*To put it in the simplest terms, proactive parents providing a suitable education for their children outside the system – raising them to be capable, independent, thinking adults – unsettle the system. The state is much more comfortable with an inclusive one-size-fits-all educational approach.*

*It should also be noted that the ‘universal’ agenda for all children everywhere has grown exponentially along with globalism. There is a trend towards global pronouncements about streamlining educational priorities for all children as part of the international (global) conversation around education. The following from UNESCO is typical. (Conclusion, p87):*

*“ultimately, actors depend on each other to reach shared education goals. Meeting those goals requires collaboration and communication. Governments need to view the education system as a single entity, ensuring that standards are set and applied in both state and non-state schools and that all education actors are held accountable for their activities and results. Effective regulatory frameworks that support compliance and ensure effective complaint and redress mechanisms exist and can be replicated. This is necessary to ensure that every student learns.” (emphasis added) (UNESCO 2021)*

*The latter is by no means a family-friendly policy, and parents are frequently denigrated, side-lined or spoken of in a patronising way. Children of hunter-gatherer bands in the Amazon jungle are assumed to require schooling to get them away from their own culture. The history of enforced schooling for indigenous people in places such as Australia (Pilkington 1996) and Canada (Wikipedia 2022) has come under scrutiny, yet these horrific ventures are ignored by the universalists who insist that every child must go to school. (Grey, Free to Learn: Why Unleashing the Instinct to Play Will Make Our Children Happier, More Self-Reliant, and Better Students for Life 2013)*

*A ‘universal’ or global educational programme which exercises control of delivery and outcomes is intrinsically opposed to any form of alternative to school, because permitting such programmes confirms the rights and responsibilities of both parents and children to determine the style of those children’s education. A ‘universal child’ agenda has the tendency to pit the state’s responsibilities and rights against the responsibilities and rights of their parents in a way which is not beneficial to family autonomy. Neither does it support choice or the delivery of a personalised education in any out of school context.*

## Local Authorities and proper accountability

There are major issues here. The law around home education and the role of local authorities has been interpreted in different ways. This is reflected at both government and local levels and has been a cause of conflict and mistrust. Indeed, the policy creep in the various iterations of government guidance regarding EHE and the relationship with the local authority is palpable. Authorities are encouraged to demand more and more information from home educators to 'prove' that they are providing a suitable education to their children, something that the Education Act 1996 s.7 never intended to be the case. Had the Schools Bill 2022, passed into legislation as it stood, it would have made the situation even worse. The imposition of local authority registers with the inclusion of confidential data about a EHE child, as deemed appropriate by those in authority (with no right of refusal for the parents or the child) would have worsened relationships immeasurably.

Historically, the relationship between EHE parents and representatives of the local authority (LA) has often been difficult. On occasion parents have reported a positive and helpful connection with their LA. Sometimes however, they have found that demands being made of them were unreasonable or ultra vires. Amongst parents, there is a perceived lack of a mechanism for redress and no appeal process for those who find themselves subject to ultra vires demands or any other poor behaviour by local authority officers. The present arrangements are perceived by many as a 'judge, jury and executioner' model which disempowers them and discriminates against them.

The current arrangements deter some from asking for help they might otherwise have requested. In fact, any so-called 'support' currently on offer from LAs is rarely regarded by long-term home educators in a positive light, though parents newly withdrawn from school may think differently.

Local authorities frequently claim that they offer support but upon examination, such 'support' actually turns out to be monitoring and welfare visits, neither of which is required in law, and which can be stressful and damaging. The Education Act 1996 s.436A affirms that a local authority has a responsibility to respond when concerns are raised that a child may not be in receipt of a suitable education, but there is no requirement to proactively monitor all children being educated outside of school.

'Proper' support would involve provision for those who genuinely wanted it, with no penalty for opting out for those who did not wish to avail themselves of it. Again, the Schools Bill 2022, expressed the notion of support but since most local authorities are financially stretched and the provision of any positive support is optional for them, it is difficult to envisage there would have been any positive outcome from such legislation.

This sense of injustice is enhanced by a failure to meet their own responsibilities on the part of local authorities. For instance, there have been a growing number of complaints to the Local Government Ombudsman regarding local authority failures to provide educational support when a child cannot attend school for certain reasons, even though this is a statutory duty (referred to as section 19 provision as it derives from the Education Act 1996 s.19) (Forbes Solicitors 2019)

In cases where the Local Government Ombudsman has found in favour of parents, the local authority has been instructed to make certain that officers responsible are fully qualified to do their work. Currently, local authority administrators with no practical experience of educational provision and few educational qualifications are making life-changing judgements about children. We recommend that no local authority

officer should make decisions on a child's future without gaining the same post-graduate qualification required of Special Educational Needs Coordinators (SENCOs) in schools. Local authority administrators need to have the same abilities and knowledge as a competent SENCO given that many of the children they are dealing with would be part of a SENCOs work in school. SENCOs will generally have a great deal of knowledge of SEND children in their schools so they are actually in a more favourable position to recommend actions to support those children than local authority administrators who will have much less practical knowledge of children out of school.

We would regard this post-graduate qualification as also essential for anyone issuing a School Attendance Order. These orders, made against the wishes of parents and their children, are extremely serious legal documents. The Schools Bill 2022, intended to give even more power to unqualified local authority administrators than is currently provided. The increased power proposed would in any case have been disproportionate to the situation.

Another matter which has arisen in recent years is a shift of focus within Local Authorities from requiring information about the provision of education to evidencing progress with that education. This relates closely to the hotly disputed topic of whose role it is to judge 'a suitable education' in each case – disputed because it connects directly with the issues of assessment and monitoring – essential in the minds of many local authority officers who erroneously believe they have a duty to ascertain that a child is in receipt of an education (to National Curriculum age and stage levels) and making progress in it. This disregards the fact that, in law, many different models and modes of education can be deemed 'suitable', and aptitude and ability must be taken into account. In other words, to benchmark an individual home educated child against a National Curriculum average is unlawful and discriminatory.

The issue of 'progress' is covered later in this report. Suffice it to say here that there is evidence that neat linear progress is not a factor in a suitable education – either in school or otherwise. Pattison's research (Pattison, *Rethinking Learning to Read* 2016), for instance, proves that learning to read can usefully and successfully occur at different ages.

Looking to the future, an EHE parent's wish list around these areas would contain some or all of the following items:

- Appropriately qualified staff making educational decisions.
- Local authority education officers being held fully accountable for their actions and communications.
- Home educators being meaningfully represented at all levels of decision-making relevant to them.
- The creation of an independent ombudsman to protect children by rebalancing the power differential between individual home educating families and state officials who may, by choice or in ignorance, abuse their powers.

The fact that Children's Services now handle both Education and Children's Social Care has proved problematic with regard to the fair treatment of home educators by local authorities. The merging of these departments has led to conflation of two different issues, and confusion over where the boundaries of each department's remit start and stop. Greater clarity is also needed regarding the definition and proper parameters of their safeguarding duties.

In a climate where parents are no longer considered trustworthy, it is probably inevitable that the state has taken upon itself a greater supervisory role with regard to children's welfare (often confused with 'wellbeing'). Another matter for concern is the implication in the 2019 EHE guidance that safeguarding

legislation requires LA education officers to obtain evidence of a 'suitable education,' without which they have to intervene by issuing a School Attendance Order. Section 4.2 reads: "Until a local authority is satisfied that a home educated child is receiving full time education, then a child being educated at home is potentially in scope of this duty." [Underlining original] It goes on to say that in such circumstances statutory guidance on children missing education applies. Then it contradictorily cites s436A Education Act 1996 to say that this should not be taken as implying that it is the responsibility of parents to 'prove' that education at home is suitable. This can only result in the confusion which now exists.

It is also important to recall, as already noted that in some instances Serious Case Reviews (SCRs) have been unjustifiably tagged with EHE, though the report made no direct assertion that EHE had actually been a contributing factor to the harm caused to the child. In addition, many such SCRs concluded that EHE is a contributing factor whereas it has never been the case in an SCR that EHE was a contributing factor. Indeed, in some of the SCRs it can be seen that the period of EHE was the safest in the child's life.

# REGISTRATION

The authors of this report seek to establish and uphold an appropriate balance in UK policy, legislation and practice in the relationship between parents, children and the state.

Universal registration will shift the balance between the state and parent – for all parents. A system that puts the government in a position of checking up on parents – with no prior concerns – subverts the natural balance.

## Concerns about registration

However, the authors have longstanding and particular concerns about the DfE's interest in creating registers of children not in school. (The stated intention was that these would be administered locally.)

In our considered view such registers are neither necessary nor desirable. As previously stated, the Education Act 1996, s436A places a responsibility on LAs to identify those children not in receipt of a suitable education, but does not give them a duty to monitor every child being educated otherwise than in school.

Here is a summary of our reasoning:

- As noted earlier, 'Children Not in School' is a broad umbrella term under which several sub-sets or categories of children may be found. How would requiring registration for each of these groups be legitimised? We have already pointed out the need for greater clarity and less confusing categories.
- What is the justification for categorising children whose parents have made a legitimate educational choice alongside other groups perceived for various reasons to be 'vulnerable'? The majority of the latter are either already known to social services or supposed to be receiving alternative educational provision via the local authority.
  - Blurred boundaries only confuse the situation further or increase the feeling of undue discrimination. EHE parents would feel a strong sense of injustice should authorities threaten to serve School Attendance Orders upon them, whilst at the same time failing to follow up those families whose children are on a school roll but are known to be not attending or have been 'off-rolled' or cannot be provided with a suitable school place for their needs.
  - The proposals in the Schools Bill 2022, were unhelpful in that they bundled together different categories of children. For instance, children who are flexi-schooled are already registered at their school, so why add them to another register? The proposed registers also bundled together children whose parents are taking their responsibilities seriously (as EHE) with those who are not. Yet it was not suggested that Section 19 children be included on the register despite them often only receiving 3 or 4 hours of education a week and therefore missing out on a good deal of the education they are entitled to in law.
- Would having their names on a register bring any genuine benefit to those children and young people whose names would be on it? Given that many young people in receipt of education outside school are there precisely because of failings within the school system, how would a register benefit them? Given that local authorities already have powers to enquire after children educated 'otherwise', what new benefits would accrue?
- In a similar vein, what thought has been given to the potential dangers a register would carry with it? The matter of consent regarding the inclusion of confidential personal information has already been noted. In the Schools Bill 2022 proposals, those in authority could have put any confidential information they liked on a register. Data such as whether a girl is sexually active is ideal information

for men grooming young girls. Equally, drug dealers would find it valuable to know for county lines operations if a boy was logged as using drugs and so on. Given that there would potentially be one hundred and fifty-two registers and that specific details could be shared at a local authority's discretion, it is inevitable that information would get into the wrong hands. For example, mothers separated from their husbands and not wishing the latter to know their address for reasons of safety, would find themselves unable to prevent that as there were no safeguards in place. Similar concerns were raised about the 2010 attempt at creating a register of children.

- Although technically it is the children's names which would be entered on a CNiS register, the parents' data would necessarily be stored there. Many in the home educating communities find it stigmatising that their data would be included on a compulsory register, when their educational provision has equal legitimacy with schooling. (The only other compulsory register for adults is the sex offenders' register.)

A previous attempt at such a register was made following the Laming report into the death of Victoria Climbié in January 2003. This project, ContactPoint, came under fire at proposal stage by the ADCS (Association of Directors of Children's Services) who wrote outlining significant concerns over the database, saying that it "may allow a situation where an abuser could be able to access ContactPoint for illegitimate purposes with limited fear of any repercussions." Indeed, in November 2007, following a major breach of data security at the Child Benefits Agency, Beverley Hughes, Secretary of State for Children, Schools and Families, commissioned an independent review of ContactPoint security procedures. In a paper written at the time, ContactPoint was described as treating children and young people "as a precious object, and parents as custodians whose moral worth as parents may in principle be subject to scrutiny" (Peckover, White and Hall 2008)

Freedom of Information requests with regard to the Schools Bill 2022, indicated that there were no plans for a pilot scheme. What caused the government to believe that a register does not need piloting? (What do They Know 2022)

What plans were in place to assess the impact and effect of a register on all stakeholders?

What safeguards, other than the courts, would be put in place to prevent local authorities from abusing the information held, either unintentionally or intentionally?

## Costs of a register:

Via FOI requests (Appendix 2) it has been established that there were no plans to carry out a cost-benefit analysis of a register. This is astonishing. In times of such financial shortage, surely local authorities would require this. Given the government's intention to drastically reduce the number of civil servants, what confidence could anyone have that these 152 registers all with local variations would be reliable? (What Do They Know 2022)

The only available indication as to possible cost is found in Q11 of the Annex to the government consultation response, published February 2022, p.45-46, which reads as follows:

*Q.11 What does the local authority believe would be the approximate additional annual cost of maintaining a register for its area? This should, so far as possible, include any costs already incurred on voluntary registration, but exclude other costs incurred by the authority in relation to home education and children missing education. It would be helpful to set out the basis for the estimates. (Department for Education 2022)*

This question was intended for local authorities only, but of the 251 responses gained many were from consultees responding in other capacities. Most of these responses were from parents who expressed opposition to the proposed register and did not provide estimated costs for local authorities. Only the 62 responses from local authorities that quantified the cost per annum were included in the analysis. The mean cost to authorities was £76,906 per annum and the median was £50,000. The minimum estimated cost was £2,544 and the maximum was £420,000.

In approximate terms, if the maximum estimate was applied to all 152 local authorities, the cost of a register would work out somewhere in the region of £650/child. However, at the time of asking for these indications, there was no mention that a register could entail more than providing basic information such as name and address. The Schools Bill 2022, proposed a more complex register.

### ‘Considerable Evidence’

This phrase first appears in the introduction to the 2019 Guidance for local authorities:

*“Educating children at home works well when it is a positive, informed and dedicated choice. However, the past few years have seen a very significant increase in the number of children being educated at home, and there is considerable evidence that many of these children are not receiving a suitable education. There is a less well evidenced but increasing concern that some children educated at home may not be in safe environments.” [emphasis added] (Department for Education 2019)*

Since then, this comment has been repeatedly cited, most prominently in the Education Select Committee's Third Report, Strengthening Home Education [Summary p3, para 22 p12 & para 29 p14] (House of Commons Education Committee 2021), in the context of children being educated at home.

To date, this ‘considerable evidence’ has not been published, and FOI requests [January 2022] failed to provide clear data to substantiate these claims. Instead, conversations about concerns held by local authorities were cited, but not detailed. It must be noted that concerns often arise when there is a lack of evidence rather than when evidence of a matter exists. Given the weight that has been placed on this comment, it is important that the government clarifies whether there is statistical evidence to back up their claim, or if it is based on hearsay.

Therefore, until it is established whether this is a real or a perceived problem, there is no way of knowing how the proposed registers would provide a legal, proportionate, and therefore justifiable solution.

In order to justify the necessity of a register, appeals are frequently made to the need for safeguarding. But simply ‘being on a list’ is not a genuine safeguarding factor – the vast majority of children are on a list from birth. Recent high-profile tragedies like the deaths of Star Hobson or Arthur Labinjo-Hughes demonstrate that a child can be on multiple lists and still be at risk. In at least one of these cases, family members did raise welfare concerns, but these were not followed up appropriately.

A study of Serious Case reviews tagged ‘Home Education’ and related terms, currently being undertaken by Jo Merrett and Alison Sauer, has revealed that in every single case the family were already known to multiple agencies and therefore on multiple lists. The research also showed up the fact that a great number of the cases that made reference to home education were labelled incorrectly. There is no evidence at all that there are hidden home educating

families that are putting their children at risk and who are not known to the authorities. It is clear that an expensive and potentially error-prone register would actually do more harm than good.

### Problematic 'evidence'

The recent Commission on Young Lives – Report 3 (April, 2022) makes classic allegations that are either deliberately malicious towards home education or are evidence of ignorance on the part of the authors. For instance, they state in relation to the case of Jaden Moodie:

*“The consequences of a school system that does not always value inclusiveness and can go much further than just leaving school without decent grades. At the time of his murder, aged 14, Jaden Moodie’s life in London bore little resemblance to that of most teenagers his own age. He was homeless, out of school and three months before he was killed, he was found with an older boy in Bournemouth, 100 miles from home, carrying nine’ wraps of crack cocaine, a mobile phone and over £300 in cash. Incredibly, following his release by police, no contact was made with either Jaden’s school to inform them of the arrest or with the child exploitation team in his local authority.*

*Shortly afterwards, Jaden was excluded from school, and in the months before his death he had spent just three of the last 22 months in school. Half of his time out of school was while he was supposedly in ‘Elected Home Education’ (sic), a time when Jaden was out of the school system and out of contact with his teachers and peer group. Indeed, the Serious Case Review into his death says, “In [Jaden’s] case, the current arrangements governing home education contributed to his vulnerability to criminal exploitation.” (The Commission on Young Lives 2022)*

We now need to be clear on the facts. Jaden Moodie was not ‘Elected Home Education’ (sic). He was excluded from school, and it does not appear that anyone took any responsibility to support him and his mother. He was also known to various agencies that clearly failed him, yet they seem to want to avoid responsibility by claiming that his death was due to ‘Elective Home Education’ – which it most definitely was not. The comments from the Serious Case Review appear not to be unusual. Wrongly attaching blame to EHE is a very serious error and seems designed to avoid placing blame where it more appropriately lies. Evidence cited about his case includes

*“Jaden was arrested for possession of class A drugs with intent to supply. His appropriate adult during police interview said he appeared to be “a vulnerable young person frightened by what he was being groomed and coerced into by others”.*

*He asked to be allowed to call the Samaritans while he was still in custody.*

*After the interview, his mother, Jada Bailey, was contacted to go and collect him from where she was living in east London, but she cannot drive. No-one was available from Waltham Forest Council to make the journey as it was 11pm, and so ultimately two Dorset Police officers drove Jaden home.*

*The review, which refers to Jaden as Child C, found that this was a “missed opportunity”.*

*It said: “The arrangements for responding to Child C and eventually returning him to London in particular represent a missed opportunity. Had it been possible for Child C to have met specialist child exploitation workers while still in custody, and then brought back to London by these workers, and ideally if they could have continued to work with him for a time after his return, I believe such workers would have been able*

to exploit the 'reachable moment' of this crisis in the police station, during the car journey, and then subsequently, and start exploring with Child C the risks to him of his vulnerability to exploitation.

*"But this was not the brief of the Dorset Police officers who were providing a well-intended but basic service in driving Child C back to London."* (Careappointments – Margaret Davis 2020)

The review also found that there were delays in dealing with the family's housing needs – at the time of his death Jaden was sleeping on his grandmother's sofa. Once the fuller picture of this tragic murder is taken into account, the allegation that his death was attributable to EHE is incomprehensible. Most certainly the existence of a register would have been of no benefit, since he was not 'hidden' but well known to various services and their failures contributed to his untimely death.

## The safeguarding remit – a case of mission creep

In years gone by, local authorities were (rightly) required to safeguard children whilst they were left in their care, but the current interpretation of their duty has now become 24/7 responsibility for all children in their area. Proper vigilance and intervention when necessary have become full-blown 'stateguarding' and this imagined duty is often quoted in order to justify intrusion into the privacy of family life.

**This is a vast expansion of a safeguarding remit, and a serious case of mission creep which will affect all parents, not just home educating ones.**

Confusion exists amongst education officers around their responsibilities for education and safeguarding, as illustrated by the Association of Directors of Children's Services (ADCS) 2021 Report on Elective Home Education. A poorly written question in an ADCS survey (November 2021, see above reference) sent to Local Authorities demonstrates the problem of conflating EHE children with children missing education (CME). Q. 16 reads:

*"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."* (The Association of Directors of Children's Services (ADCS) 2021)

The question is informative about potential local authority practice, but too generic to elicit meaningful data. It also lacks comparators, e.g., how many non-home educated children fall into the CME category.

No matter how much surveillance is increased, it will never be possible to fully eradicate bad apples in any sector of society. It is unwise therefore to appeal to emotive worst-case scenarios to justify policy changes in any sector. Hard cases do not make for good law. (Wikipedia 2022)(citing Hayak)

Anomalous, extreme cases are not good justification for tightening regulations which would normally cover a wider range of less extreme cases, i.e., a general law is better drafted for the average circumstance, as this will be more common.

A culture overly preoccupied with safeguarding and risk tends to produce a self-protective mentality amongst its staff, a check-up attitude in order to protect their own backs, rather than a genuine care for the wellbeing of those being monitored. A thought-provoking article entitled 'Home Education: politics' looks back to the days of Baby P, exploring issues around child protection, and the long-term implications for both vulnerable children and home education in general when EHE becomes politicised. (Gerrard 2018)

*"Child protection had become a political football and government, opposition and the media were vying for control of the ball. Ironically, the outcomes had significant negative repercussions for vulnerable children. Directors of social services became very nervous about their jobs, and social worker recruitment and retention, already under strain, became even more challenging, further increasing the vulnerability of the children social workers were dealing with. Local authorities made sure they erred on the side of caution..."*

At one time concern would have required evidence in order to establish risk. Since the 2004 Children Act however, concern of itself can be interpreted as risk, which can erroneously constitute sufficient evidence. EHE in itself is now widely perceived as a risk factor, compounded by the risk of potentially unsuitable education, although at the same time many manage to hold to the misguided belief that children in school are 'safe', just because they are 'seen', a belief which is frequently demonstrated to be false.

It should be noted that there are a number of local authorities which have indicated that Children in Need (CIN) should not be allowed to be home educated. As a child can be classed as CIN for all manner of reasons, including having a diagnosis of autism or having a bereavement in the family, the idea that all CIN should be denied the opportunity to be home educated is nonsense. Most children considered to be CIN are not at risk from their parents' behaviour or actions and may even be classed as CIN due to incidents at school.

## Data collection and privacy; crossing the boundary

The push for registration and inter-agency information sharing in order to facilitate the tracking of 'children missing education' is an ever-present issue for EHE families because it is common for public services staff to categorise electively home educated children along with Children Missing Education. Because both groups are frequently overseen at local level by the same department, the mentality that tracking is appropriate for all can easily prevail. The nomenclature of such departments is often very revealing as to the mindset within them.

Local authorities themselves come under pressure to deliver results, as evidenced by publications such as: Tracking young people – a 'how to' guide for councils. (Local Government Association 2013)

However, such initiatives do nothing to reassure parents that the increasing amount of data being collected about their children is either legitimately collected or secure after collection. It is worrying to note the range of sources of information and data about young people listed on page 21 which 'Councils involved in the Action Research' could potentially use to 'support the tracking process.'

It is important for EHE families to have a clear grasp of where the boundaries lie between what local authorities are permitted to require of them in terms of satisfying themselves that a 'suitable' education is being provided, and their family's legitimate right to privacy. Raising objections if unwarranted intrusions are made or if personal information is shared without justification is important, so that the perceived 'normal' does not gradually creep to a new boundary.

A report from the Joseph Rowntree Reform Trust in 2009 clearly stated that a quarter of the 46 public-sector databases they surveyed were illegal under human rights or data protection law, fewer than 15% were effective, proportionate and necessary and the benefits claimed for data sharing were illusory. (The Joseph Rowntree Reform Trust 2009)

Concerns about data-sharing were not allayed by words from the government's document "Consultation outcome – Children not in school", p.12. (Department for Education 2022)

*"...the legislation would allow LAs (local authorities) to incorporate data gained from other sources. LAs would be empowered to share data from the register with specified agencies where necessary (e.g., a safeguarding concern)."*

ContactPoint has already been mentioned. Memories are short, but it is important not to forget lessons from relatively recent history such as the scrapping of that project in 2010 by the incoming coalition government, in order "to reverse the substantial erosion of civil liberties under the Labour Government and roll back state intrusion. " (Wikipedia 2021)(Coalition Agreement)

A huge scale and very worrying data breach incident had already taken place in 2007, when two computer discs containing personal details of all UK families in receipt of child benefit were lost in the post. George Osborne, Shadow Chancellor at the time, emphasised the scale of this "catastrophic mistake", adding that it was the "final blow for the ambitions of this government to create a national ID database". (DigitalHealth 2010) (Wikipedia 2021, Wikipedia 2022)(Loss of Child Benefit Data)

A further concern about data-sharing is that the existence of registers potentially opens doors for 'groomers' of various sorts, including drug gangs, making it easier for them to access 'vulnerable children' as they desire to do. (BBC News 2022)

As discussed, the Children Not In School Register was a fundamental part of the Schools Bill 2022. Human Rights do not seem to have been adequately considered. Government guidance on creating legislation (Cabinet Office, UK 2022) states that:

*The explanatory notes should contain a section on compatibility with the Convention rights setting out why the department has determined the position. This should set out whether [The European] Convention [on Human] rights are engaged, any relevant case law, as well as an explanation for how any interference can be justified and proportionate. If the analysis is too lengthy to be included in the notes (for example, if it requires more than a few paragraphs) a separate ECHR memorandum should be prepared for publication alongside the bill and submission to the Joint Committee on Human Rights when the Bill is introduced. If the topic may raise questions as regards compatibility with the UN Convention on the Rights of the Child, this analysis should also be contained in the ECHR memorandum.*

No such analysis was included in either ECHR Memorandum attached to the Bill. In fact the following blanket statements are the extent of their explanation:

*a. Requirement of children to attend school in certain circumstances (clauses 48-51): the Department considers that any interference with Article 8 or Article 9 is necessary and proportionate in the interests of protection of the right of a child to an education and for the protection of health and morals. The Department also considers that these clauses comply with Article 2 Protocol 1 (paragraphs 92 to 97).*

*b. Sharing of information (clause 48): the Department considers that any interference with Article 8 is necessary and proportionate for the protection the right of children to an education and to protect health and morals through safeguarding (paragraphs 98 to 99). (Department for Education 2022)*

*The statements quoted above illustrate the contempt in which the government holds both those subject to the register and their basic human rights, as enshrined in international law. The claims that any interference with Articles 8 and 9 was necessary and proportionate would be open to serious legal challenge, particularly as no explanation has been given as to how the Department justified such interference.*

# OTHER IMPORTANT CONTRIBUTING FACTORS

## Other aspects of 'otherwise'

As we have stated, EHE is not about education in the home. It should more properly be identified as parent and child led education. Parents and children access a wide variety of educational resources, and these take the education far beyond intensive classroom-based teaching.

One element of the attack on 'otherwise' than at school learning has been the allegation that thousands of EHE children are actually attending illegal schools. The Schools Bill 2022, contained proposals to increase the powers of Ofsted to enter any premises they like (including family homes) and to take away anything they like.

The department within Ofsted assigned with the task of dealing with this invented problem has only managed six prosecutions in over five years of operation despite inspecting over 600. This does not show that there are thousands of children in illegal schools. On the practical level the evidence is that these Ofsted inspectors are attempting to intimidate part time learning communities that provide support for children who are unable to attend school and are classified by state agencies as EHE.

The Schools Bill 2022, contained much that was clearly designed to close down part-time facilities that support parents and their children. It contained draconian features which are out of proportion to the government's need to close illegal schools. It is quite apparent that facilities such as tutorial assistance for home educated children would have been curtailed under the Bill's proposals. Also, small learning communities that provide support for children who are unable to attend school were also liable to be closed due to the provisions of the Bill.

The largest of these learning communities is the Self Managed Learning College (SMLC) in Sussex, which has had two visits in four years by Ofsted. The first visit concluded with the inspectors from Ofsted agreeing that SMLC is not an illegal school given that it has no classrooms, no curriculum, no imposed timetable, no imposed lessons and freedom for children (aged 9-16) to learn anything that they wish in order to go on to lead a good life. The lead inspector at that visit, having interviewed every child present, suggested that actually the College has a broader curriculum than any school. The second visit to the College was less amicable, and the Chair of Governors and the College Coordinator were given an official caution as per police procedures and threatened with prosecution and potential imprisonment. However, seeing no changes had taken place since the previous visit, the only inferable reason for this so-called inspection was intimidation.

The College, like other learning communities, is used by schools in its locality for children who are unable to attend school. Local authorities also recommend the use of the College when parents who are opting out of school ask for advice or assistance with their child. The College has had numerous research evaluations from the University of Brighton as well as independent research (Freedman 2019) by Luke Freedman (Cunningham 2021) on how ex- students have fared. Freedman's conclusion was that despite taking children who in most cases had been written off by schools, the ex-students were engaged in satisfying careers. These were not always reached via traditional routes. For instance, he noted that those who had not taken the university route were often in responsible positions at an early age – for example, head of IT for a company at age 21 or events manager at 22.

# WHERE SCHOOL IS UNSUITABLE

In this section of the report, we will show how school can be unsuitable for many children. We are not attempting to be encyclopaedic here. Much of the research we quote is pre-pandemic as it has been difficult in some areas to get reliable and valid evidence in the last few years.

The following are examples of where school has proven to be a problem. Appendix 1 is based on the views on school of children who attend the SMLC learning community that is part of the 'otherwise' provision. Given the latest evidence that around 25% of children are neurodiverse, (Baron-Cohen 2022) and schools are built for the neurotypical, it is a natural conclusion that many neurodiverse children will find school a problem. Children on the autistic spectrum have been specifically identified as finding the classroom an impossible environment in which to learn, though neurodiversity covers a wider range of children.

Ofsted officials along with Department for Education spokespersons have talked of school as a place where teachers have their eye on all the children so that they can be kept safe and also, for example, not be radicalised. In the latter case there is no evidence that any of the young people who ended up in Syria to support ISIS were from 'otherwise' contexts.

The notion that teachers are all-seeing and can keep all children in school safe seems odd. Are teachers watching girls being sexually abused or boys being assaulted and doing nothing about it? It is clear that school can be a very unsafe place for many children (Ofsted 2021) and teachers are not at all in control of what goes on in school. Indeed, the recently publicised Child Q case in London proves that school can sometimes be a very unsafe place for children (The Guardian 2022) (McCallum 2022)

The following is from the Independent Inquiry into Child Sexual Abuse

*"Schools are not as safe for children as they should be and children's interests do not always come first when allegations of sexual abuse are made, a report by the Independent Inquiry into Child Sexual Abuse has found."*

The Inquiry heard evidence about ineffective safeguarding in schools during the past 20 years and the testimonies on the Everyone's Invited website demonstrate that currently, for children in some schools, sexual abuse and harassment between peers remains endemic. Chair to the Inquiry, Professor Alexis Jay said:

*"Schools play a central role in the lives of almost nine million children in England and half a million in Wales. They should be places of learning where children are nurtured by trusted teachers and are able to flourish in a safe environment. This is in contrast to the many shocking instances of child sexual abuse detailed in this report. They represent the opposite of everything that a school should be."* (Willis Palmer 2022)

The following are examples of the failure of the schooling provision, and they support our statements above. In summary they challenge assumptions about the statement by many that school should be the place for all children. Groups that are covered below include:

- The 3 million children born in the summer months of May, June, July and August in England
- The 2.25 million neurodiverse children in England (Baron-Cohen 2022)
- The 1.8 million adolescents who experience a mental health problem in any given year in England (Mental Health Foundation 2022)

- The 2.4 million children frequently bullied in schools (Smith 2021)

Within these global figures there are clear overlaps. For instance, neurodiverse children are also more likely to be bullied – as are homosexual children. Being bullied itself is linked to mental health problems.

## Summer-born children

The Department for Education's own research shows that at least 10,000 summer-born (May to August) children gain worse results at GCSE than autumn-born (September to December) children, just because of their birth date. Nothing else. The research shows that this gap appears as soon as children start at school and carries on right into higher education. 18.8% of August-born young people enter university at 18 compared with 21.3% for September-born young people. (Department for Education 2010)

The figures also show that summer-born children are more likely to be labelled as special needs and more likely to have been identified as having a range of symptoms such as learning difficulties and speech, language and communication needs. Indeed, by the age of 7 in primary school, August-born children are nearly 90% more likely to be identified as SEN (Special Educational Needs) than September-born children.

All this evidence points to the fact that current school arrangements and structures are inherently discriminatory. There is no way to make the classroom, the rigid subject-based curriculum and imposed timetables solve problems of inequality. The structures and processes of schooling are inherently faulty. They even encourage parents and teachers to make erroneous judgements. For instance, both parents and teachers of summer-born children are more likely to underestimate the abilities of such children, according to the government's own research.

Compare this with EHE. Parents and their children can choose when to take GCSEs, for instance. Instead of children born in July and August being forced to take GCSEs when they are only 15 years old, EHE children and their parents are free to leave GCSEs until the child is 16, or whenever it is sensible. EHE avoids the institutional discrimination of schooling.

## Difference

### **The negative response of schools to difference**

It is well-known that certain groups do not do as well in school as they should do, given a school environment which has not accommodated their differences.

The groups that are well-known to do less well in school in the UK and are therefore less likely to go into higher education include the following: children in care (looked after children, as they may be labelled), autistic children, those who are adopted, those on free school meals (which is evidence of poverty), young people with ADHD, working class children (especially from white and Afro-Caribbean backgrounds), and young people with a severe physical disability.

Here is some evidence in relation to the problems that school creates for certain young people.

- Adoption UK's research entitled 'Bridging the Gap' reports that "77% of adopted young people agreed with the statement 'I feel confused and worried at school.' Two-thirds of adopted young people said they were teased or bullied in school because they are adopted. 60% of adoptive parents do not feel that their child has an equal chance at school" (Adoption UK 2018)

- Only 22% of adults with a diagnosis of autism were in any type of employment in 2020, a figure that has improved little over the years. (Office of National Statistics 2021)
- There are risk factors that predict the likelihood of exclusion. Excluded children are: five times as likely to be in care; three times as likely to be 'children in need'; four times as likely to have grown up in poverty; seven times as likely to have special educational needs and disabilities, and 50% have a mental health problem. Four in five excluded children are likely to be Not in Education, Employment or Training (NEET). (The RSA 2020)
- Wetz (2009) quotes a study in one British city that 15% of young people aged 16–24 NEET (Not in Education, Employment or Training) died within 10 years due to risky behaviour. (Wetz 2009)
- 'Only 6% of children in care went into higher education in 2016.' (RSA, 2018)
- As many as 26,000 autistic young people were unlawfully denied a full education in 2018 (Ambitious About Autism 2018, June)
- Research shows that grouping by ability is more to do with classroom management, and nothing to do with helping children learn. (TES – Grant, R. 2019)
- 'Pupils who qualify for free school meals currently arrive at primary school an average of four months behind their peers and leave secondary school 18 months behind. Pupils with special educational needs and disabilities start 15 months behind and finish three years behind.' (p 41) Schools make the situation worse. (Astle 2019)
- A research study by Coventry University and the University of Roehampton cites the following:

*'In 2017, more than 16,000 parents in the UK were prosecuted by the courts for their children being absent from school.' 'it is most commonly children with special educational needs who are regularly missing school and families feel these needs are not being met adequately in schools'. 'Of the parents prosecuted in 2017 71% were women and 10 parents (nine women) received custodial sentences.' (i.e., prison). (Coventry Telegraph – Hainey, F 2019)*

The group that is often not recognised as having different issues in school are those who are very introverted. Susan Cain presents important research evidence about the discrimination against introverts, who she suggests make up more than one third of the population. As she argues, 'many schools are designed for extroverts'. She suggests that 'we tend to forget that there's nothing sacrosanct about learning in large group classrooms, and that we organise students this way, not because it's the best way to learn, but because it's cost efficient and what else would we do with our children while the grown-ups are at work?' (p 253). (Cain 2012)

We would argue that the attempt is low-cost, but actually inefficient for learners grouped in large classrooms. She does point out that too often, what children have to do is to be prepared to learn how to survive in a school day, just because they are more introverted. One could argue that this is similar to all the other negative differences as perceived by the system.

Cain lists criteria which she would regard as a desirable environment for introverted children. The environment would include the following features:

- Prize of independent interests and emphasises autonomy.
- Valuing kindness, caring, empathy, good citizenship.
- Emphasising a tolerant, down-to-earth culture (p 257)

All these criteria are best met through EHE. Parents of more introverted children often recognise this and make the wise choice not to force their children to attend school.

### ***The positive value of difference***

We want to make the case here that we need difference among people, that diversity in any society, community or working organisation is to be valued. The best text on this is Scott Page's 2008 book, entitled 'The Difference', which has the subtitle of 'How the power of diversity creates better groups, firms, schools, and societies.' He presents rigorous research evidence to support this proposal. (Page 2008)

The implications for education show that we need not only to respect difference amongst learners, but to actually support that difference – valuing it and, if necessary, encouraging it, rather than assuming that we want a uniform output from education.

Page's two most important findings are:

- that diversity trumps homogeneity – i.e. people with different perspectives and experiences will outperform people who have more homogenous perspectives and experiences and
- That diversity trumps ability – that random collections of intelligent problem-solvers can outperform collections of the best individual problem solvers.

By drawing on the diversity of approaches and ideas of individuals, the group is generally a better performer than the best individual. This kind of result is confirmed by Mercier and Sperber who cite eight significant research studies that confirm this. (Mercier 2011)

This is one demonstration of what Page shows in his book about problem solving and also about prediction. Further, he goes into more detailed research on specifics. Here is one quote:

*'Careful empirical studies show this benefit to cognitive diversity: teams of people with diverse training and experience typically performed better than more homogenous teams. Studies that isolate diversity and skills, such as between the different types of engineers, demonstrate that diversity actually improves performance. Studies of creativity and innovation concluded that cognitive variation is a key explanatory variable. Studies also show that management teams with greater training and experiential diversity typically introduce more innovations. Based on this evidence, organisational scholars generally agree that cognitive diversity improves rates of innovation.'* (p 323). (Page 2008)

One conclusion from the overwhelming research evidence is that, as a society, we should encourage the diverse educational pathways chosen by EHE parents and children. One example of this is that the Self Managed Learning College (SMLC) cites that young people have chosen EHE and then used their part time facility to take GCSEs that would not have been possible in their schools. This has included being able to take three separate science subjects as well as law and child development. Also, different qualifications such as the Arts Council's Arts Award are often more easily accessed outside school.

## **Bullying**

Bullying is a major problem, especially in secondary schools. The exact figures for bullying vary greatly, but common percentages quoted are that 40- 50% of young people post age 11 have been bullied at some time in school.

Research by the anti-bullying charity Ditch the Label has the highest figure of 50% bullied at some point from its 2016 study of 8,850 people aged 12-20 (Ditch the Label 2016). Stefan

Brugger (Brugger 2017) quotes a Department for Education figure of nearly 40% in a 12-month period and 6% on a daily basis. In addition, Ditch the Label's 2020 survey clearly shows the incidence of bullying increasing by 25% year on year, so the problem is, in fact, growing at a fast rate. (Ditch the Label 2020).

Whilst there are all sorts of initiatives to support bullied children, such as anti-bullying weeks and bully buddies, the problem of bullying in schools has not been solved and the situation is not getting any better, if one looks at national figures. The big problem seems to be that because bullying is regarded as inevitable and endemic within secondary/high schools, it is not really taken seriously. If it were really taken seriously, bullying would be a rare event.

One problem we have seen is a growing trend to 'blame the victim'. At a meeting where an educational psychologist spoke about their role with bullied children, they seemed to feel that the main thing they should do was to develop resilience in bullied children. This does nothing to address the systemic issues within a school and can appear to those who are being bullied that they are somehow lesser persons, because they need some training in resilience.

The second problem is the assumption that children will be bullied and 'it's just part of the growing up process' – and once they leave school, it will all be fine. Nothing could be further from the truth. A number of rigorous research studies have shown that the effects of bullying last into adulthood.

Lewis et al, 2019, cite research funded by the Medical Research Council UK. It is estimated that nearly one hundred thousand children in the country are suffering from post-traumatic stress disorder because of severe bullying. The study also revealed that half of young people with post-traumatic stress disorder had self-harmed and one in five had attempted suicide since the age of 12. (Lewis SJ 2019, March)

Evans-Lacko et al, 2016, performed an analysis using the National Child Development Study and the 1958 British Birth Cohort study. They showed that people who were bullied were more likely to use mental health services in childhood and adolescence, and also in midlife. (Evans-Lacko S 2017)

Wolke, 2014, explained: "We want to eradicate the myth that bullying at a young age could be viewed as a harmless rite of passage that everyone goes through – it casts a long shadow over a person's life and can have serious consequences for mental health." His study showed that bullies and their victims have an increased risk of developing psychotic experiences in adult life. (Wolke 2014)

Campbell and Morrison, (Campbell ML 2007), showed that bullying was significantly associated with a predisposition to psychotic experiences.

Varese et al, 2012, showed that children exposed to bullying and related abuse were 2.72 times more likely to have psychosis in adult life than the rest of the population.

Moore et al, (Moore SE 2017), showed that victims of bullying are associated with a wide range of mental health problems such as depression, anxiety, suicide attempts and illicit drug use.

Copeland et al, (Copeland WE 2014), found high levels of markers of inflammation in young adults who had been bullied. Takizawa, (Takizawa 2015), showed the same in midlife. (Inflammation markers are correlated with both mental and physical health problems.) Stefan Brugger wrote that exposure to bullying is associated with symptoms of mental illness and that this continued beyond childhood. (Brugger 2017)

Lieberman, 2013, makes an impeccable case regarding the harm done by bullying, arguing that it is 'probably the most pervasive form of social rejection that we have'. (p 69). For instance, he cites a Finnish study of over 5000 eight-year-olds. Those bullied by that age were more than six times as likely to have taken their own lives by the age of twenty-five. A saying one used to hear in the past was 'sticks and stones may break my bones, but names will never hurt me'. This was to say that name-calling and verbal bullying was not as serious as physical bullying. We now know, from the neuroscientific research, that this saying is untrue. Emotional pain and physical pain occur in the same part of the brain, and it is clear that verbal bullying is extremely serious and does lead to mental health problems. In monitoring suicides by children who have been verbally bullied, it appears that verbal bullying is more likely to produce a suicide or attempted suicide in the young person than physical bullying. So again, the lack of serious attention to this situation is appalling. (Lieberman 2013)

Further Lieberman, 2103, cites research that social pain – such as from verbal bullying – significantly reduces intellectual performance. As he comments: 'This must be a profound distraction and a major strain on classroom learning.' (p 279).

None of the above address instances of bullying by teachers which children have cited as a reason to remove themselves from school, although this could be judged as a minor concern in comparison to peer-on-peer bullying.

The issue of school bullying has meant that many who are EHE have chosen the safer mode rather than attending school. Recent Ofsted reports on failed secondary schools indicate that such schools are manifestly unsafe. If parents are to fulfil their legal duty to ensure a suitable education for their children, then removing them from an unsafe environment should entail praise for parents instead of the offensive attacks on them from failing schools.

## The subjective curriculum

We have deliberately entitled this subsection the subjective curriculum because that is a particular emphasis we want to take here. Any choice of curriculum for young people is a subjective choice. There is no objectively right curriculum.

One of the interesting aspects of the UK is that there is a devolved government in Wales, Northern Ireland and Scotland. The curricula for schools in Wales, Northern Ireland, Scotland and England are all different. Yet there is no evidence presented by governments of significant differences amongst children in the different parts of the UK, such that these large differences in curricula are justified. There are Welsh, Northern Irish and Scottish young people in England who follow the curriculum imposed for England. There are English students in Wales, Northern Ireland and Scotland who follow the curriculum for those countries. One example worth mentioning is the English baccalaureate (EBacc). This (supposed) qualification drives the curriculum in schools in England. The requirement to get an EBacc is that a young person must take and pass GCSEs only in academic subjects. The particular subjects that have to be passed are English, maths, a science, a foreign language and history or geography. Any learning outside these five academic subjects does not count in terms of the judgement made of a school for its performance in the EBacc.

The government in England introduced measures for this qualification in 2011. The National Foundation for Educational Research has plotted changes since that time (Hepworth 2019). They report that between 2009 and 2019 the number of GCSE entries increased by 1.9% overall. Entries for Ebacc subjects have increased

by 12.6% over the time period, while entries for non-Ebacc subjects have fallen by nearly 30%. Another way of looking at the figures is that 81.4% of all GCSE entries in 2019 were for Ebacc subjects, compared to 73.6% back in 2009. They comment that this is an enormous shift. They demonstrate the impact on technology subjects, which have decreased greatly in the ten years from 2009, as did music and drama entries. The option of adopting this English baccalaureate is a subjective choice made by a government which imposes this upon schools, but without adequate justification. (Hepworth 2019)

The House of Lords Communications and Digital Committee (House of Lords Communications and Digital Committee 2023) has made a searing critique of the neglect of creative and digital sector in the education of children. They said: 'The creative industries rank among the world's fastest-growing sectors. They provide high-quality employment, drive innovation, and support civic and social wellbeing. According to the government, in recent years they have generated more value to the UK economy than the life sciences, aerospace and automotive industries combined. But the government's current approach is complacent and risks jeopardising the sector's commercial potential.' (P. 3)

The Committee were clear that 'the English schools system is not preparing students adequately for careers in the creative industries...Careers guidance currently takes insufficient account of the myriad opportunities in the creative sector.' (P 37). They explicitly criticised the narrowness of the school curriculum and how government decisions have produced a 70% decline in GCSE entries in design and technology and a 40% decline in other creative subjects from 2010 and 2021.

In evidence to the Committee, Robert Halfon MP, Minister of State for Skills, Apprenticeships and Higher Education, said that "88 per cent of employers in the creative occupations find it hard to recruit higher-level skilled individuals, compared to around 38 per cent of employers across the economy." (P 35)

These subjective choices, driven by politicians, are dangerous and are having a negative impact on both the lives of young people and the economic future of the country. EHE has allowed for children to have a more balanced curriculum, with evidence that children out of school do choose more creative/arts-based studies with associated career advantages. (Cunningham 2021). Parents are quite sensibly pulling children out of a schooling system that is letting them down so that their children can pursue more relevant learning.

## What is taught does not equal what is learned

This seems to be a fairly obvious statement. If everything taught in the classroom were learned perfectly then, of course, every student would pass every test they took. This doesn't happen because what we know is that much teaching does not lead to learning.

Cunningham et al researched many thousands of managers and professional people across organisations around the world about what made them effective at work. (Cunningham I. 2004). The managers all talked about things that they have learned, but very little reference was made to education, training, colleges, universities, courses etc. Indeed, not only this research, but that conducted by a number of universities in the UK and in the USA has shown that the maximum contribution of education and training to the performance of a professional person is about 10 to 20%. (Burgoyne 1997) Most of the useful learning that we gain comes from what tends to be dismissed (by officialdom) as informal learning, such as from peers, family, travel, reading etc. (Candy 2002) See also (Eraut 2019) (Wenger 1998)

This evidence can come as rather a shock to people in the educational world. One reason being that, by and large, educational institutions do not follow up the people who have attended them to find out what impact that education has had on their lives.

EHE provides an ideal environment for learners to use a wide variety of learning modes, as they can avoid the sterile classroom mode. The evidence is that children out of school can benefit from approaches that may be denied school children. A good example is travel. The research cited on adults has shown that travel is one of the very positive learning experiences that adults mention. Schools in England fine parents if they take their families travelling in term time, whereas EHE families can avail themselves of the lower cost travel arrangements in school terms. This is only one of the many advantages that EHE provides over schooling.

Government sources have tended to suggest that every day that a child is absent from school during term time, they are missing out on learning, and that this is a terrible thing for parents to do to their children. What they do not comment on is the fact that state schools have much longer-term times than expensive independent schools. In a typical locality, state schools' terms are around 39 weeks per year, whereas at some of the independent schools they are 34 weeks. Now if parents are paying out a lot of money to send their child to an independent school but then not getting as much teaching time as in a state school, one has to question why parents are doing this. The answer, of course, is that the amount of time spent in the school is not a measure of the quality or quantity of learning, and that parents who take their children on holiday during term time are providing educational benefits. Home educating parents do not have this problem. It is interesting that the current government has financed tutorial support for school children to make up for lost time during the pandemic. They have not chosen more classroom time. The evidence of the efficacy of one-to-one support for learning is manifest. And this is part of the normal pattern of EHE.

Kirby, 2016, cites the estimated worth of the tutoring industry in Britain that year as £2 billion per annum. (Kirby 2016) Clearly parents are prepared to pay a great deal of money for this support. Kirby's report was written for the Sutton Trust, whose annual survey in 2019 of secondary students in England and Wales showed that 27% have had home or private tuition, a figure that rises to 41% in London.

Given that England also has selective grammar schools for some in the post 11 age group, there is a particular industry supporting the passing of exams. The Sutton Trust shows that fewer than 10% of children from families in the lower income bracket receive any tutoring, compared with 37% from households in the top income quartile. About 70% of those who received tutoring gained a place in a grammar school or other selective school, compared with 14% of those in the same area who did not. Clearly for many parents this is money well spent, if they are interested in selective education.

Other information suggests that this shadow tutoring workforce actually props up some schools, both private and state, which have an outstanding rating from their inspections. One example was in North London where the local secondary school had an excellent record of passes at GCSE. The local tutoring agency reported that more than 50% of the students who went to that school used their agency and concluded therefore that they were more responsible for the outstanding rating than the school.

One-to-one support for EHE learners is fundamental. Parents are there to provide direct support to their children. Some use paid tutors, some do not, often relying on support from other family members. The clear advantage for EHE parents and children is choice over learning methods, which can respond directly to the needs of the individual child.

## Studying English is not the same as developing literacy

The kind of curriculum that is common in England for learning English has a great emphasis on writing essays, analysing Shakespearian plays and learning grammatical rules. Literacy is about being able to read and write, in order to function effectively in society. The evidence from research in England shows a rather depressing situation for school children. One in five children leave primary school unable to read or write properly. Sherwood, 2019, quotes research that says: 'It is estimated that 9 million adults in the UK are functionally illiterate and one in four British five-year-olds struggle with basic vocabulary. Three quarters of white working-class boys failed to achieve the government's benchmark at age 16. Research also shows that functionally illiterate adults are more likely to be socially isolated and lack self-esteem'. (The Guardian - Harriet Sherwood 2019)

In comparison to this evidence from schooling, the research evidence from home educated children is much more positive. The best research on this is Pattison, 2016. She showed from her in depth research on home educating families that children are not taught literacy in the same way but develop it through practices in the home and the opportunities they are given to manage their own learning. The children in her study might have learned at different ages, but they all became literate without the use of classrooms or formal teaching. In some cases, the parents themselves did not know how the child came to be able to read and write. Because the parents responded to the needs of individual children, then in the absence of a uniform approach, each could learn in ways that suited their own predilections. (Pattison, Rethinking Learning to Read 2016)

## The myth of neat, linear progression

Research on effective leaders has found that many had very erratic career paths (Gray 2022) It is well-known that many successful entrepreneurs left school with few or no qualifications. But even those who have climbed the corporate ladder may have started off erratically before developing their career successfully. Our concern about schools is the expectation of neat linear progression. Performance is measured and tested regularly, and students are supposed to be on track for whatever predicted destination the school might suggest for that individual. The outcome, however, seems to involve unacceptably high levels of discrimination against individuals who are different, and who progress differently. (Morgan, Costello and Gilbert 2023)

The notion of linear progression in learning is a myth. Schools may attempt to monitor progress as though it is something that will happen logically and incrementally, but this is not borne out by the evidence. Treadway, did the serious slog of actually comparing real life situations within schools from extensive data. (Treadaway 2015) In the English system, there are a series of Key Stages and the expectation is one of a linear and predictable progression between each of the stages. These stages are Key Stage 1, which finishes at age 7, Key Stage 2 at age 11, Key Stage 3 at age 14 and Key Stage 4 at age 16. School pupils are judged for attainment at each of these stages, with the expectation being a linear progression. Treadway has shown that this assumption is erroneous. As he puts it, children's learning is too idiosyncratic to be able to make these kinds of predictions. His work also shows that children who have a low attainment at Key Stage 1 are particularly likely to show a development process which is so unpredictable that it's not worth attempting the assessment. Unfortunately, this means that such young people are 'slow tracked' and discriminated against within the school system.

Learning is not just a simple process of adding new facts, knowledge and skills into someone and then measuring that accumulation. Learning is not one single process; hence it shouldn't be a surprise to us that

development is an uneven process when someone is apparently not making progress.

Home educating parents recognise the nature of progress and how it is not a simple stepwise improvement over time. Unfortunately, local authority administrators who are either unaware of the research evidence or choose to ignore it can make demands on parents for neat linear progress and evidence of this. Some parents have ended up with School Attendance Orders based on such erroneous judgements. This is one of the reasons why we demand that local authority officers who make such decisions should be demonstrably knowledgeable about all the crucial research evidence on children's learning.

## Artificial Intelligence (AI)

We know that AI can deal rapidly and effectively with the content side of running a business, and other aspects of our lives. What AI cannot do – and will not be able to do – is to deal with, for instance, those qualities that organisations need and what Luckin has identified as including a social intelligence; the ability to engage with others and to think creatively. (Luckin 2018)

In her book, Luckin is especially careful to locate AI in its full educational and social context. For instance, she emphasises how what we offer as humans is an ability to work together and to bring a social intelligence to bear on decisions about the application of AI (something AI alone cannot do). She shows how the limited view of learning that has dominated education is unhelpful. If education is just about drilling students in facts and data, then the role of the teacher can be replaced by AI. However, for proper human learning, the collaboration of learners is central, and this is where AI cannot contribute.

She takes a broader view of intelligence than the stance of IQ-driven educators. Social intelligence is central to human development and how we can best utilise AI in the future. The title of her book (*Machine Learning and Human Intelligence. The future of education for the 21st century.*) is apt because a great deal of it is actually discussing the way we think about intelligence and the importance of, for instance, metacognition. We can develop our knowledge and skills in a broader context. One of the many areas she highlights is the notion of achieving mastery in a subject. This requires us to develop a way of thinking about what mastery means and to pursue that to the full, not through competing with others, but from having a real sense of what we mean by the learning we want to undertake. This includes the ability to self-assess – again, a process mostly omitted in formal education.

This capability is part of what is technically labelled as self-efficacy. To quote from the book:

*"An accurate perceived self-efficacy, based on accurate judgements about what we know, is a key ability for learning and will be so to an increased extent. It will be the most important ability for our future lifelong learning. It is also something that is unavailable to AI."* (p. 131).

What Luckin shows is that real education must include aspects of social intelligence and of other qualities that go beyond just acquiring knowledge in a classroom. AI can replace that, but it can't offer the wider development of self-efficacy and interdependent learning. EHE is much better placed because it can avoid the narrow curriculum focus of schools.

## Careers and jobs

It is clear that AI will impact hugely on the jobs that will be available to young people. In discussing 'What's wrong with education' Simms, cites the report from the World Economic Forum, which states that the occupations and specialities most in demand did not exist even five years earlier. (Simms April 2019) It estimates that 65% of children entering primary school in that year would end up working in roles that similarly did not yet exist. The exact impact of the changing nature of work is not easy to predict, as Taylor

and Wallace-Stevens accept. (Taylor 2019) They quote predictions from several universities and think tanks about the number of jobs at risk of automation. Their range varies from 35%, (University of Oxford) to just below 5% from McKinsey Global Institute.

Whatever the future holds, some of it is already present in that automation is currently eliminating jobs, especially many of the middle range jobs. Paradoxically, given governmental support for STEM subjects (Science, Technology, Engineering, Maths), it is clear that many of the jobs in that very area can be mechanised out with the use of artificial intelligence.

All commentators suggest that the most important issue for young people is learning how to learn and to be able to make sensible choices about career. It's about being well prepared for any eventuality, rather than the notion that one can predict the future. We cannot predict even a few years into the future. Therefore, a knowledge-fixated education system is, as Simms shows, quite wrongheaded.

A major problem is that schools are generally ill-equipped to help pupils think through career issues. Without a good knowledge of the individual and how they think, it is tricky to engage with each pupil about choices. Rubin cites some important research. (Rubin 2019) For example, many children start to rule out career choices as early as seven.

The need to assist young people with exploring their options more widely is crucial, as poor career choices lead to much frustration and unhappiness. The Chartered Institute for Personnel and Development survey Employee Outlook: skills and careers, 2016, cites research on career dissatisfaction amongst adult employees. (CIPD 2016) The research found that over a quarter (26%) of those whose career had failed to live up to their expectations identified poor-quality career advice and guidance at school as a key factor to blame.

Using home education, families give children the chance to escape the narrow knowledge-based school curriculum and to explore what they want out of life.

## Mental health, including some international comparisons

The matter of mental health problems for young people gets much publicity and, in a sense, the issues are so well-known that people almost switch off when they are raised, because there is so much concern. But too many of the suggestions are related to dealing with the symptoms rather than taking preventive measures. For instance, in England there is great pressure for more people to be employed in children and adolescent mental health facilities. There is also a tendency to make facile prognostications related to, for instance, the growth of social media and the amount of time that young people spend in front of a screen. There is a tendency for schools to blame mental health and suicide issues on factors outside their control. The normal culprits that schools blame include the media, parents, the medical profession, lack of counsellors and therapists, lack of money, parents, and, most perniciously, the young people themselves.

We mentioned earlier in relation to bullying the fact that educational psychologists were pushing resilience training as a way of blaming the victim, who they claim should be more resilient. It also deflects from the cause. Wright, makes an excellent case against those who wish to blame the individual. (Wright 2018) He quotes the tendency to say that, 'whatever is going wrong in society, personal life and work is as a result of your own moral, biological, psychological or spiritual weaknesses that, with a bit of mindfulness work, you can put right.' (p. 22) And if you cannot, it is your fault. His more generalised comments about society can be applied even more devastatingly in the school context, with the growth of mindfulness programmes and

other self-help tools which ignore the responsibilities of adults towards young people. In its proper place, mindfulness may be helpful for individuals, as may other self-help methods. But the issue is more fundamentally one of schools ignoring their responsibilities to young people by dumping the problem on the individual. This adds up to a notion that school itself has little or no impact on mental health and related problems. Or worse still, that schools help children to be more mentally healthy.

In relation to the latter, we now have a wealth of evidence from the USA that is undoubtedly equally relevant to other rich countries, like Britain. This shows that there is a direct link from the mental health and suicide issues of young people to their school. Grey has an excellent summary of rigorous research studies. (Grey, *Children's & Teens' Suicides Related to the School Calendar* 2018) As he points out, he had, four years earlier, provided evidence from a mental health facility in Connecticut. This data revealed that the average monthly number of emergency mental health intakes for school-age children, declined from 185 in May (the last full month of school) to 102 in June, (the month in which school is finishing), and then dropped to 74 and 66 respectively in July and August (the two full months of freedom from school). In September, the rate started to climb again. This is very clear evidence that when young people are out of school, they are less likely to have emergency mental health requirements – and that school quite clearly has a negative impact on the mental health of many young people.

Since Grey's earlier evidence, he has cited other studies which support what he found. Lueck et al studied the rate of psychiatric visits to a large paediatric emergency mental health department in Los Angeles. (Lueck 2015) They found that the rate of such visits in weeks when school was in session was 118% greater than in weeks when school was not in session. In other words, the rate of emergency psychiatric visits was more than twice as high during school weeks as it was during non-school weeks. Plemmons et al, (Plemmons n.d.), found the rate of hospitalisation of school-age children for suicidal ideation and suicide attempts increased dramatically by nearly 300% during the seven years of this study from 2008 to 2015, and that each year the rate of such hospitalisations was significantly higher in school months than in the summer. Grey summarises these research studies by saying 'increase in suicidal ideation and attempts over time is the result of the increased stress of school over this time period, and not attributable to some factors independent of schooling.' (p. 2)

Faced with this evidence, parents may sensibly consider that EHE can be a life saver (literally).

## Life satisfaction and emotional well-being

Clark et al bring together a wealth of evidence focused on the work of the Well-being Programme at the London School of Economics' Centre for Economic Performance (Clark A. E. 2018)

They introduce the notion of happiness over the life course as based on aspects of what should be attended to in childhood. They say there are broadly three main aspects of child development; intellectual or cognitive, behavioural, and emotional. The intellectual development is about knowledge and task-oriented skills, whereas behavioural development is primarily about behaviour to others. Lastly, emotional development is about how the child feels. Their interest lies in establishing which of these are the most important in terms of being predictors of subsequent life satisfaction. They summarise research by saying that the strongest childhood predictor of a satisfying adult life is emotional health in childhood. The intellectual and the behavioural developments are less important, though not irrelevant.

They show that, as we know, there is significant influence from parents, but they also say that schools can be disproportionately influential. They note how many people only think about schools affecting academic

performance and maybe behaviour, but assume that the emotional health of the child may be left to the family. Clark et al are very clear that this is a totally wrong view. The effect of school on those who attend school is huge. Even if one holds as a constant the child's family background, the primary school still has an enduring influence – and for behaviour and emotional health, it has as great an influence as the secondary school. In their overview of life satisfaction, Clark et al summarise that income has only a small part to play. Human relationships are much more important, and mental health is the most important single factor in explaining the variation in happiness in the population.

In digging into the issue, a number of the headline features include the fact that emotional health in childhood reduces adult illness, physical as well as mental, and that intellectual performance has no effect on the number of physical health problems someone experiences.

They show that there is a two-way interaction between happiness and health, and that healthy people are happier and happy people live longer. They actually prove that helping pupils' well-being does not detract from, but rather augments, their academic performance.

The undue focus on academic performance by schools can create a neglect of well-being factors. Where schools are guilty of such neglect, it is no surprise that parents look to EHE.

# CONCLUSION & RECOMMENDATIONS

We have provided evidence of both the real situation with regards to so-called Elective Home Education and how school fails many children. Given the much greater number of children going to school than those being home educated, the greater national problem lies with schools. Only around 1% of children are categorised as EHE. Yet a great deal of energy is devoted to criticisms of home education from state agencies, and from media that is heavily briefed by such agencies.

One conclusion we draw is that by recognising that a sector is doing well overall, (EHE in this case), it focuses attention on a sector that is not doing so well (schools), and there is an ongoing vested interest in supporting schools against the 'otherwise' alternative. But the attempt to give more power to the state could actually reduce the chance of a child getting a suitable education. Parents can only fully exercise their duty to provide a suitable education for their children if independent, alternative educational options continue to exist.

We have drawn attention to the Schools Bill 2022. This Bill took a partisan stance against EHE and the 'otherwise' provision in law, yet there were numerous problems with it. Since the same issues are very likely to be raised again in future, a summary of these may be found below:

## A summary of problems with the Schools' Bill 2022

1. There is no real evidence of the need for a register
2. The child's best interests were completely forgotten in this Bill
3. All reliable and quality data was ignored in favour of poor-quality statistics provided by biased parties, despite the DfE being in possession of alternative, better quality data and research
4. The Bill was poorly drafted, as it was dependent on secondary legislation (Regulations) and guidance to introduce parameters and specifics
5. It would have allowed those in authority to ask for any information from parents, regardless of its relevance and the parents' right to privacy. This data about individuals is then also allowed to be shared - there is no regard to GDPR-UK
6. No allowance had been made for those for whom data disclosure poses a significant risk
7. It demanded that Out of School Settings, including private tutors, share detailed information (which they may not have) about families and imposes penalties if they did not do so, again without regard to GDPR-UK
8. There were no safety measures in the bill e.g. it allowed local authority staff to make life-changing decisions about families based on their own prejudices and beliefs
9. It would have created a dual registration system for a large number of children for no apparent purpose e.g. code C Flexischooled children and sick children
10. The register would not have included details of children educated under the Education Act 1996 s 19, who often receive only 3-5 hours of education a week, whereas Code C Flexischooled children who already receive a full-time education and are already on a school register would have been required to be on the register.
11. It could have criminalised parents for not providing trivial things or for making a clerical error rather than for deliberate and more serious wrongdoing
12. It would have allowed local authorities to prosecute families repeatedly for the same offence and it would have allowed for repeat enforcement of a School Attendance Order (SAO) without any re-examination of the facts

## **A Suitable Education for Every Child**

13. There were unrealistic and pointless time restrictions to be placed on parents for statutory actions e.g. 10 days to prove that a suitable education is being provided. There was no parity with the timescales allowed by Ofsted for schools that are failing nor any opportunity for the families to improve their provision
14. Neither children nor families would have derived any benefit from being on the register
15. There was no support or funding for assessment for SEND/ Education and Health Care Plans (EHCPs)
16. There was no proper route of appeal or complaint for either SAOs or the behaviour of local authorities
17. If an EHCP with a named school was in place, a parent would not have been allowed to apply for an SAO to be revoked even if a suitable education at home was taking place.
18. A lifetime SAO simply does not work – needs change, people move and children age out of schools.
19. It placed the burden of proof on parents to demonstrate that they are following the law, rather than assuming that they are and intervening only if there is evidence to the contrary
20. No pilot scheme for the registers had been proposed or attempted
21. No appropriate impact assessment had been undertaken, including how the measures would affect human rights.
22. The Bill proposed increased the powers for Ofsted, including the right to enter family homes in an unwarranted way.
23. Allegations of thousands of children in illegal schools were not substantiated.
24. Settings that provide part-time support for EHE families could have been closed down at the whim of the Minister as there was no guidance in the Bill as to what is an acceptable arrangement for such part time settings. The Bill would have left it to the Minister to decide without any constraints on him.
25. The Bill attempted to undermine existing legislation that states that parents and not the state are to ensure that children have a suitable education.

## Recommendations

1. There is no justifiable or evidenced basis for a register of children who are educated otherwise than at school
  - a) If a register were to be created, we are clear that it would have the following problems.
  - b) It would be costly to implement. Given that no credible figures have been produced by state agencies, we can only guess that it might cost up to £500million per annum.
  - c) It would not serve to identify problem families – according to the 2019 Guidance, they are already known to agencies.
  - d) It would be guaranteed to have data entry errors. For instance, where would travellers’ children be registered? How would unusual names be identified? etc.
  - e) It would provide a groomers’ handbook, as vulnerable children would be identified along with their contact information.
  - f) It would not be secure.
  - g) It would lead to opportunities for inappropriate interventions (see the next recommendation).

2. The role of local authorities in relation to EHE (electively home educating) parents and children needs to maintain the balance which was established through the 1944 Education Act. This identified two means by which parents may fulfil their educational responsibilities towards their children – at school or otherwise. These have equal standing, and local authorities should thoroughly respect this at all times and not simply acknowledge it in policy statements whilst acting to the contrary.

Progress should not be evaluated by standard metrics, nor should there be any required equivalence with the National Curriculum.

Safeguarding and education are two separate issues and should not be conflated. Confusion of these two has been responsible for children ‘falling through the cracks.’ Local authorities need to ensure that any genuine child safeguarding concerns are dealt with appropriately by the relevant service.

The prime responsibility for education has always rested with the parents, and indeed parents are the decision makers for all aspects of a child’s life. The state’s offer to provide free education for children contributes to the parents fulfilling their responsibilities. The state must therefore respect that parents have the best interests of children at heart, and should not step into the role of decision maker. There are already systems in place for both education and welfare should the parent fail to provide a suitable education or fail to act in the child’s best interest.

- a) The current trend within local authorities to impose arbitrary supervision of EHE children needs to be halted.
- b) Since school pupils do not achieve even progress across years, it is clearly inappropriate to demand this of EHE children. Local authorities must recognise that their role needs to be one of offering support to families, without imposing it.
- c) Only properly qualified staff should be involved in making educational decisions, such as for School Attendance Orders. Staff involved in making educational evaluations and decisions in regard to children educated otherwise than in school should have to meet recognised standards of training which enables them to relate to each child’s needs as an individual.

- d) Local authority education officers should be held fully accountable for their actions and communications.
- e) The creation of an independent ombudsman or other arbitrator is needed to rebalance the power differential between individual home educating families and state officials who may, by choice or in ignorance, abuse their powers.
- f) Home educating families should be meaningfully represented at all levels of decision-making relevant to them and treated with dignity and respect.

3. The responsibilities and rights of parents who choose education otherwise than at school should be recognised, including access to a wide range of learning resources including part-time settings. These settings need to be regarded as important and completely legitimate – provided they comply with normal health & safety requirements – just like other organisations which provide services independent of the state.

a) The existing position is that any settings such as after-school clubs, part-time learning communities, tutorial arrangements etc should only have children in attendance for a maximum of 18 hours per week. This has been seen to work well, and it is clear that such a setting cannot be a school, since schools require full-time attendance. There is no need to change this.

b) The anomaly of the failure of the state to cover public examination fees for children educated otherwise than at school needs to be urgently addressed. The state saves around £500 million per annum through parents opting not to take up the state's offer of educating their children. A small proportion of that would provide appropriate support for children educated otherwise than in school to take national exams.

c) Given that many children educated outside school frequently need to learn in ways that do not fit the standard classroom model, local authorities should be more proactive in supporting initiatives and resources which meet such varying needs.

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# APPENDIX 1 – STUDENTS’ VIEWS ON FORMAL EDUCATION

There is currently a mood in political and establishment circles that challenges the notion that children are able to get a suitable education outside school. For instance, the Local Government Association submission to the Parliamentary Committee on Education stated that all children need formal education. The current law which gives equal status to education in school and education out of school is being undermined by opinions not based on evidence that, despite the law, any education outside school is intrinsically inferior and likewise, that any education inside school is superior.

I asked students in Self Managed Learning College (SML College) about their views of formal education. A group of ten (out of our 40 students) volunteered to give their views as a group. The statement below was then circulated to all students and was unanimously agreed.

School was universally seen as having failed those who had been to school – the majority of students. Specific criticisms of formal education included (in the students’ words):

- Being talked at – not talking with us.
- Schooling did not provide a place where we could focus on our real needs.
- School was not practical enough.
- Being taught but not understood.
- Schools are too large and impersonal.
- Being treated as a number not a person.
- Our personal feelings were ignored – unlike in SML College.
- The tight scheduling of work in school did not allow for the flexibility needed when learning.
- Bullying was rife – and made it unpleasant to be there.
- Bullies are people and were themselves frustrated and unhappy with school.
- Fights would break out and cause chaos.
- Teachers are too busy to deal with problems such as violence.
- Formal education is stressful – for teachers and children.
- Lessons were not interesting.
- Big classes mean that there is a lot of bad behaviour.
- Wearing uniforms is unnecessary. We need to be able to choose our own clothes. The argument that if a rich child had posher clothes than others would cause trouble is not true. Children don’t get uptight about what someone is wearing. And uniform is very expensive for parents anyway.
- Formal education is about trying to make everyone the same – and it doesn’t work anyway. We want to be treated as individuals – as is the case at SML College.
- Some adjectives describing school included ‘dead’, ‘bland’, ‘boring’, ‘dull’, ‘uncreative’, ‘not welcoming’.
- School is not good for SEND children. If you have special needs, you need a place that can respond to these – like SML College.
- Mental health is important – and schools don’t think about that.
- Similarly with physical health.

Schools lack freedom for the individual to be who they want to be.

Students feel that being able to come to a part-time place like SML College deals with their concerns about formal education. They do not welcome the idea of being forced to attend school.

Dr Ian Cunningham, May 2021

## APPENDIX 2 – DFE ‘CONSIDERABLE EVIDENCE’ FOI REQUEST

### Freedom of Information (FOI) Request by R Hardy, 15 Dec 21

“In the introduction to the 2019 Elective home education, Departmental guidance for local authorities, the Department made the following statement (page 3): “Educating children at home works well when it is a positive, informed and dedicated choice. However, the past few years have seen a very significant increase in the number of children being educated at home, and there is considerable evidence that many of these children are not receiving a suitable education. There is a less well evidenced but increasing concern that some children educated at home may not be in safe environments.”

The phrase “considerable evidence” was cited three times in the recent Education Select Committee's Third Report, Strengthening Home Education (Summary p3, paragraph 22 p12 & paragraph 29 p14).

Please provide, as far as permissible by the Regulations, details of all information available to the Department – both in April 2019 and now – which when accumulated together constitutes “considerable evidence that many of these children are not receiving a suitable education.”

If the information is already in the public domain, please provide links to the sources of it.

If it is not available on-line, please provide as much detail as possible – I realise some personal details will have to be redacted. Sources of the information should be included so that it can be verified.”

### DfE response, 14 Jan 22

Dear Mr Hardy

Thank you for your request for information, which was received on 15 December 2021. Your request was as follows:

“In the introduction to the 2019 Elective home education, Departmental guidance for local authorities, the Department made the following statement (page 3): “Educating children at home works well when it is a positive, informed and dedicated choice. However, the past few years have seen a very significant increase in the number of children being educated at home, and there is considerable evidence that many of these children are not receiving a suitable education. There is a less well evidenced but increasing concern that some children educated at home may not be in safe environments.” The phrase “considerable evidence” was cited three times in the recent Education Select Committee's Third Report, Strengthening Home Education (Summary p3, paragraph 22 p12 & paragraph 29 p14). Please provide, as far as permissible by the Regulations, details of all information available to the Department – both in April 2019 and now – which when accumulated together constitutes “considerable evidence that many of these children are not receiving a suitable education.” If the information is already in the public domain, please provide links to the sources of it. If it is not available on-line, please provide as much detail as possible – I realise some personal details will have to be redacted. Sources of the information should be included so that it can be verified.”

I have dealt with your request under the Freedom of Information Act 2000.

The Department holds the information you have requested. However, the Department estimates that the cost of complying with your request would exceed the cost threshold applicable to central Government. This is £600 and represents the estimated cost of one person spending 3½ working days locating, retrieving and extracting the information. This is because the information requested would require us, amongst a wider

search, to sift through over 3,000 responses to the Government's call for evidence on Elective Home Education in 2018. Those responses were reviewed at the time and summary published in this document in April 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791552/EHECfEResponseDocumentv9.4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791552/EHECfEResponseDocumentv9.4.pdf)

I have considered ways in which your request might be narrowed or limited in order to reduce the cost of complying with it. However, due to the nature of your request I do not consider that the Department would be able to provide the information you have requested without exceeding the cost limit].

Under section 12 of the Act the Department is therefore not obliged to comply with your request and will not be processing it further.

If you have any queries about this letter, please contact me. Please remember to quote the reference number FOI 2021-0053276 in any future communications.

If you are unhappy with the way your request has been handled, you should make a complaint to the Department by writing to me within two calendar months of the date of this letter. Your complaint will be considered by an independent review panel, which were not involved in the original consideration of your request.

If you are not content with the outcome of your complaint to the Department, you may then contact the Information Commissioner's Office.

Yours sincerely

A. J. [Full name removed for privacy].

Senior Policy Adviser, Elective Home Education

Non-school education, activities, and integration unit

Department for Education

## Follow up submitted by R Hardy 23 Jan 2022

Your Ref: FOI Request CRM:0284011

For the attention of A. J.

Senior Policy Adviser, Elective Home Education

Non-school education, activities, and integration unit

Department for Education

Dear A. J.

Thank you for your response to the above FOIR dated 14 January.

I find the reason given for your refusal rather incredulous. It would seem to me impractical for the minister who signed off the 2019 Guidance to be presented with all 3,000 responses to the Government's call for evidence on Elective Home Education in 2018 in order to assure themselves and their ministerial colleagues that all the statements in the Guidance were accurate and reasonable before they agreed to the adoption of the Guidance.

The following statement appears in the official response to that same consultation:

"1.2 Although focused on home education, the context for the consultation was the duty of local authorities

to make arrangements to identify, so far as possible, children in their areas not receiving a suitable education. \*\*\*It has been apparent to local authorities for some time that the number of such children is increasing, for a variety of reasons.\*\*\* Although some of the children deemed to be educated at home are within that group, there are others being educated outside mainstream schools who are also of concern." Surely, it is essential that the analysis of those 3,000 responses must have included some digest of the evidence from local authorities that for some time that the number of children not receiving a suitable education is increasing. Please therefore supply a copy of all the documentation which was presented to ministers to support the relevant statements in both the response to the 2018 consultation and 2019 Guidance for local authorities.

I would expect this information to already be on file, and therefore should not require a great amount of time to retrieve it.

I therefore look forward to receiving the requested information in the near future.

## DfE response, 16 Feb 2022

Dear Mr Hardy

Thank you for your request for information, which was received on 23 January 2022, following up on your previous request.

You requested:

"Thank you for your response to the above FOIR dated 14 January. I find the reason given for your refusal rather incredulous. It would seem to me impractical for the minister who signed off the 2019 Guidance to be presented with all 3,000 responses to the Government's call for evidence on Elective Home Education in 2018 in order to assure themselves and their ministerial colleagues that all the statements in the Guidance were accurate and reasonable before they agreed to the adoption of the Guidance. The following statement appears in the official response to that same consultation: "1.2 Although focused on home education, the context for the consultation was the duty of local authorities to make arrangements to identify, so far as possible, children in their areas not receiving a suitable education. \*\*\*It has been apparent to local authorities for some time that the number of such children is increasing, for a variety of reasons.\*\*\* Although some of the children deemed to be educated at home are within that group, there are others being educated outside mainstream schools who are also of concern." Surely, it is essential that the analysis of those 3,000 responses must have included some digest of the evidence from local authorities that for some time that the number of children not receiving a suitable education is increasing. Please therefore supply a copy of all the documentation which was presented to ministers to support the relevant statements in both the response to the 2018 consultation and 2019 Guidance for local authorities. I would expect this information to already be on file, and therefore should not require a great amount of time to retrieve it. I therefore look forward to receiving the requested information in the near future."

I have dealt with your request under the Freedom of Information Act 2000 ("the Act").

The Department is not able to provide any documents that fit within the scope of your request, which we understand to be for documentation presented to Ministers to make the case for including specific statements, in both the 2018 call for evidence and the 2019 consultation on Children Not In School, that there had been an increase in the number of children not receiving a suitable education. This is because information that informed this assertion was drawn from analysis of the surveys conducted by the Association of Directors of Children's Services, which gave evidence of a marked increase in the number of electively

home-educated children at the time. Local authorities were also very clear in discussions with officials that they were concerned about the portion of EHE children that were not receiving a suitable education. There was also some concern that this cohort, as a proportion of the total number of EHE children, might even be increasing – hence there was a risk of EHE representing an increasing proportion of an increasing total.

Those concerns were amplified by concerns that some schools were pressuring reluctant parents to take their children off the schools' roll. There was no specific further analysis on this point: ministers were well aware of these concerns, which they had heard in a variety of different forums, including as part of the arguments voiced in support of Lord Soley's Private Members' Bill, titled "Home Education (Duty of Local Authorities) Bill. If you have any queries about this letter, please contact me by return to this email address. Please remember to quote the reference number above in any future communications. For any general queries you may have about Elective Home Education, you may wish to write direct to [elective.homeeducation@education.gov.uk](mailto:elective.homeeducation@education.gov.uk) . If you are unhappy with the way your request has been handled, you should make a complaint to the Department by writing to me within two calendar months of the date of this letter. Your complaint will be considered by an independent review panel, who were not involved in the original consideration of your request.

If you are not content with the outcome of your complaint to the Department, you may then contact the Information Commissioner's Office.

Yours sincerely

A. J. Senior Policy Adviser, Elective Home Education  
Non-school education, activities, and integration unit



## CONTACT US.

[selfmanagedlearning.org](https://selfmanagedlearning.org)



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