

Home Education Advisory Service

Cllr C Dann
Chairman
Education and Children's Services Policy Overview Committee
Conservative Group Office
Civic Centre
Uxbridge
Middlesex
UB8 1UW

9 November 2011

Dear Cllr Dann

Review: Elective Home Education policy

Thank you very much for giving me the opportunity to attend and speak to Hillingdon's Education and Children's Services Policy Overview Committee on 19th October. I am writing to send you some further information on the matters which I raised during the Witness Session, as I undertook to do at the time.

At the outset I would like to assure you on behalf of Home Education Advisory Service (HEAS) and the group of concerned home educators from the Borough that we do not wish to be adversarial over the matter of Hillingdon's Elective Home Education policy and procedures. As a national registered charity working in the field of home education, HEAS has endeavoured to improve relationships between home educators and LAs during the 16 years that it has been in existence. We have often assisted LAs during reviews of their policies and procedures and we know how crucial these matters are in fostering good relationships between both parties. We understand the Council's concerns and on behalf of the local parents present and also on behalf of the trustees of Home Education Advisory Service I would like to give you a sincere assurance of our good will in the matter of the safety and welfare of children generally. We have no desire to be legalistic but we do recognise that home education policies give assistance and protection to all concerned if they are solidly based in law.

Hillingdon's draft EHE policy for consultation

HEAS is very concerned about the fact that the draft Elective Home Education Policy for consultation which has been presented to the Education and Children's Services Policy Overview Committee (as included in Public Document Pack A) is deficient in many respects. It appears to be a hasty and superficial revision of the 2009 policy which, although it is said to have been through 'due process', contains some significant errors.

The DCSF issued a document entitled *Elective Home Education Guidelines for Local Authorities* (EHEGLA) in 2007 in the name of the Minister of State for Schools and Learners and bearing his signature. This is the standard document which is used by local authorities in order to ensure that their elective home education policies conform to the law. I have to inform you that Hillingdon's 2009 policy, together with the current draft policy for consultation, appear to have been based on an early uncorrected draft of the DCSF document which differs in some important respects from the final version of EHEGLA that bears the signature of the Secretary of State. You will be able to see for yourself that this early draft, with consultation questions appended, still appears on the internet when a search is undertaken. Other local authorities have also made the mistake of assuming that this is the current version. The current document *Elective Home Education Guidelines for Local Authorities* may be found on the DfE website at the following link:

http://media.education.gov.uk/assets/files/pdf/e/guidelines_for_las_on_elective_home_education.pdf

There is an urgent need to examine Hillingdon's consultation draft policy thoroughly before matters proceed any further. I have annotated the draft but to go into the details here would make this letter unacceptably long. I would be glad to provide further information on this matter and I am more than willing to meet with your officials and assist in the preparation of a document that is based on the correct information. EHEGLA states (paragraph 1.3) that the guidelines were issued 'to support local authorities in carrying out their **statutory** responsibilities and to encourage good practice by clearly setting out the legislative position, and the roles and responsibilities of local authorities and parents in relation to children who are educated at home'. Unfortunately the draft policy cannot be said to fulfil these aims as it stands.

HEAS has been advised that if a local authority were obliged to take legal action or if action were taken against them, their policy would be subject to scrutiny; if the policy could be shown to be in error (as would be the case with the draft policy under consideration) the local authority would be open to censure.

Matters arising from the minutes of the first Witness Session

In addition to studying the draft policy we have also considered the minutes of the first Witness Session which the Committee held in September 2011. The minutes record a number of significant errors of fact that were included in the information which was presented to the Committee. These are as follows:

Bullet point 1: the claim is made that there is ‘a conflict between the Children Act and the Education Act 1996’. The alleged ‘conflict’ between parents’ educational rights and local authorities’ safeguarding duties does not exist. Parents and carers bear the responsibility of ensuring that their children are safe, not local authorities. It was not the intention of Parliament to remove this duty from parents and place it upon local authority officials. The *Every Child Matters* initiative does not give local authorities the duty to carry out universal surveillance of every child in the country. Their duty is to be alert during the course of their duties for signs that a child might be at risk and to act upon them promptly. Section 175(1) of the Education Act 2002 gives local education authorities a general duty to exercise their functions with a view to safeguarding and promoting the welfare of children. Section 11 of the Children Act 2004 extends this duty to all other functions of the local authority, but it adds no new responsibilities.

In particular there is nothing in Section 11 or in any other part of the Children Act 2004 which gives local authorities the power to enter homes in order to see children unless there is reasonable cause to believe that the child is suffering, or likely to suffer significant harm. Home education itself cannot be cited as a ground for concern about a child because this is a lawful activity for parents by virtue of Section 7 of the Education Act 1996.

The DfES document *Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004* (2007) states that ‘under the Children Act 2004, LAs have a responsibility for making arrangements to ensure their normal functions are discharged having regard to safeguarding and promoting the welfare of children in their area. This includes all types of LA services involving adults, children and families ...’ (section 3.3). This duty applies to Hillingdon’s Elective Home Education Service in terms of requiring any staff member to be alert for signs of abuse or neglect when they are acting in the normal course of their duties. It does not empower them to carry out investigations when there are no grounds for suspicion of a problem. Indeed, it does not empower them to carry out investigations at all: it is their duty to report to the relevant authorities any concerns that may arise during the performance of their duties.

Section 2.4 of the statutory guidance mentioned above also confirms that the duty does not give agencies any new functions. It requires them ‘to carry out their *existing functions* in a way that takes into account the need to safeguard and promote the welfare of children’ (emphasis ours). HEAS raised the matter of the boundaries of the LAs’ safeguarding duty with Elaine Haste of the DfES Home Education team at a meeting in July 2007. Ms Haste confirmed that local authorities should not go looking for safeguarding issues amongst home educating families. Ms Haste stated that the duties placed upon local authority staff are exactly the same as those given to GPs, the health authorities and other professionals; if any issues are suspected during normal contact with a child, local authority representatives should pass on their concerns to ‘the relevant authorities’.

Bullet point 2: this states that ‘Parents had rights to home educate and children had rights in relation to safeguarding’. This statement does not take account of the fact that in all but the most extreme cases, the duty to keep a child safe belongs to the parent. The duty to safeguard children does not give GPs the power to insist on

carrying out health checks on every child. Dentists are not empowered to demand that children should attend for checkups. Police officers cannot go from house to house to investigate whether or not children are involved in crime. Teachers' duty to safeguard children has been turned on its head by the assumption that home educated children are missing out on the safeguarding role of schools. The duty to safeguard and promote the welfare of children obliges teachers to notice and report any concerns but it does not override the duty of parents, who are the primary guardians of the rights of their own children.

Bullet point 7: this states that the aim is for all children to be seen annually by the LA or by a 'recognised professional body advising that a child was safe'. This aim would appear to be a 'box-ticking' exercise: how could children's safety possibly be assured by a visual inspection once a year? This objective creates the illusion of having taken action but it is dangerous because it could easily lead to complacency. All the evidence points to the fact that children die because both professional agencies and individuals in the community had ongoing concerns but failed to act in time to save them. This is not an attempt to apportion blame and it is acknowledged that many factors make it very difficult to decide on the right moment for intervention in such cases. It is also evident that any attempt at some kind of universal surveillance is extremely wasteful of scarce resources and expertise; further, many false positives would result. Investigations in these cases would cause severe trauma and distress to innocent families while diverting attention away from known cases where children are vulnerable and in need of help.

Bullet points 12 and 13: the claim is made here that 'The Elective Home Education (EHE) policy had been through due process and had taken into consideration and struck a balance between both the Education Act and the Children Act'. The policy in question may have been agreed by the multi-agency Policy sub-group and signed off by the Local Safeguarding Children's Board but it is incorrect and not fit for purpose. It is in urgent need of reconsideration to bring it in line with current law and good practice. The policy as it stands is certainly not legally compliant as stated in bullet point 13 and it is an incorrect precis of the law to state that 'there was an overriding duty around safeguarding'. There is no statute which gives total and absolute power to any agency in all situations without any checks or balances, as the word 'overriding' suggests.

Bullet point 14: this states that 'There was a right for officers to see a child that had not been seen by another professional for a year or more'. There is absolutely nothing in either primary or secondary legislation which justifies this extraordinary statement. It is totally without foundation. Only in exceptional cases should there be compulsory intervention in family life - for example, where this is necessary to safeguard a child from significant harm (Working Together to Safeguard Children (2010), paragraph 1.6).

A senior social worker from another LA area has advised home educators: 'I know of no provision that gives local authority officers the right to knock on doors unannounced and demand to see children ... Section 2.12 of the DfES document *Elective Home Education: Guidelines for Local Authorities* (2007) states that local authorities' duty under section 175(1) of the Education Act 2002 does not extend their functions. Any local authority which claims that they have the power to enter homes

and see children just in case abuse might be going on, should be asked to supply the exact wording of the text of the statute, regulation or guidance, with full reference, that they consider justifies their procedure. Such a power does not exist.'

Bullet point 15: the statement is made that 'Over the last 20 years there had been a number of case reviews, where it had been highlighted that no proper safeguarding measures had been put in place for a child not seen by professionals'. We recommend that the Committee seeks further specific information about this general and rather vague statement. HEAS has not found any evidence to support this assertion.

Research studies available on the DfE's website show that in many cases the families of abused children were well known to several agencies. Poor communication between professionals has been a factor in many cases; delay in responding to concerns has led to tragedy in many instances and professionals have been deceived by manipulative parents who present a caring and capable appearance to them. Workers have passed on concerns and considered that their responsibility was thereby ended, and the concerns were not acted upon; often, officers have been intimidated by aggressive and threatening parents; in some cases, ambiguities may have caused professionals to hesitate in the absence of unequivocal warning signs. In the overwhelming majority of serious cases, it is clear that the families and their problems have been known to a number of agencies for some time.

It is clear that in a small minority of cases no warning signs have been evident prior to a tragedy occurring. It is an unavoidable truth that if parents or carers are sufficiently evil or deranged to be capable of hiding children away altogether, no policy or procedure will be able to give them the protection that they deserve. In these cases the most effective means of safeguarding children lies with the local community, including the home educators who are being alienated by a wasteful and unlawful policy of unannounced visits.

Bullet points 16 and 17: after commenting on the tension caused by unannounced visits, the statement is made that 'There would always be a minority of home educated children that needed to be safeguarded and there was a duty on LA officers to protect each child'. The next point states that there needed to be 'a balance between these two absolute rights for a child to be educated at home and to be safeguarded in the EHE policy'. These comments reveal the confusion that exists about the nature of the LA's duty to safeguard and promote the welfare of children. It is the primary duty of parents both to protect their children and to ensure that a proper education is provided for them.

The local authority's safeguarding duty is general, not particular, and it is stated correctly in the Policy Overview and Scrutiny Committee's report: 'Members and Residents will be assured that Hillingdon children are safeguarded as far as is reasonably possible'. The local authority has a responsibility for ensuring that they make appropriate arrangements to safeguard and promote the welfare of all children. Such arrangements might include subsidised sports and leisure services, access to health services and ancillary services including speech therapy; they must include child protection training for all professionals who might come across home educated children during the performance of their duties. All professionals must be briefed on the proper procedures for making referrals to the relevant agencies if any child

protection concerns should arise in the course of engagement with home educated children. The duty to ensure that 'appropriate arrangements to safeguard and promote the welfare of children are in place for all children residing within their area ' (*Working Together to Safeguard Children* (2010), paragraph 2.21) is not the same as 'a duty on LA officers to protect each child ' and the local authority's responsibility cannot be interpreted as such.

Bullet point 18: the assertion is made here that the Badman review 'highlighted a number of loopholes in relation to safeguarding'. This is the *Review of Elective Home Education in England* by Graham Badman (2009) which was commissioned by the then Secretary of State for Children, Schools and Families. We were disturbed to see that the report of the Badman review is also listed under 'Intelligence' in Hillingdon's Policy Overview Committee Review Scoping Report. We must point out that this discredited document is not a reliable source of evidence.

The Badman Review of Elective Home Education in England

The Badman review was ill-considered and hastily executed: it was badly flawed and roundly condemned not only by home educators but also by many MPs, many academics and by a number of professionals in the fields of education and safeguarding. The seriousness of the complaints received led to the conduct of the review being investigated by a House of Commons Select Committee of Inquiry which published its report on 9 December 2009. Shadow Education Secretary Michael Gove noted in debate in the House of Commons that 'I have become particularly worried about the way in which various issues have become conflated; I am especially worried about the conflation of safeguarding and child protection with quality of education.' (Hansard 11 Jan 2010, Column 456).

The Select Committee Inquiry found that Badman's figures were improperly calculated, including elementary mathematical errors. The review itself was discredited and none of its recommendations was implemented.

In his submission to the Select Committee Professor James Conroy, himself a member of the Badman review's reference group, states: 'In my 30 odd years of professional life in education I have rarely encountered a process, the entirety of which was so slap dash, panic driven, and nakedly and naively populist. From the moment Baroness Morgan publicly announced the terms of reference as based on a number of assumptions, not least of which was that home education might be a haven or harbour for various kinds of child abuse, the stage was set. Of course anything could be a shelter for anything else - to say so is to say nothing. No account was given of any substantial empirical evidence of the prevalence of abuse in home education environments or whether there was a greater incidence of such abuse amongst home educators than was more generally true of the population as a whole, or perhaps, more tellingly, in state sponsored care facilities. In the report itself Badman compounds the felony with a raft of unsubstantiated claims based on hearsay and vague generalisation.'

Professor Eileen Munro, in her response to the Select Committee Inquiry, is also critical of the review. After exposing the author's 'muddled thinking' and observing

the ‘risk of harm’ from losing the few genuine concerns amidst a mass of irrelevant data obtained from routine surveillance, her submission concludes: ‘Overall, I think this report confuses two overlapping agendas - to promote the welfare of children and protect them from maltreatment. It also overlooks or underestimates two current sources of safety for children: the current child protection system and the importance of community support and monitoring of home education.’

Much more could be said about the shortcomings of the review and we are shocked to find that it has been recommended to the Committee as a source of evidence on home education. We would urge the Committee to read the Select Committee of Inquiry’s Report as well in order to put the Badman report and its ‘findings’ into proper perspective.

‘Legislative Changes’? A request for clarification

We would like to ask for clarification of a point that is made in the ‘Risk Assessment’ section of the Policy Overview Committee’s scoping report (on the final page). The comment is made that ‘There may be Legislative Changes required arising from the review’. What does this statement mean? Does the statement refer to the Badman review when it suggests that changes to the law may be required? If so, could we please point out that the legislative changes which were proposed in the Children’s, Schools and Families Bill were removed during the final stages of the passage of the Bill and the Badman review is no longer relevant. Any future consideration of the law of home education would of necessity be informed by a fresh inquiry.

Home education policy: an example of good practice

We note that the Policy Overview Committee includes in its terms of reference a commitment to looking at sources of good practice and to recommend a revised policy to Cabinet. May we suggest that you consider the policy which is in use in Gloucestershire? The policy may be seen on Gloucestershire County Council’s website at <http://www.gloucestershire.gov.uk/index.cfm?articleid=813> together with the associated documents. Key to the success of this policy is the work of EHEGLOS, the department which provides the county’s elective home education service, and the work of its advisers over many years which has resulted in a very good and trusting relationship with the local families.

Unannounced visits: an ineffective and potentially dangerous procedure

It is a matter of concern to us that the Council’s unannounced visits procedure not only angers and insults decent and reasonable parents, but it could also contribute to a negative outcome for a child who might actually be at risk. We note that the consultation draft of the EHE policy, as included in the Public Document Pack A, includes this statement at section 3.10: ‘Should a family choose to have no contact with the Local Authority whatsoever, or the child have no alternative Community links, the Local Authority may attempt to visit the family at home, by appointment or not, to carry out Hillingdon’s safeguarding duty. ... Ultimately, if there is no indication that the child has been seen by anyone outside the home for a period of time not less than three months, a Common Assessment Framework may be completed and guidance sought from Social Care Officers.’

If a parent has withdrawn a child from school and has failed altogether to respond to the EHE Department's initial informal enquiry about the educational arrangements, the LA might reasonably conclude that suitable education is not being provided. If it has been impossible to obtain any information from the family by this point it is hardly likely that they would agree to co-operate with the completion of a common assessment, and the assessment may only be carried out with the family's consent. Further, if no information is forthcoming from a family who is known to other agencies and there are existing concerns about a child, it would be reasonable for local authority staff to serve the parent with notice of their intention to apply to the court for a School Attendance Order under Section 437(1) of the Education Act 1996. In this case an attempt to complete a common assessment after a delay of three months would not be an appropriate procedure; if a child were at risk it would be dangerous to delay before following up any concerns.

We must add that failure to see a child or to hear from a family would not of itself be a reason for concern about a child's welfare. HEAS has always had some subscribers who are away for months at a time for various reasons. These include an Associated Board Music examiner who does tours of duty overseas and takes his family, a number of showmen who provide excellent education for their children while they are travelling with their fairgrounds, missionaries who travel with their children and others of various nationalities who visit relatives for extended periods both at home and abroad. Some families move out of the area and they are under no obligation to inform anyone if they decide to do so. It would be an improper use both of public funds and a waste of scarce resources to pursue such families when they have broken no law and when there is no indication of any cause for concern.

Safeguarding children: the community's important role

The law makes it clear that protecting children from maltreatment is everyone's responsibility; it is not a duty which is given solely to the local authority and to other public agencies. EHEGLA states (paragraph 4.7):

'The welfare and protection of all children, both those who attend school and those who are educated at home, are of paramount concern and the responsibility of the whole community. Working Together to Safeguard Children (2006) states that all agencies and individuals should aim proactively to safeguard and promote the welfare of children. As with school educated children, child protection issues may arise in relation to home educated children. If any child protection concerns come to light in the course of engagement with children and families, or otherwise, these concerns should immediately be referred to the appropriate authorities using established protocols.'

It is sensible for local authorities to build good relationships with local home educating families because they are very well placed to complement the local authority's safeguarding role. These families will be in contact with many others who are not known to the local authority. In some parts of the country the local authority's EHE department has asked the known local home educators for a volunteer who is willing to act as a contact for new families. When the EHE staff receive notification of a child who is new to home education they give details of the voluntary contact

person to the child's parents. This service is of benefit to the new family as it enables them to join in all or some of the local activities as they wish. It should be noted, however, that if the family decides that the local activities are not suitable for them this should not be regarded as a cause for concern.

Home educators are well placed to help other families who are not known to the LA. Over the years I have seen many examples of parents in local groups helping others who may be facing difficulties. I have witnessed many instances of parents giving practical help and support in situations where without that help children might have been considered to be vulnerable or in need. In addition, in the course of the 23 years during which I have been personally involved with home education at a national level there have been a handful of cases where home educating families in a local area have had concerns about a child. Safeguarding children is everyone's priority and parents in local home education groups do take this responsibility seriously. It is crucial that parents should feel able to seek advice if they have concerns, but if relationships between home educators and the local authority have been soured by an insistence upon unreasonable and unjustified procedures it would be very difficult for them to do so.

I have so often been impressed and humbled by the altruism, dedication and public-spiritedness of so many of the home educating parents with whom I have been privileged to work over the past 24 years. I would like to emphasise that the Hillingdon home educators do not wish to be obstructive, but they wish to complain about procedures that are *ultra vires*, offensive, misdirected and counter-productive. They have all stated that confusion between educational and safeguarding matters can only result in procedures that fail to achieve satisfactory results in either area.

I do hope that it will be possible to address the matter of the inadequacy of the draft policy before the revised draft reaches the Cabinet for ratification. Taking into account the errors and misapprehensions that are recorded in the minutes of the first Witness Session of the Education and Children's Services Policy Overview Committee, together with the draft EHE policy as it stands at present, we fear that Hillingdon is in danger of adopting a new policy which is not in accordance with the law.

On behalf of my fellow trustees of HEAS I would like to emphasise that we would be happy to assist Hillingdon Council's Elective Home Education Department in any way that we can. We are committed to working co-operatively with all local authorities in order to promote our shared goal of improving outcomes for children and families.

With all good wishes,

Yours sincerely



(Mrs) Jane Lowe
for the trustees of Home Education Advisory Service