

**EDUCATION OTHERWISE, HOME EDUCATION ADVISORY SERVICE,
IAN DOWTY MEETING JULY 4TH 2009**

Present:

Ian Dowty, barrister

Education Otherwise

Ann Newstead

Fiona Nicholson

Annette Taberner

Home Education Advisory Service

Jane Lowe

Children's voice

EO feedback from children's survey. Ian thinks we should extend this. We need more on The Voice of The Child. Children's survey highlights that the review was ill-conceived. Compare and contrast Government questionnaires which led to Every Child Matters Green Paper 2003.

<http://tinyurl.com/eochildstats>

Review is not proportionate

Review was rushed. Graham Badman did not put matters to the home education community. We have not seen a précis of the evidence.

The Panel

There has been no report from the panel. We need to know what the panel were told and what the panel said and how often the panel met. Do the panel members stand by the recommendations? What did the panel discover for themselves about home education?

What about new children coming into the country? How will Government know if nobody is claiming child benefit?

Challenge Badman Report on statistics with regard to abuse in home education + home educators "known to social services"

Nottingham children's services. Disaggregate statistics. Ofsted also want information on this. Look at work already being done by home educators in this field.

Recommendation 23/24

Ian says recommendation 24 could be used to stop people home educating. Either it is safe to be with parents or not safe to be with parents.

Databases

Will ContactPoint ever come in? Tories and LibDems have said they will scrap it.

Investigate contractual obligations and assurances given by current Labour government.

Local authority responsibilities

Graham Badman refers to LA responsibilities but where does law say what these are?

Section 10 Children Act 2004

<http://tinyurl.com/2dxygp>

Section 11 Children Act 2004

<http://tinyurl.com/2dxygp>

Section 7 Education Act 1996

<http://tinyurl.com/oqs78j>

Pupil Registration Regulations 2006

<http://www.opsi.gov.uk/si/si2006/20061751.htm>

Section 17 Children Act 1989

<http://tinyurl.com/n8kngv>

Section 47 Children Act 1989

<http://tinyurl.com/nmys87>

Section 436A Education Act 1996 (introduced by s.4 Education and Inspections Act 2006)

<http://tinyurl.com/n2usw6>

DCSF Elective Home Education Guidelines 2007

<http://tinyurl.com/lu8eoo>

How representative was the Badman Enquiry

It should be noted that Badman Report stated percentage of total LAs who responded (60%) but didn't state percentage of home educators. In fact if 2,000 home educators responded and if Graham Badman says there are 80,000 home ed children, then over 100,000 parent/carers so only 5% of home educators replied. Why did Graham Badman not ask local authorities to circulate information to home educators on their books? Information was not even disseminated to local authorities, they were having to ask Education Otherwise what was happening.

Is "suitable education" defined in law?

We take issue with the fact that Graham Badman says suitable education is not defined in law. This is incorrect. Section 7 Education Act 1996. Section 7 cannot be bettered. Broad and balanced is watering down. Broad and balanced does not address needs of the child. Schools equip people for work? Over 50% of children in schools being educated for jobs that don't exist.

Section 7 Education Act 1996

<http://tinyurl.com/oqs78j>

Alternative education

Private schools and alternative education. Why no Badman Review of alternative provision? If s.7 duty can be discharged by sending to Steiner School or Summerhill or yeshiva or madrasah then why not via home education? What has Graham Badman

understood of autonomous education? Ian Stronach expert witness (Manchester?) + lawyer for Summerhill. We understand Graham Badman has spoken to someone who was involved in legal case for Summerhill. Point of Summerhill Ofsted case was that plans were not produced in advance and children were not forced to attend activities.

<http://tinyurl.com/mds3z5>

<http://tinyurl.com/ncbj4k>

Ofsted

Ofsted should include EHE service in inspection of local authority says Badman? Does this duty already exist for Ofsted?

Why is it safe for child to remain with parents but not safe for child to be home educated?

What on earth does Graham Badman mean by “inappropriate abuse”? It suggests there might be “appropriate abuse”. If there is an unsafe parent, then the child is not safe. Why would anyone say child not safe to be home educated but safe to remain then why not care proceedings, why just stop from home educating. Development of welfare and cause for concern militates against child protection. Crime committed? By trampling all over the place you are wrecking the evidence.

Registration

What does national registration scheme locally administered MEAN? LAs administer it? Does this mean the local authority DEFINES how registration happens? Is it envisaged that there would be list or database?

How do you register the ones you don't know about? How are you going to find them? Do you take your child to a place to be registered? Would this be mandatory? How is it envisaged this would happen.

Do we only home educate during school terms? Responsibility of the parent to educate child at school or otherwise. Parent makes decision. But if LA gives licence it is contrary to s.7. If they change s.7 it will affect everybody.

Educating without a licence

If you pass your visit, you get re-registered. If you are going to have this system, you need fully fledged appeals system against registration and licences. Conflict of interest. Duty to inspect, duty to support, duty to assess. Duty to safeguard. Educating without a licence. If parent tries to register but is turned down. Elsewhere Badman Report only saying criminal offence if you fail to register or provide inadequate or false information. Fiona has attempted to investigate this.

Function creep/harvesting data

Argument against registration is harvesting all the data and sharing all the data. Includes hearsay and concerns about child. Having a licence to home educate implies that it is the state who registers the child, not the parent.

Who registers the child for school?

The proposed framework will not fit in with registration and enforcement. Graham Badman has not thought this through. Coerced deregistration/off-rolling is not a home education problem. If they make it a criminal offence not to register the child as home educated, then the legal option of home education will have to be widely publicised. Related to the point

about who registers a child for school, what about automatic transfer to secondary school?

<http://www.opsi.gov.uk/si/si2006/20061751.htm>

Pupil Registration Regulations England 2006

Primary legislation would be needed to effect a change to make it possible for state to register child. S.434 Education Act 1996 does not say that the state can register. Pupil Registration Regulations 2006 cannot be saying that the state is able to register child because this would go beyond the primary legislation.

Additionally, if the Pupil Registration Regulations were in fact saying that the state could register a child, then the state would never have to serve a School Attendance Order, it could simply register the child and then prosecute for "truancy". They cannot take the action to register as this would be the State taking an action which made the parents criminally liable if they did not ensure their child attended at school.

Legal points

Speculation about what happened with regard to light touch changes to monitoring in 06/07. Light touch and backed off. Legal team must have pointed out changing legal responsibility of all parents. Proposals on registration and monitoring will require primary legislation and the Safeguarding Bill has already mentioned "home education monitoring."

Draft legislative programme 2009-2010

<http://tinyurl.com/lj5qd2>

Ian: is this Article 6 ECHR compliant? Can't be judge and jury in your own court. It gives local authorities parental responsibility and also judicial duty. Laws that reverse the presumption of innocence.

<http://tinyurl.com/mk35ta>

"ARTICLE 6 European Convention Human Rights

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and the facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the

language used in court. “

Light touch changes civil servant in 2006 said privacy and human rights legislation against registration (which we know was earlier plan in 2006) Ian says we can show that there is not sufficient need for this invasion. We are being denied the evidence that there is a need for change. The case has not been made by Graham Badman.

Lord Justice Donaldson interpretation of duty to be alert to whether have a duty “if it appears” is now superseded by duty imposed by s436A Education Act 1996 (Children Missing Education).

“Children not receiving suitable education

436A Duty to make arrangements to identify children not receiving education

(1) A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—

(a) are not registered pupils at a school, and

(b) are not receiving suitable education otherwise than at a school. “

<http://tinyurl.com/n2usw6> (s436A is inserted into Education Act 1996 by s4 Education and Inspections Act 2006 with effect from 27th February 2007

There is no problem in writing legislation but the problem is whether it would alter the general duty of all parents set out in s7 Education Act 1996.

Article 29 UN Convention on the Rights of the Child

We are signatories to UNCRC but it is not incorporated in our law. Human Rights Act 1998 refers only to European Convention on Human Rights and requires UK not to legislate incompatibly with it

Article 29 United Nations Convention on the Rights of the Child includes development of respect for child's parents. Graham Badman quotes selectively.

<http://tinyurl.com/mdlnuc>

Article 29

“1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State. “

<http://tinyurl.com/a52orc>

Human Rights Act 1998 - An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights

Section 3 Human Rights Act 1998

Interpretation of legislation

“(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights. “

Just because you can home educate it doesn't mean you can talk about it. See judge in Harrison case about Iris Harrison.

Stages Bill must pass through in Commons and Lords before it becomes law

<http://www.parliament.uk/about/how/laws/stages.cfm>

“The procedure for passing the different types of Bills is broadly similar in both Houses. At a very simple level, a Bill must pass through several stages - in both Houses - to become a law.

Public Bills

The following stages take place in both Houses:

- First reading (formal introduction of the Bill without debate)
- Second reading (general debate)
- Committee stage (detailed examination, debate and amendments. In the House of Commons this stage takes place in a Public Bill Committee.)
- Report stage (opportunity for further amendments)
- Third reading (final chance for debate; amendments are possible in the Lords)

The bill is sent to other House for the same procedure to be followed.

When a Bill has passed through both Houses it is returned to the first House (where it started) for the second House's amendments to be considered.

Both Houses must agree on the final text. There may be several rounds of exchanges between the two Houses until agreement is reached on every word of the Bill. Once this happens the Bill proceeds to the next stage: Royal Assent.

Royal Assent (granted by the monarch)

Act of Parliament (the proposals of the Bill have now become law)”

Public Bill Committees

<http://tinyurl.com/lc9dw2>

“A Public or Private Bill Committee is appointed for each Bill that goes through Parliament. Depending on its complexity, the consideration of a Bill can take a few minutes to a few months.”

“Each committee is assigned a chairman and debate Bills as they would do in the Commons chamber, with broadly the same rules of debate applying. Public Bill Committees, unlike the Standing Committees they replace, have the power to take written and oral evidence from officials and experts outside of Parliament. This is intended to give Committee members more information on which to make their decisions.

The minimum number of Members in a committee is 16 and the maximum is about 50. The proportion of Members in a Public Bill Committee mirrors the political parties' strengths in the Commons, so there is always a government majority."

Article 8 European Convention Human Rights with respect to privacy and family life. Invasion must be proportionate and not arbitrary. Question : if inspection for abuse is ineffective is it arbitrary and not proportionate?

<http://tinyurl.com/kudszc>

Article 8 – Right to respect for private and family life¹

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. "

20 days deregistration.

How can we challenge this? Denies the fact that schools can't stop bullying.

Statement of educational approach, intent and desired/planned outcomes for the child over the following 12 months.

Graham Badman says he is not being prescriptive but then goes on to contradict himself. Badman Report takes the school model. Graham Badman has clearly not understood autonomous education. Age specific targets are creeping in as though we all shared the same assumptions and as though this were possible or desirable for all children. What about home educated SEN children? What would be offered in school?

Schools to give LA record of achievement

In cases where the children have special educational needs, we hear over and over again that the school claimed the child could do things when he or she was not capable of them. It makes the school look better. Hardly going to admit child deregistering unable to read or write for example. Damaging legacy to begin home education. It is also destructive to tie "education" in with an external body's view of "progress" because home education may be non-linear, ie not make "enough progress", not be able to "demonstrate progress" or may even appear to have regressed and be able to do less. Is this because he intends for it not to happen or because perhaps he assumed it happened already?

Parents duty to educate child encompasses duty to take child out of school where not learning

We question whether the government will in fact rewrite section 7 of the 1996 Education Act. Graham Badman has arbitrarily picked the Rose Review but compare with the Primary Review Cambridge University Interim Report 3 which stated that alternative education produced positive outcomes.

<http://www.primaryreview.org.uk/>

<http://tinyurl.com/2hubzt>

5 outcomes ECM

Local authorities don't have any duty to ensure home educated children achieve the 5 outcomes. Otherwise at the least they would have statutory duty to make services available to home educated children. S.10 Children Act 2004.

<http://tinyurl.com/2dxygp>

Implicit prejudice in the Badman Report/Selective quotes

In home education the system is child-oriented. Child gets what he or she needs at that time. It would be interesting to do mystery shopper exercise where we telephone local authorities and say we are thinking of home educating, to see the response we get.

The Badman Report quote about LA not being at child's level was emotive and appears intended to belittle home educators or brand them as arrogant. In fact the quotation was from a parent whose child was gifted in science, where the parent was saying a generalist from the council couldn't offer any assistance, nor was assistance wanted.

Home educators tell us that Graham Badman dismissed their outcomes and said this wouldn't apply to everyone because he wasn't meeting many home educators. However, Graham Badman is happy to accept the 2006 NFER study which used 21 authorities and only had input from 4 families, as though this were somehow objective or as though the results could be extrapolated. In accessing some provision designed for NEETs, our children might get categorised as NEETs. Disaggregation.

<http://tinyurl.com/ldnntc>

Small scale scoping study of 16 local authorities including home educators from 4 of the 16 authorities.

Do parents deregister out of fear of prosecution for truancy?

Home educators don't tell us this is their motive. This comes from local authorities. Where is the hard evidence?

Yeshivas and madrasahs/ what is the political agenda?

The Badman Report has not addressed issue in yeshivas and madrasahs, but instead has pilloried home educators. What is the political agenda here?

<http://tinyurl.com/lbba4w>

Flexischool Recommendations in the Badman Report

There is no stipulation about the amount of time spent at school versus the time spent at home. In theory there could be a flexischool arrangement where the child only attended school for an hour a week. This child would be a registered pupil at the school and would not be home educated. We feel headteachers might be asked for their views on the Badman Report recommendations re flexischool.

Was the deadline for the review questionnaire extended?

We understand it is possible that the NSPCC response went in later than the deadline and we need to establish which date local authorities and other bodies submitted their responses. It was not made public that responses could be received after the deadline. Facts need to be checked here.

Tasmanian Model

Graham Badman raised this repeatedly with home educators and yet never said what he meant and also did not listen when home educators told him that a system for a tiny country could not possibly be replicated in England even if there were a will to do so, which clearly was not the case from his discussions with EO and HEAS.

2007 DCSF Home Education Guidelines

If the guidelines were truly unworkable then all the local authorities would find them unworkable. Is the problem with understanding “wellbeing” or is it “progress”? If there is issue with either, why aren't they doing something?

<http://tinyurl.com/l25j9y>

What has Graham Badman got in mind for local authorities?

References are made to children's trusts and a multidisciplinary team. It seems to be envisaged that the local authority has or will have a duty to assist home educators, but no evidence is offered for this. Might we not expect Children's Trusts to contract out the Badman Home Education Monitoring service? Is an implicit case being made via the Badman Report for using third sector eg NSPCC to monitor home educated children?

Right of access to the home

Right of access to home is irrelevant. There is no educational need to go into someone's home and if there is no safeguarding issue then under current law there is no general right of access to the home. If this were mandated for home educated children, it would apply to all children. Graham Badman is effectively requiring national inspection of children.

What would happen if child refused to meet with local authority officer or if child expressed view that he/she didn't want access to the home? Parent is there to help child exercise their right. Graham Badman has not made up his mind whether it is parents' rights or children's rights because he says “parents should be required to allow the child” as though the child were wanting this and parent were otherwise preventing it.

Exhibition

We are not clear what this means. There is a view which says that demonstration of knowledge demeans the possession of it. If family espouses this view, could this be compliant with Badman? Graham Badman has said that he understands education can't be separated from life but yet he proposes invasion of the family. School model end of term concert concept.

Common Assessment Framework

We find the mention of CAF sinister. It reads as though every home educated child should have a CAF to see if they need services. DCSF Iain Campbell said he didn't read it this way.

Funding follows the child?

There is an implicit argument in the Badman Report that funding should follow the child. However no political party would enact this because it would effectively mean a subsidy to the private sector.

Support

Home education groups are already doing things for themselves. We are not holding our breath and waiting for schools and local authorities to offer anything

Philosophy of education

Graham Badman has written his own philosophy of education after inviting us to write ours. In a democratic society we should be free to choose our own idea of what an education should be.

Links

Email to 3,000 EO members July 12th 2009, can also be viewed as web page

<http://tinyurl.com/nzz5j>

Badman Report on Home Education

<http://tinyurl.com/lthsha>

Summary of recommendations from the Badman Report

<http://tinyurl.com/lzkzsg>

EO campaign site page on Badman Report

<http://www.freedomforchildrentogrow.org/heconsult.htm>

Children's Survey

<http://tinyurl.com/eochildstats>

DCSF Elective Home Education Guidelines 2007

<http://tinyurl.com/lu8eoo>