

Meeting EO/DCSF/HEAS to discuss revised statutory guidance to section 4 of the Education and Inspection Act 2006 (which introduced section 436A to the 1996 Education Act)

DCSF Sanctuary Buildings SW1 Friday August 29th 11.00 -1.00

DCSF

Emily Carter
ContactPoint team working with Nicola
Nicola Doyle
Policy lead on ContactPoint
Denise Hunter
Elective Home Education Team
Jamie Kelly
Consultation co-ordinator

Education Otherwise

Ian Dowty
Barrister. Special areas : children's rights/human rights.
Ann Newstead
Member of Government Policy Group. National Media Spokesperson. Local Contact for Kent and also runs website for local home education group.
Fiona Nicholson
Chair Government Policy Group. Member Disability Group. Trustee. Local Contact for Sheffield.
Annette Taberner
Member Government Policy Group. Chair Sheffield Home Educators Network.

Home Education Advisory Service

Brenda Halliday
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Discussion Themes

Action Points

Appendix/Further References

Contact Details

Discussion Themes

- What is the rationale for revising the 2007 guidance in 2008?
- When is it envisaged that the revised guidance will be published ?
- Is it the intention of the revised guidance to make home educators a vulnerable group?
- Is it the intention of the revised guidance that local authorities should LOCATE home educated children or ASSESS the home education ? (i.e. question mark over “suitable”)
- How will ContactPoint fit with the CME database?
- Who contributed to the pre-consultation discussions and why ?
- How will the revised CME guidance fit with the 2007 EHE Guidelines
- If home educators are not the target why does it always feel that way ?

What is the rationale for revising the 2007 guidance in 2008 ?

There are a number of reasons why guidance needs updating to reflect current Government programmes and priorities, but that the catalyst for changing the guidance at this time is the Home Affairs Select Committee Report on Domestic Violence and Forced Marriage, which concluded that there was lack of consistency among local authorities over collecting and sharing information on children not receiving education.

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/26302.htm>

The Committee heard evidence that in some cases children not being at school could be a warning sign that they had become involved in a forced marriage. Some witnesses called to give evidence to the committee, expressed concern that children were taken out of school and home education used as a cover. In some cases it was felt that the parent might claim to be home educating when not actually doing so. EO asked about evidence base for this.

The HASC recommendations covered a number of different DCSF policy areas including recommendations re: 'children missing education', and included the following : to consult/create a new set of data definitions to improve consistency in how LAs share information; to incorporate these into revised statutory guidance; and to strengthen the safeguarding message of the guidance.

Jamie said he was increasingly aware of some inconsistencies between different sections of the draft revised guidance and said we must remember they were a draft and that the priority was that nothing should be omitted from the pre-consultation feedback received by DCSF. Jamie said the current public consultation process was designed to sort this out, eliminate inconsistencies and make any other improvements to the text of the guidance.

When is it envisaged that the revised guidance will be published ?

Home Affairs Committee asked for revised guidance as a matter of urgency. DCSF now anticipating publication of revised guidance by early December 2008. Consultation finishes at 5pm on October 24th 2008. DCSF agreed it was important to respond early.

Is the intention of the revised guidance to make home educators a vulnerable group?

Denise said the revised guidance does not aim to make home educators a vulnerable group. EO and HEAS and Ian all said but that's exactly what the draft guidance is doing. Many instances to back up this assertion.

Jane said the new draft guidance was coming at CME and home education from a safeguarding agenda. Local authorities appear to be saying they have to make sure that children aren't at risk but meanwhile home educators are just getting on with the job. Jamie made point that there are numerous changes in the guidance across a wide range of policy interests – the revisions are not just about Home Education.

EO: If home educators aren't the target then perhaps it makes sense to suggest the policy requirements be fulfilled by a different form of wording? Jamie encouraged any ideas for alternative wording to be included in written responses.

EO queried "tracking" and apparent inclusion of home educators here. Would it only be pupils who were tracked? No time to discuss this further. To raise in written submission.

Is it the intention of the revised guidance for local authorities to LOCATE home educated children or to ASSESS the home education ? (ie question mark over “suitable”)

Ian asked: is it a duty to LOCATE or to ASSESS. If a duty to LOCATE, then once located all that is needed is to state that reference should be had to EHE guidelines for further instruction about how to proceed in dealings with home educated child and family. You would assess quality as per EHE guidelines and then as per EHE guidelines you would follow s437 procedure if quality defective.

Ian said there's qualitative element in the consideration of “suitable”. Home educators objected to “suitable” and also to categorising home educators as vulnerable or at risk group. Ian said this would be fertile ground for LA antipathetic to home education. Ian said the principal problem is that too many of those in LAs who are involved in home education apply their own model of education instead of finding out what the parents’ model is. Before the efficiency of education provision can be assessed, it is necessary to understand and apply the parents' religious and philosophical beliefs (provided these are cogent and worthy of respect); the parents’ value system and educational philosophy should be used to assess efficiency.

EO and HEAS said current draft guidance would increase rather than decrease inconsistency because of the element of subjective assessment contained in word “suitable”. Hugely problematic for data definition.

Ian said the logic of the revised draft guidance is that everyone has to be assessed which construction places s436A in conflict with s437. The latter only requires an assessment of suitability if there is an appearance of no suitable education which does not require every case to be fully assessed. To illustrate how s437 should work, Ian gave example of clock. If you know that it is about 3pm and that is what the clock says, you don't need to have a close look at the workings to see if it is working properly, you just accept that it is three o'clock. DCSF said again no it's about location not about assessment.

Ian pointed out that s437 was framed in the negative and that the interpretation being placed on the duty under s436A conflicted with this. He asked again what was the aim of s436A, was it to locate or was it to assess. Again it was affirmed that the sole intention was to locate not to assess the quality of education.

Nicola and Jamie said Government trying to get away from the phrase “children missing education” because this got confused with “children missing.” Ann Newstead from EO asked how this fitted with HASC apparently requesting revised CME guidance “to find missing children.”

Ian made important point about how LA has increased liability if it behaves as if it accepts responsibility for the outcomes for home educated children. He said that when he trains LA or takes on a court case he always points this out. DCSF interested in this and asked for it to be included in our written submission, so that the legal department could consider it.

Ian cited PHELPS CASE vicarious liability of LEA. Child could sue LA if LA took on additional role and responsibility and did so negligently. <http://tinyurl.com/3c4dl>

How will ContactPoint fit with the CME database ?

ContactPoint based in Sanctuary Buildings. Policy Lead Nicola has worked on ContactPoint for 5 years. Nicola said she would be happy to answer further questions about ContactPoint after the meeting.

Nicola said with regards to the ContactPoint Children Missing Education report, only those records where, no educational setting was recorded would be included on the CME report Annette asked how often this would be updated. Nicola said probably monthly but would check. Nicola subsequently confirmed that the CME report produced by ContactPoint for local authority CME teams would in fact be produced monthly.

Nicola said LAs are working with independent schools about the provision to ContactPoint, of data relating to their pupils. DCSF are looking to collect data relating to pupils attending Pupil Referral Unit through the School Census. This data would be collected from 2010 and supplied to ContactPoint.

EO: paranoia from safeguarding point of view which actually undermines safeguarding. eCAF treatment of child and family. EO gave examples of bad practice. Nicola said CAF was voluntary and consent-based. Nicola said surely point of CAF was not to apply the framework rigidly. Sorry to hear of bad experience, some suggestion of redress at local level? Be a great pity if this meant home educators now wouldn't refer safeguarding concerns or trust social workers. EO said home educators had bush telegraph system. Ian said we were hearing that Ofsted now recommended eCAF on every home educated child. EO said we know there are authorities who have proposed this as a matter of policy. Nicola said she would take this point up as this was not what was intended. DCSF subsequently told us that Nicola has raised both these concerns with the policy team responsible for CAF and they are looking into these claims and will pass on their response.

Sharon Pitchford is no longer working on CME. DCSF is currently recruiting to replace Sharon. Leslie Goodman, based in DCSF Moorfoot is now the team leader for the team responsible for policy around 'Children Missing Education', although the team manages a number of other policy areas too (See notes of EO meeting with Sharon and EHE team April 2008 http://docs.google.com/Doc?id=dcnxcqvq_103gxj8vc8r)

Nicola and Jamie said they would need to liaise. Nicola said it is the responsibility of the CME team in LAs to identify children not receiving education. Nicola confirmed that ContactPoint supported that process by enabling an educational setting to be recorded for every child - it doesn't matter to ContactPoint whether the setting is maintained, independent, school, home, Pupil Referral Unit, etc. The CME report which will contain details of children where no educational setting is recorded, produced by ContactPoint on a monthly basis, will drive where CME teams will focus their efforts.

EO asked how this would work for home educators and Nicola said that it is likely the educational setting field will contain the home address. As this would be the same details as their home contact details, it should be obvious that the child was home educated.. Ann asked if there would be a field that asked if the child was at school and Nicola said that ContactPoint did not include a field that asked whether the educational setting was a school, it provided a space to record the name and address for the educational setting. In many cases though, the word school or something similar would appear in the address (e.g St Joseph's Primary, 123 Eccles Drive ...). Nicola said it would be beneficial for home educators to have this data field filled as this means that the records for their children would not be included on the CME report. She envisaged that if the education field was empty, the parents/carers would simply be telephoned to find out what the location of education was.

EO asked who would input educational settings details to the database, and whether GPs could do it. Nicola said theoretically a GP could update that field but that it was unlikely that they would. A GP more likely to input medical data and to refer concerns about a lack of education setting to Education Welfare Officers. (Fiona suggested GP might contact CME teams but Nicola thought EWO) Nicola said CME needs to liaise with ContactPoint over EHE. Nationally ContactPoint will

get data from School Census 2009. ContactPoint are also taking to officials about getting info on pupils in PRUs .

EO said when ContactPoint goes live there will be a lot of gaps. Nicola said there would be a need to manage people's expectations of completeness of the data set. Nicola will be able to give more information about this later.

Who contributed to the pre-consultation discussions and why ?

DCSF, The Department of Communities and Local Government (DCLG) and the Home Office gave feedback on the implementation of the 2007 guidance which contributed to the current 2008 draft revised version.

At local authority level DCSF contacted :

CME co-ordinators
Local Data services
Some of the local ContactPoint teams
School Attendance

DCSF did not contact Home Education personnel directly although it was felt possible that some home education reps may have made a contribution at some level to the local discussions. We are aware that home education teams in local authorities have now been notified about the consultation by DCSF.

Nicola and Jamie said they would find out which authorities took part in the data definition workshops and which authorities were in dialogue during the pre-consultation period. At the meeting EO pointed out that LA who was involved in dialogue with DCSF was likely to be one we could identify as having strong views and probably not a good working relationship with EO or with local home education community. (Nicola had heard of working partnership between Sheffield EO and LA.)

EO said person dealing with home education is person used to dealing with a problem. Because there is no money in home education, no training, no status. The post is often taken by someone from Education Welfare. Ann said in her area it was Behavioural Improvement Services. It might also be School Improvement. Guilty till proven innocent.

After the meeting the following note was sent to EO: "All LAs were given the opportunity to put forward their views on the data definitions, but only some did. Some of the comments recorded came from plenary forums at which the location of each person putting forward a view was not recorded, but those that we can identify (usually from those who sent in views in a written format) are: - Wakefield; Knowsley; Birmingham; Bradford; Leeds; Staffordshire; East Sussex; West Sussex; Blackpool; Cumbria; Sandwell; Derby; Derby City; Somerset; Lewisham and Dudley. "In addition Sheffield provided comments by phone.

Nicola said models of good practice might be helpful. Helping less experienced and less knowledgeable LA to support knowledge sharing. Ian said he ran training workshops for local authorities and the ones who came were the ones who didn't need the training.

How will revised guidance fit with 2007 EHE guidelines ?

Ian queried paragraph 1.2.7 p.5 of the draft revised CME guidance (see below) with Denise who said the wording had been agreed with the legal team and that lawyers would consider home educators' concerns as part of the consultation process.

1.2.7 "Local authorities have a duty to make arrangements to enable them to establish whether a child who is being educated at home (under section 7 of the Education Act 1997) is not receiving suitable education."

<http://tinyurl.com/5seuqv>

Jamie confirmed that 1997 was a typo.

Major question mark over how revised CME could possibly work with current EHE guidelines which were only finalised last November. Statutory Guidance on CME would obviously take precedence so EO and HEAS said DCSF might as well bin the EHE Guidelines if planning to go ahead with the current CME draft. Ian outlined what SHOULD happen when information is received that a child is being home educated. Denise explained that the wording in the EHE guidelines reflected the original statutory guidance on CME. She added that although there were no plans to update the EHE guidelines, the outcome of the current consultation will be considered.

Ian said very difficult to see how s436A fitted with s437 of the 1996 Act but we had to use the words in actual legislation. Not in the least helpful to MERGE as the new CME statutory guidance appeared to be trying to do. (Note we are not inferring intentionality here)

DCSF said even though it was Home Affairs Select Committee on Forced Marriage and Domestic Violence that prompted this current consultation, it was certainly not the case that forced marriage was the ONLY reason why it was felt guidance needed to be revised. Denise said that a number of local authorities had asked for confirmation about the powers that they had in relation to home education. EO said monitoring arrangements exist, that's what current (Feb 07) CME guidance says.

Ian said this will change EHE via CME. Ian said the difficulty with home education law is that s436A actually doesn't sit properly with s437 but that the aim of any statutory guidance should surely be to make things clearer and not less clear.

Annette made point about loco parentis. Parents have ultimate responsibility and are not agents of government. Targets don't apply to us. EO said responsibility not fully discharged by sending child to school because parent still responsible for efficient full time education as per section 7 of the 1996 Act. Jamie said this was something to think about and asked us also to include in our written submission.

Jane said desiderata become sticks to beat us with eg 5 outcomes of ECM. Seen as generally desirable outcomes but not mandatory. Home educators have many ideas for how local authorities could help promote outcomes for our members.

Ian made a point about unified authorities. The person with responsibility for home education might have no background in education let alone home education. May not be a local authority employee. May or may not be from social services background. This was a particular issue in cases where there were Special Educational Needs. Ian's firm has represented families where the LA has applied for children to go on At Risk register. Home educators often report that Social Services have concerns about home education per se even when, and in some cases, despite the fact that, the LEA

has no such concern.

If home educators are not the target why does it always feel that way?

Education Otherwise had a meeting with Sharon Pitchford of the CME team plus Denise Hunter and Iain Campbell from EHE on April 1st 2008. A full report of the meeting can be found at the following URL.

http://docs.google.com/Doc?id=dcnxcqvq_103gxj8vc8r

HEAS and EO had both gone through the 2007 and 2008 CME guidance and highlighted all the changes and references to home education. HEAS and EO consider that every single change is prejudicial towards EHE. Both organisations will supply further details as part of their written submission. Jamie stated this was not the intention, the revisions to guidance aim to make guidance clearer, and more useful to local authorities as they implement this statutory duty.

EO and HEAS spontaneously offered example of truancy patrol guidance where we had repeatedly been told that home educators weren't the target by officials but then found it used on the ground to catch home educators. Fiona reminded meeting that they aren't called "Finding unknown home educator sweeps" or even "truancy sweeps" they are called "attendance and exclusion sweeps" and home educators don't come into the category of "attending" or "excluded." (Fiona had input to revised draft of DCSF Ensuring Regular School Attendance January 2008). Jamie mentioned a difficulty here - this statutory guidance was not directly about 'practice' and that it seems like some of the Home Educators concerns are about how guidelines like these are put into practice.

Annette related how home education was not included as legal option in initial consultation document on raising the participation age in 2007 and then was not changed in any official paperwork for months afterwards. We were told it was an oversight. This requires constant vigilance on our part.

HEAS said earlier talks with Peter Mucklow at DfES (now DCSF) on CME were very positive and constructive and he was very supportive of home education. (In report to HEAS and DCSF supply meeting notes from 2005 as link and attachment)

<http://tinyurl.com/6jy578>

Caxton House November 2005 EO and DfES

Annette complained that EO were never invited to pre-consultations and always came in after the end. We said we felt personally got at because we knew a number of authorities were trying one thing after another to restrict home educators. Jamie said he had followed standard practice and called us to stakeholder meeting as soon as consultation was launched. We acknowledged this.

Ann said it was chicken and egg. When we are not involved earlier and we know DCSF has been talking to someone with axe to grind then we feel that we are the target. The solution is for Government to talk to us earlier and for talks at Ministerial level as well as with civil servants.

Action Points

EO/HEAS

Home education support organisations need to alert members to need to respond quickly to consultation because of publication deadline.

DCSF

Nicola and Jamie to find out more about how CME database will fit with ContactPoint and get back to us.

Nicola to give information about managing expectations of completeness of data set.

Denise to alert legal team that they will need to consider home educators' concerns about paragraph 1.2.7 as part of the consultation process.

Appendix/Further Reference

PHELPS CASE vicarious liability of LEA. Child could sue LA if LA took on additional role and responsibility

<http://tinyurl.com/3c4dl>

<http://www.dcsf.gov.uk/consultations/conDetails.cfm?consultationId=1569>

Consultation reference

<http://tinyurl.com/5seuqv>

Draft Revised Statutory CME Guidance

http://docs.google.com/Doc?id=dcnxcqvq_103gxj8vc8r

[Education Otherwise meeting with DCSF CME and EHE April 2008 .](#)

<http://tinyurl.com/6jy578>

Caxton House Meeting November 2005 EO and DfES

<http://www.dcsf.gov.uk/schoolattendance/uploads/Prosecutions%20Ensuring%20Child%20rights%20to%20education.pdf>

Ensuring Children's Right to Education DCSF 2008

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or forward questions to Education Otherwise to be raised with DCSF