Briefing Note

ELECTIVE HOME EDUCATION: COMMENTARY ON THE NEW GUIDANCE TO LOCAL AUTHORITIES FROM THE DEPARTMENT OF EDUCATION

Daniel Monk, Professor of Law, Birkbeck, University of London
Email: d.monk@bbk.ac.uk
18 April 2019

In April 2018 the Department of Education (DfE) undertook a consultation about elective home education (EHE) which distinguished two policy initiatives: a revision of the existing Guidance for local authorities about the law and proposals for reforms to the law.

On the 2nd April 2019 the DfE published three documents:

- a substantially revised Guidance, which is in force of that date and replaces the previous guidance largely unaltered since 2007[1];
- a formal response to the initial call for evidence and consultation[2]; and
- a further consultation on proposals to introduce a compulsory register of compulsory school age who do not attend maintain schools, together with new proposals to introduce new duties to both respond to enquiries from local authorities and for local authorities to provide support[3].

The new consultation proposals - in particular the registration requirement, have attracted considerable media attention, and the consultation ends on 24 June 2019.

The new Guidance has attracted less attention. But in practical and immediate terms it is in many respects more significant. The response to the 2018 consultation the DfE notes that:

> Many local authorities have set out their fears about children who are not being well-served by home education . . . many feel that with the substantial increase in numbers, there is a moral obligation towards children which cannot be discharged in a satisfactory way within their existing powers and duties. *However the revised guidance . . . is aimed at helping local authorities use their existing powers in the most effective way*.' (emphasis added, para 4.5)

---

[1] *Elective Home Education. Departmental guidance for local authorities*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791527/Elective_home_education_gudiance_for_LAv2.0.pdf

[2] *Elective Home Education: Call for Evidence 2018, Government consultation response*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791552/EHECfEResponseDocumentv9.4.pdf

[3] *Children not in school: proposed legislation*. Available at: https://consult.education.gov.uk/school-frameworks/children-not-in-school/

A lack of clarity about the precise nature of local authorities' 'existing powers' has been an underlying problem. The main reasons for this are:

1. the lack of legislation *explicitly* addressing EHE;
2. the absence of any judicial statements from the appellate courts on the matter and, consequently, reliance on the limited number of earlier judgments from lower courts (often unreported); and
3. the potential application of a number of statutory provisions addressing different issues.

These factors have enabled different interpretations and understandings of the law to flourish, with marked variation of practice across local authorities[4]. The lack of clarity has also been exacerbated by those who have argued that local authorities currently have restricted powers and limited duties and have sometimes gone as far as to suggest that local authorities adopting a more proactive approach have been acting unlawfully. Paradoxically the extent to which these views have been influential has been one of the motivations for a review of the law.

It is important to emphasise that the new Guidance does not change the law and the three reasons above mean that the inherent complexity of the law and a space for discretionary professional judgment by local authorities both remain.

That said, however, it is important to acknowledge and understand the extent to which the new Guidance is substantially different from the previous version. In terms of format there are now two documents, one for local authorities and one for parents and helpful flowcharts summarising the law in the former.

The Guidance for local authorities now provides a far more comprehensive and up to date coverage of the case law and relevant statutory framework; in particular it now provides the following:

- a more precise interpretation of *Phillips v Brown*, acknowledging that it legitimises and requires a more proactive approach in circumstances where informal requests for information from parents are not forthcoming;
- a clear acknowledgment that Section 436A of the Education Act 1996 and the statutory guidance relating to a local authorities duties to identify 'children missing education' not only applies to home educated children but forms a key part of the statutory framework;
- a clear acknowledgment and advice about the general duties under Section 13A of the Education Act 1996;

[4] For commentaries and critique of the previous guidance, available on request, see D Monk, "'Out of School Education' and Radicalisation: Home Education Revisited" (2016) *Education Law Journal* 1: 17-31; D Monk, 'Regulating Home Education: Negotiating Standards, Anomalies and Rights' (2009) *Child and Family Law Quarterly* 21 (2): 155-184.

- a clear acknowledgment and advice about the application of Article 12 of the UN Convention of the Child, relating to the weight to be placed on the views of children;
- a clear acknowledgment and advice about the application of the Equality Act 2010;
- clearer advice about the application of the general duties under Section 175 of the Education Act 2002 and clarity about the interaction between local authority duties relating EHE and safeguarding;
- acknowledgment and explicit advice about the impact on EHE and the challenges posed by the practice of unlawful exclusions from school ('off rolling');
- Consolidated and extended advice about the meaning of 'suitable education', including the extent to which it incorporates safeguarding concerns about 'radicalisation' and 'socialisation'

In providing these acknowledgments and clarifications the new Guidance addresses explicitly and attempts to provides answers to two questions, which have been particular troubling:

- What should or can a local authority do to identify children who may be home educated?
- What should or can a local authority do if, after making informal enquiries, they are unable to find out the form of education a home educated child is being provided?

The new Guidance is a welcome initiative for all these reasons, and the specific changes are identified in more detail below.

Perhaps the single most important fact about the new Guidance is an acknowledgment not only, correctly, of the right of parents to home educate, but that the current legal framework legitimises, and in places requires local authorities to take a proactive approach to protect the right of every child to a suitable education. In other words, and in contrast to the previous guidance, it emphasises what a local authority *can* and *should* do as well as the limits to their powers. The distinction between 'can' and 'should', in lawspeak 'powers' and 'duties' respectfully, is, however, at times not clear. For example in the introduction it states that:

> ' . . . a local authority has a *moral and social* obligation to ensure that a child is safe and being suitably educated. If it is not clear that that is the case, the authority *should* act to remedy the situation' (emphasis added, p4).

If the local authority *should* act, it would have been clearer to say that the obligation is also a legal one. But this omission may be intentional, for alongside a clear aim 'to enable local authorities to identify children not receiving a suitable education, and do something about it' (p4), there is a recognition of the realities and resource implications facing local authorities that, without further reforms, mean that any extension of their legal obligations requires explicit statutory intervention.

STATUS OF THE GUIDANCE

The Guidance is referred to as 'non-statutory' (p3). This means that there is no statutory provision which requires the Secretary of State for Education to issue guidance on the matter. While there is a degree of debate about the legal weight of guidance documents generally and the stated aim of this Guidance is simply 'to help local authorities understand their role', it is an established principle that local authorities, at the very least, are obliged to take Guidance into account in making decisions and should be able to demonstrate reasonable justifications for not doing so.

COMMENTARY ON THE NEW GUIDANCE

The new guidance has 9 sections.
The commentary below adopts the headings in the guidance and identifies the changes from the previous guidance and also the extent to which it differs from the proposed revised guidance in the 2018 consultation.

1. What is home education?

Asking and providing an answer this question is helpful because there is no statutory definition of the term 'home education'. As before the Guidance makes clear that EHE is not the same as home tuition provided by a local authority, but it now, helpfully, also emphasises that parents 'take on financial responsibility for the cost of doing so', including examination costs (1.4). It notes that a 'local authority may have a policy of assisting with such costs', but this remains at their discretion. In the Further Information of the Guidance it confirms again that parents, 'assume financial responsibility' and that the 16-19 Bursary Fund is 'not payable to young people whose parents elect to home educate' (10.21). But it also provides a list of additional support that a local authority 'may' be able to offer (10.18).

The Guidance also makes clear, as previously, that EHE may be provided by people other than parents, but this time uses the expression 'other settings' indicating the interface of EHE with the broader issue of 'out of school settings'. This is important as it makes clear that even where home education is provided by people other than parents, it falls within the remit of local authorities' responsibilities for home educated children. An important caveat to this is provided in the Further Information of the Guidance where it makes clear that where parents employ tutors 'the suitability in terms of access to children is for parents to ascertain' (10.12). It endorses the practice of some local authorities of assisting parents with DBS checks but makes clear that this is not a legal responsibility for local authorities, beyond duties relating to safeguarding generally which is dealt with later.

The issue is returned to later in the Further Information of the Guidance (10.10). Here the Guidance addresses the question of 'unregistered settings' in more detail. It makes a very clear distinction between part time settings, which it describes as 'genuinely supplementary to home

education', and unregistered settings which provides, 'most if not all the education received by a child'. It makes clear that where the latter meet the criteria for registration as an independent school they are operating illegally and a matter for Ofsted and local authorities. It also makes clear that parents who send their children to such settings, while not themselves acting unlawfully, should be required to be able to demonstrate to local authorities that suitable full time education is being provided: the clear implication is that simply confirming attendance at such a setting will not be adequate.

The Guidance makes specific reference to orthodox Jewish yeshivas and distinguishes them from unregistered independent schools, on the basis, it appears, that they only provide religious education and that secular education is provided at home. At the same time it notes that the question of formal registration of such settings forms part of the new consultation. This is a complex and often politicised issue and the scale of the potential problem has recently been highlighted.[5] The Guidance also refers to madrassahs as an example of legitimate part-time setting with a specific purpose (10.11).

What is clear in relation to whatever setting a child attends, other than a registered school, is that the responsibility lies with local authorities to determine whether or not the education is sufficient, notwithstanding that some settings will also fall within the remit of Ofsted.

Finally of note in this section are the references to 'flexi-schooling'. Previous versions of the guidance have adopted vastly contrasting positions on the issue. The new Guidance confirms that it is a legal option, but one dependent on the agreement of schools and that they are 'under no obligation to agree to such agreements' (1.3). It also makes clear that the responsibility is on parents to provide suitable full-time education, but that in determining this local authorities can take into account 'the element received at school' and that the Guidance consequently 'applies as much to children who are flexi-schooled as it does to others who are educated at home' (1.3).
The issue is returned to later in the Further Information of the Guidance (10.7-8). Here the Guidance helpfully now makes clear to schools who have agreed to a flexischooling arrangement that the time spent out of school should be marked as an 'authorised absence' and not as an 'approved off site activity'. This is important and the Guidance supports this approach by stating explicitly that schools have 'no responsibility for the welfare of the child while he or she is at home' (10.8). While the Guidance states that, 'the department does not propose to institute a new attendance code specific to flexi-schooling', this should not be interpreted as suggesting disapproval of flexi-schooling. This is clear from the explicit reassurance about the impact of flexischooling on Ofsted inspections, as the Guidance notes 'some schools with significant flexi-schooling numbers have had good outcomes from Ofsted inspections' (10.9).

[5] 'Ofsted uncovers 500 suspected illegal schools in England'. *The Guardian* 12/4/19 available at: https://www.theguardian.com/education/2019/apr/12/ofsted-uncovers-500-suspected-illegal-schools-in-england?CMP=Share_iOSApp_Other

2. Reasons for elective home education - why do parents choose to provide it?

As in the previous version, the new Guidance makes clear that there are many reasons why parents might choose to home educate. It adds four possible reasons to the previous list of potential reasons:

- Health reasons, particularly mental health of the child;
- Disputes with a school over the education, special needs or behaviour of the child, in some cases resulting in 'off-rolling' or exclusion
- Familial reasons which have nothing to do with schools or education (eg using older children educated at home as carers)
- As a stop-gap whilst awaiting a place at a school other than the one allocated

It also deletes the following reason from the previous list: 'parents' desire for a closer relationship with their children'.

The new reasons emphasise the growing awareness that the decision to home educate is often neither an informed choice nor a parental preference. The Guidance acknowledges this when it advises that: 'wherever possible, local authorities should encourage parents to discuss an intention to home educate children before putting into effect' (2.3). This may be particularly pertinent in the context of 'off-rolling'. This issue is discussed in more detail in the Further Information section of the Guidance under the heading 'Pressure exerted by schools on parents', where it notes that: 'In such cases it is possible that the parent will be unable to provide proper home education, even if willing to attempt this' (10.6). However where a local authority does not know about a child until he or she has been deregistered it will be difficult to offer prior information about home education as advised above. This supports the case for the formal involvement of local authorities at an earlier stage or the introduction of a 'cooling off period' prior to formal deregistration to enable inter-agency communication. Reflecting the emerging and welcome concern about the issue the Guidance advises that:

> Local authorities should seek to reach agreements through schools forums which discourage pressure on parents to educate children at home, and address this issue directly in discussion with relevant schools. Local authorities should also consider informing Ofsted of schools where off-rolling appears to be happening on a significant scale so that this can be looked into at the school's next inspection (10.6).

Local authorities may be particularly reliant on the involvement of Ofsted in the context of working closely with or attempting to influence academies as opposed to local authority schools.

This section of the Guidance introduces the question of the meaning of 'suitable'. This complex issue is explored in more depth in section 9, but here the emphasis is on adopting a liberal and inclusive approach, stressing the importance for local authorities judging education 'by outcomes, not on the basis that a different way of educating children must be wrong' (2.4).
It also advises local authorities to:

> . . . consider trends in home education in a wider strategic context, for example in identifying shortcomings in local school provision and alternative provision settings, or failures by schools to manage attendance and behaviour properly (2.5)

These are important considerations but it is not clear how this advice should inform or helps the making of decisions about individual cases. Nevertheless it is a helpful acknowledgment that the reasons parents home educate will in some cases be a response to factors that a local authority might be able to influence.

3. The starting point for local authorities

In this section the new Guidance sets out the key statutory provision - Education Act 1997, section 7 - that establishes the right of parents to home educate. The Guidance states, in bold, that 'the responsibility for children's education rests with their parents', and states that 'the current legal framework is not a system for regulating home education *per se* or forcing parents to educate their children in any particular way' (3.5).

At the same time it makes clear that the law requires parents who exercise their right to home educate to provide a child with 'efficient, suitable full-time education' and that the current legal framework is 'a system for identifying and dealing with children who, for any reason and in any circumstances' (3.5), are not receiving this.

In articulating what this means for local authorities, the Guidance now legitimises and in places suggests that they are required to take a proactive role. For example, where aware a child is not attending or registered at school and might be home educated it advises that:

> the local authority's *task* is to find out how he or she is being educated and whether that education satisfies legal requirements (3.1-3, emphasis added).

Similarly while it should not be assumed that a child not attending school is not being suitably educated it advises that the law: ' . . . does *require* the local authority to enquire what education is being provided', and that subject to those enquiries:

> the law may *require* further action . . and the department believes that this is the case for an increasing number of children. Local authorities must take such action where it is required, within the constraints of the law (3.5, emphasis added).

In this section the Guidance also introduces the issue of safeguarding, advising that appropriate action here may be required on the basis of 'the general responsibilities which local authorities have for the well being all children living in their area' (3.5).

In order to comply with the above requirements the Guidance recommends 'as a minimum' various actions, many of which appeared in the previous version, such as having a written policy statement, offering guidance to parents, and regularly reviewing policies so that they reflect current law and are compatible with the guidance. **The latter point will require immediate action by all local authorities to take on board the changes in the Guidance.** In addition the Guidance now recommends setting aside resources necessary to implement its policy effectively and to consider their organisational structures. In both contexts there is an explicit emphasis on the need to implement policies in conjunction with related areas such as welfare, attendance, safeguarding and children missing education. It states explicitly that:

> although parents who educate their children at home sometimes say that home education should be dealt with in isolation, the reality is that it needs a holistic approach to issues of suitability, attendance, welfare and safeguarding' (3.6).

This approach implicitly indicates once again the application of general responsibilities of local authorities to all children in their area to those who are or might be home educated.

Finally in this section the Guidance makes two important points. The first enables local authorities to do more than is required by making clear that, where they wish, and with the support of the DfE, a system of voluntary registration may be established. The second, reinforces once again that proactive action is now expected more than before by making clear that Ofsted's inspection remit under section 136 of the Education and Inspections Act 2006 extends to reviewing how a local authority: 'identifies children who are not receiving suitable education and what steps the local authority takes to deal with that' (3.9), and how it deals with 'vulnerable children' (3.8). The Guidance is careful to make clear that 'home educated children are NOT automatically 'vulnerable' but notes that 'evidence from many local authorities is that the proportion who do is increasing' (3.8, capitals in the original).

The involvement of Ofsted was referred to in the previous version, but the Guidance is both more specific and arguably extends the remit.

4. How do local authorities know that a child is being educated at home?

This is a critical question for local authority professionals working in this area and it is to the credit of the DfE that the Guidance now tackles it head on. The section has two parts; looking at separately children who have never and those who have attended school.

The Guidance makes clear that 'there is no legal duty on parents to inform the local authority that a child is being home educated' and acknowledges that, consequently, 'an authority may be unaware that he or she is being home educated' (4.1).

In addressing this fact the Guidance takes an approach which is substantially different from the previous version; for while previously it advised that the duty under s 463A of the Education Act

1996 did not apply to home educated children it now makes clear that it does, stipulates precisely how, makes clear that it creates a positive duty to act which will be the subject of review by Ofsted (3.9), and refers to the duty in numerous places throughout. The new paragraphs introducing this provision in this section consequently represent a significant change, which will require local authorities to revise their policies. The paragraphs are quoted in full below (note that the underlined sections are in the Guidance).

> 4.2 Identification of children who have never attended school and may be home educated forms a significant element of fulfilling an authority's statutory duty under s.436A of the Education Act 1996 - to make arrangements to enable the authority to establish, so far as it is possible to do so, the identities of children in its area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than at school (for example, at home, or in alternative provision). Until a local authority is satisfied that a home-educated child is receiving a suitable full-time education, then a child being educated at home is potentially in scope of this duty. The department's children missing education statutory guidance for local authorities applies. However, this should not be taken as implying that it is the responsibility of parents under s.436A to 'prove' that education at home is suitable. A proportionate approach needs to be taken.
>
> 4.3 It should be noted that the caveat in s.436A 'so far as it is possible to do so' should not be interpreted as meaning 'so far as the authority finds it convenient or practical to do so'. It means what it says, and the authority should do whatever is actually possible. If the department receives a complaint that a local authority is not doing enough to meet its duty under s.436A, it will consider whether there is sufficient basis for making a direction under s.496 or s.497 of the Education Act 1996 so that outcomes for children in that local authority's area can be improved.

One criticism made of proposals to introduce a system of compulsory registration is that information about the existence and whereabouts of children is available to local authorities from other sources. The Guidance does not address that point, but it helpfully advises that they 'should explore the scope for using agreements with health bodies, general practitioners and other agencies, to increase their knowledge of children who are not attending school' (4.4). As before it also advises about the implications of Children Act 2004 ss 10, 11, but it also advises about the implications of the recent GDPR and the Data Protection Act 2018 (4.4).

In the context of children who have attended school, the Guidance notes that 'fulfilling the s 436A duty in relation to children who may be home educated is easier'. It is noteworthy that the relevance of the provision relating to 'children missing education' is emphasised. In this section the Guidance sets out the requirements and procedures for notifying local authorities about the removal of a child from a school register and updates the previous version by including the more stringent requirements on school under the Education (Pupil Registration) (England)

Regulations 2016/792). Also included in this section is an implicit further acknowledgment of the concern about 'off-rolling' - far more than was included in the draft Guidance in 2018. The Guidance advises here that:

> Ofsted is likely to ask local authorities about withdrawal rates at schools and whether action has been taken to identify patterns and a suitable strategic response. Local authorities are entitled to ask schools whether there is any further information available which would suggest that a child may be now home educated, but a school may genuinely not know the reason for withdrawal. A state-funded school must respond reasonably to any request from the local authority for any information it has about the reasons for withdrawal (4.7)

Finally in this section the Guidance once again reiterates the importance of local authorities sharing and accessing information from other local authorities and NHS and social service departments, subject to GDPR and Data Protection Act 2018 restrictions. And the Guidance makes clear that local authorities 'should' be doing this in order to comply with the statutory guidance on Children Missing Education (4.8-9).

5. Local authorities' responsibilities for children who are, or appear to be, educated at home

This section opens with a clear statement about the proactive duties of local authorities arising from the key provision relating to children missing education:

> The duty under s.436A dealt with above means that local authorities *must* make arrangements to find out so far as possible whether home educated children are receiving suitable full-time education (5.1, emphasis added)

Alongside this unequivocal statement it is worth noting that the following sentence from the previous guidance has been removed: 'Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis' (2007/2013 Guidance, para 2.7). This is a welcome move as it lacked clarity and as the new Guidance makes clear was inaccurate in law.

In advising local authorities what their statutory duties require them to do the emphasis is now on the concept of 'proportionate':

> It is important that the authority's arrangements are proportionate and do not seek to exert more oversight than is actually needed where parents are successfully taking on this task (5.2).

What this careful advice makes clear that while many home educated children are receiving suitable education *some* form of oversight is always needed and required. 'Oversight' might be

considered a softer and more preferable term to the previous term ‘monitoring’ and that reflects a clear preference for cooperative and supportive engagement between parents and local authorities, but at the same time the necessity of it taking place is now clearly emphasised.

Moreover the necessity is legitimised by reference to a statutory duty that was not referred to in the previous guidance:

> Local authorities should be clear that maintaining such oversight is a legitimate part of their overall responsibilities towards the children living in their area (for example as set out in s.13A of the Education Act 1996 shown below) and act accordingly:
> A local authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to
> (a)promoting high standards,
> (b)ensuring fair access to opportunity for education and training, and
> (c)promoting the fulfilment of learning potential by every person to whom this subsection applies.
> In this context, relevant education functions include those under sections 436A to 447 of the Education Act 1996 and the authority should act accordingly (5.2)

While emphasising that local authorities are required by law to maintain oversight over education provided at home, the Guidance leaves it up to local authorities:

> to decide what it sees as necessary and proportionate to assure itself that every child is receiving a suitable education, or action is being taken to secure that outcome (5.3).

As previously it recommends establishing a positive relationship with parents and the importance of local authority staff receiving training about the law. However, while only a recommendation, the Guidance does advise that local authorities should ‘ordinarily’ make contact with parents:

> . . . *on at least an annual basis* so the authority may reasonably inform itself of the current suitability of the education provided. In cases where there were no previous concerns about the education provided and no reason to think that has changed because the parents are continuing to do a good job, such contact would often be very brief (5.4, emphasis added)

In this way, once again, the Guidance articulates the importance of balancing respect for the right of parents to home educate and awareness of the fact that many do so very effectively, alongside a clear recognition of the application to all children of the positive legal duties of local authorities.

6. What should local authorities do when it is not clear that home education is suitable?

This is a crucial section of the Guidance as it addresses a question that is complex in both practice and in law. That the DfE asks this question and tackles it head on reflects the extent to which the Guidance has been drafted in response to real life problems faced by local authorities.

The section starts with clear advice, underlined for emphasis in the Guidance, that there is no legal basis for parents to claim that they are entitled to an initial period during which home education does not meet the required level of suitability. It advises that:

> . . . it would be unrealistic to make a judgement about the suitability of home education provision only a few days after it is started. However, families should be aiming to offer satisfactory home education from the outset, and to have made preparations with that aim in view, as time lost in educating a child is difficult to recover. In such cases, a reasonable timescale should be agreed for the parents to develop their provision . . . (6.2)

This advice may be particularly pertinent to the increasing number of cases where parents make the choice to home educate in circumstances and for reasons not of their own making.

The Guidance once again emphasis the benefits of and preference for making contact through informal enquiries. But it makes clear that this approach is underpinned by law (and again makes reference to the provision relating to 'children missing education):

> An authority's s.436A duty (and that under s.437, see below) forms sufficient basis for informal enquiries. Furthermore, s.436A creates a duty to adopt a system for making such enquiries (6.4)

Informal enquiries do not always work. And in addressing this reality the Guidance adopts an approach very different from the previous version. It states as follows:

> Parents are under no duty to respond to such enquiries, but if a parent does not respond, or responds without providing any information about the child's education, then *it will normally be justifiable for the authority to conclude that the child does not appear to be receiving suitable education and it should not hesitate to do so and take the necessary consequent steps*. This is confirmed by relevant case law (6.5, emphasis added).

This new approach in the Guidance helpfully clarifies the meaning of the expression in section 437(1) of the Education Act 1996, 'if it appears to a local authority that a child of compulsory school age in their area is not receiving suitable education . . .'. This provision, set out in the

Guidance as previously, is the key trigger for commencing legal school attendance proceedings against parents. The approach above reflects a careful reading of the key case, *Phillips v Brown* (1980), which made clear that in interpreting the expression 'if it appears', a local authority:

> has a duty to be alert in order to detect the possibility that those circumstances exists . . . if parents give no information or adopt the course of merely stating that they are discharging their duty without giving any details . . it could very easily conclude that prima facie the parents were in breach of their duty.

The Guidance now makes this point clear and is a welcome revision. The only point to note here is that the Guidance uses the words 'will normally be justifiable' as opposed to could 'very easily', the direct words from the case - used in the draft 2018 guidance, but the inference is the same.

The Guidance reiterates the point a few paragraphs later when it suggests that the provision, read in conjunction with the case law, creates not only a power to commence proceedings but a positive duty to do so:

> Local authorities considering whether they should serve a s.437(1) notice in a specific case should note that current case law means that a refusal by parents to provide any information in response to informal enquiries will in most cases mean that the authority *has a duty to serve a notice* under s.437(1). This is because where no other information suggests that the child is being suitably educated, and where the parents have refused to answer, the only conclusion which an authority can reasonably come to, if it has no information about the home education provision being made, is that the home education does not appear to be suitable (6.10, emphasis added, underlining in the original).

In addition to clarifying the full relevance of the decision in *Phillips v Brown*, the Guidance also refers to a case overlooked previously: *R v Surrey Quarter Sessions Appeals Committee, ex p, Tweedie* [1963] Crim LR 639. This case is cited to support the advice in the Guidance that while parents are under no obligation to agree to requests by a local authority to see a child, 'a refusal to allow a visit can in some circumstances justify' the serving of a school attendance notice (6.6). The Guidance does not elaborate on what those circumstances might be; this remains an issue for the discretion of a local authority. The Guidance makes clear however that seeing a child for the purposes of establishing the suitability of education is distinct from a request based on safeguarding concerns.

The Guidance emphasises that in complying with their statutory duties under s 437(1) that they need to be satisfied that suitable education is being provided and that this requires the provision of evidence. In an important and new paragraph the Guidance elaborates what is required:

> . . . an authority should not dismiss information provided by parents simply because it is not in a particular form preferred by the authority (eg, a report by a qualified teacher). On

> the other hand the information provided by parents should demonstrate that the education actually being provided is suitable and address issues such as progression expected and (unless the home education has only just started) achieved. It should not be simply a statement of intent about what will be provided, or a description of the pedagogical approach taken – this would not enable the authority to reach a legitimate conclusion that a suitable education is actually being provided. This is often a key point in separating out families which are genuinely providing a suitable education at home from those who are not, because the latter often cannot demonstrate satisfactory content or measurement of progress (6.12, underlining in the original).

It is important to emphasise here that where a local authority is satisfied and it is clear that suitable education is being provided, a light touch system of oversight is advised. But the clear concern here is to counter the assertions that a local authority has no powers or duties to act once a parent has informed them they are home educating.

The Guidance provides advice about the application processes and the distinction between School Attendance Notices under section 437(1) and School Attendance Orders under section 437(3). In relation to the latter, the Guidance provides helpful advice about the requirement that an Order can only be served if, 'in the opinion of the local authority it is expedient that the child should attend school' and to actually name a school. These provisions predate the introduction of Academies and the Guidance implicitly acknowledges the lack of control of local authorities by adding the following note:

> If the school in question is an academy, the authority should seek its agreement to that school being named in the order. If an academy is then named in an order which is made, and the academy does not agree with this, a direction may be sought from the Secretary of State (6.11)

The Guidance also helpfully provides the following examples of where, notwithstanding the unsuitability of the home education, school attendance might not be expedient:

> a. if the child is within a few weeks of ceasing to be of compulsory school age (especially as there may be a delay in enforcement through the courts);
> b. if the child has physical, medical or educational needs leading to extreme vulnerability in a school setting - and the local authority should then consider alternatives such as tuition provided by the authority itself;
> c. the parent is actively working with the authority to improve the home education and seems likely to achieve suitability within a very short time (6.14).

That these and other examples might reflect a significant proportion of cases is a reminder that school attendance orders are a blunt legal tool. They also assume that school places are available and no advice is provided as to what action to take where this is not the case.

The Guidance does, however, provide much helpful and practical advice about what happens after a school attendance order is served, including the important issue of costs, the option of an Education Supervision Order as a possible alternative to a prosecution, and the interface with parenting orders under the Crime and Disorder Act 1988 s 8 (6.15-21).

Finally here there is an implicit recognition that local authorities might have at times been reluctant to use their existing powers under the school attendance provisions and a welcome invitation from the DfE for support and dialogue about what remains a difficult area of decision making:

> The department will be happy to support local authorities to test the boundaries of current case law through discussion with them of potentially difficult home education cases which they are contemplating bringing before the courts, on the basis that the public interest means that local authorities should take this approach in suitable circumstances (6.22)

7. Safeguarding: the interface with home education

The relationship between safeguarding and home education is complex in law and a sensitive issue. The Guidance acknowledges this when it notes that:

> There is no proven correlation between home education and safeguarding risk. In some serious cases of neglect or abuse in recent years, the child concerned has been home educated but that has not usually been a causative factor and the child has normally been known anyway to the relevant local authority . . . Some parents who educate at home believe that by doing so, they are safeguarding the child from risk in the school system (eg through serious bullying) (7.3).

However, and as previously, it makes clear that the general duty under s 175 of the Education ACt 2002 which requires authorities to make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting children's welfare, applies to home education (7.2). While the previous guidance noted that this provision did not extend their functions, the new Guidance adopts a more positive approach and in particular advises that:

> . . . it is important to bear in mind that unsuitable or inadequate education can also impair a child's intellectual, emotional, social or behavioural development, and may therefore bring child protection duties into play . . . . (7.1)

Defining, with precision, the distinction between education and safeguarding is complex. Article 29 of the UN Conventions on the Rights of the Child states that education shall be 'directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential' and concerns about the curriculum in the context of 'radicalisation' have

recently been categorised as a safeguarding issue[6]. Both these examples demonstrate the inherent malleability of the terms.

The Guidance reinforces the view that education is a key aspect of welfare - and consequently safeguarding - when it advises that, 'if the lack of suitable education appears likely to impair a child's development' a local authority should be ready, 'to fully exercise their safeguarding powers and duties to protect the child's well-being, *which includes their suitable education*' (7.4, emphasis added). It then advises local authorities, in order to 'reduce the likelihood of disputes' to:

> . . . ensure that their published home education policies, and their staff, clearly state the circumstances where safeguarding action is likely to be appropriate in cases where a child is not or may not be receiving suitable education (7.4)

What those circumstances are will be difficult to describe, but the Guidance, in its introduction, appears to suggest that one circumstance will be when in effect all other methods to securing suitable education have failed. Indeed it emphasises this as the only paragraph singled out in bold print in the introduction in the following:

> Where necessary - because it is evident that a child is simply not receiving suitable education at home and the use of school attendance powers is not achieving a change in that situation - the local authority should be ready to use its safeguarding powers as explained in this guidance. The overriding objective in these cases is to ensure that the child's development is protected from significant harm (p4, bold in the original)

In what might be controversial the Guidance elaborates on this statement in section 7 by advising - and emphasising by underlining - the following:

> A failure to provide suitable education is capable of satisfying the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm. 'Harm' can include the impairment of health or development, which means physical, intellectual, emotional, social or behavioural development, so the provision of unsuitable education clearly can amount to this (7.5, underlining in the original).

Every case will be different, but the Guidance advises that a 'relatively clear cut' example of where the 'significant harm' threshold has been met is 'where a child was being provided with

[6] See D Monk"'Out of School Education' and Radicalisation: Home Education Revisited" (2016) *Education Law Journal* 1: 17-31; D Monk: 'Problematising Home Education: Challenging "Parental Rights" and "Socialisation"' (2004) *Legal Studies* 24(4): 568-598 at 586.

no education at all for months' (7.6). It also, wisely, advises that in pursuing this course a local authority seks expert advice from teachers or educational psychologists (7.6).

A critical question is what should a local authority do if they have not received adequate information to determine whether the threshold has been met. The Guidance advises that the starting point here is an investigation under section 47 of the Children Act 1989. The threshold for this action is 'a reasonable cause to suspect that significant harm' and the Guidance suggests in an important paragraph that:

> Reasonable cause can include the lack of any substantive information about a child's education, so if the 'if it appears' test in s.437(1) is satisfied, then there will usually be reasonable cause in terms of s.47. These enquiries can include taking steps to gain access to the child (7.8).

This advice coheres with the judgment in the case of *R (SD and PD) v Essex County Council* [2012] CO/6935/2012, where a home education team was found to be justified in making a referral to a local authority welfare service on the basis of having not received any response to enquiries about the education provided, even where, after investigation, it was established to be suitable with no other welfare concerns. The case is not cited but it reinforces the authority of local authorities to make referrals to social services in such circumstances.

While the Guidance raises the spectre of safeguarding proceedings arising from home education enquiries, it is important to highlight that it also makes clear that:

> It must be emphasised that resorting to the use of care orders should only arise very rarely, in the most egregious cases of a failure to provide a suitable education, and a persistent refusal by parents to co-operate with the local authority. By demonstrating a determination to use last resort powers when necessary, the likelihood of having to deploy them is generally greatly reduced (7.14).

Moreover, the Guidance also advises about the appropriateness of Education Supervision Orders under section 36 of the Children Act 1989 and emphasises the fact that they do not depend on the 'significant harm' threshold being met (7.10-7.12). These are under-used orders, and there is little scholarship about them, so the emphasis placed on them in the Guidance is constructive.

While the interface with home education is sensitive, in highlighting the appropriateness of at times identifying a child's lack of suitable education as a developmental welfare issue, enables a more holistic approach to be taken. For the measures available through safeguarding processes can be more supportive and less draconian than prosecuting parents through education law's school attendance measures. In particular they be more appropriate for the increasing number of cases where the decision by parents to home educate is a last resort response to a variety of factors beyond their control.

8. Home-educated children with special educational needs (SEN)

As previously the Guidance provides a separate section dealing with SEN. This is essential as some different legal provisions apply, in particular those in the Children and Families Act 2014, alongside the general provisions and in practice, for both parents and local authorities and, of course, the children involved, it can be a particularly fraught area where the law, especially school attendance provisions, are a blunt and potentially inappropriate tool. The Guidance acknowledges this when it advises that while the school attendance procedures are the same:

> . . . the consideration of suitability may well be more complex and need to draw on a wider variety of information, for example educational psychologist reports. . . . . Parents who have withdrawn a child from a setting they regarded as unsatisfactory may co-operate more willingly with this process if the authority is willing to explore options which are different in nature from the previous setting (8.9).

In the context of awareness of the potential inappropriateness of school attendance proceedings the Guidance also makes clear that when a home-educated child's EHC plan names a school it is 'not lawful' for the school to add the child's name to its admission register without the parent's agreement and that local authorities should not advise schools to do this and to 'ensure that both schools and their own staff know that' (8.10). The Guidance advises that the appropriate action is as follows:

> It is up to the child's parent whether to arrange for the child to be registered as a pupil at the school, and if the parent does not, the local authority should then consider whether a s.437(1) notice, and in due course a school attendance order, should be issued (8.10).

The new Guidance confirms, as previously, that the right to home educate applies equally where a child has a SEN, regardless of whether there is a statement, an EHC plan or neither. It also confirms that the general provisions about home education apply, once again referencing section 436A as well as section 437 of the Education Act 1996.

It emphasises that where a local authority arranges and provides private tuition or other forms of education to a child in his or her home, which it notes that it has a right to do so under section 61 of the Children and Families Act 2014, that that is not EHE (8.5, 8.8). Where the education is provided by the parents and is EHE it makes the important point, which can sometimes be overlooked in cases of SEN, that:

> Local authorities should not assume that because the provision being made by parents is different from that which was being made or would have been made in school, the provision is necessarily unsuitable (8.7)

The Guidance also includes advice about the implications of section 22 of the Children and Families Act 2014, which imposes a duty on local authorities to try to identify all children in their

area who have SEN. It makes clear that this applies to home educated children and in effect creates an additional duty complementary to that in section 436A of the Education Act 1996.

Section 19 of the Children and Families Act 2014 imposes a duty on local authorities to have regard to the views, wishes and feelings of the child, as well as the parents, when exercising its SEN functions. This is referred to in the Guidance (8.5) and is an important distinction from EHE generally, although the issue of listening to children is returned to later (10.2) and discussed below.

The new Guidance provides helpful advice about costs, and the place of the Dedicated Schools Grant, a particularly critical issue here and makes important distinctions between what a local authority has the power to provide, as opposed to a duty to do so (8.8).

9. What do the s.7 requirements mean?

Having established that the current law establishes a clear duty on local authorities to have oversight over EHE and to take steps where they are not able to satisfy themselves that 'suitable' education is being provided, in the final section the Guidance turns to the question: what does 'suitable' actually mean?

The new Guidance helpfully addresses the issue head on, in contrast to previously where the issue was addressed in five separate paragraphs in different sections.

That said, the issue is inherently complex, for as the Guidance rightly states, 'there is no definition of a 'suitable' education in English statute law', and 'a court will reach a view . . based on the particular circumstances of each child and the education provided' (9.3).

While the Guidance acknowledges that 'clearly a local authority must have a basis on which to reach decisions' (9.4), in the response to the 2018 consultation the DfE noted that:

> . . . although a significant number of respondents called for more detailed rules on suitability. The government does not believe that this would be in the interests of children, or home educators, who by and large prefer flexibility in the ways education can be provided; or local authorities, which *should be free to develop their own expertise and approach to this issue* (4.10, pp 9-10, emphasis added).

For this reason the new 2019 Consultation on reform of the law does not address this issue and the same point is made explicitly in the Guidance:

> The department does not believe that it is in the interests of home educated children, parents or local authorities for there to be detailed centralised guidance on what constitutes suitability. This issue should be viewed on a spectrum, and although there

> will be clear conclusions to be drawn at either end of that spectrum, each case must rest on a balance of relevant factors depending on the circumstances of each child (9.4h).

Enabling local authorities to exercise discretion and 'develop their own expertise' might result in disparity of practice, but it is perhaps worth remembering that is in keeping with the original legislative framework and intent under the 1944 Education Act.

That said the Guidance does provide advice about the 'light' in which 'the term "suitable" should be seen (9.4) and while the DfE has made clear that it does not favour legislative action here, it may however be an area where it is willing to support local authorities seeking to resolve the issue in the courts (6.22).

The Guidance makes clear that while Article 2 of the Protocol of the European Convention on Human Rights requires states to respect parental convictions, this 'does not mean that parents are the sole arbiters of what suitable education means' (9.3) and later adds that: 'Whatever the views of the parents, the key focus for the authority should be on suitability for the child in question' (9.4h). This is correct as it is well established that the 'right to education' in that article takes precedence over the reference to respecting parental views and the domestic legislation makes clear that it is local authorities and, if there is a dispute, the courts whose decision is final. At the same time it makes clear that:

> local authorities should not set rigid criteria for suitability which have the effect of forcing parents to undertake education in particular ways, for example in terms of the pattern of a typical day, subjects to be followed and so on (9.4h).

Reinforcing this point, the Guidance, as previously, makes clear that EHE does not need to follow the National Curriculum or the standards required by academies or independent schools. But it adds this time that: 'if the home education does consist of one or more of those, then that would constitute strong evidence that it was "suitable"' (9.4b). It also makes clear in a helpful positive way that local authorities:

> . . . may specify requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable, whilst accepting that these must be applied in relation to the individual child's ability and aptitudes (9.4d).

While making clear that the focus on the individual child means that care needs to be taken in the use of 'national norms for children' in evaluating progress (9.4e), the clear statement here about literacy and numeracy is important as many would consider these essential skills for adulthood, regardless of a child's background. The clarity here helps provide a positive basis for applying the reference made in the Guidance, as previously, to the much cited judgment in *R v Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust* (April 1985, unreported) that while a sufficient education can 'primarily equip a child for life within a smaller community within this country it should not foreclose the child's options in later

life to adopt some other mode of living' (9.4a). The Guidance this time adds that this means that a child should be 'capable of living on an autonomous basis so far as he or she chooses to do so' (9.4a).

Autonomy is a complex theoretical concept, but in practice it is hard to see how 'suitability' can provide this without oversight of and establishing requirements in literacy and numeracy. And alongside the *Talmud Torah* case the Guidance also cites another earlier case: *Harrison & Harrison v Stevenson* (1981), which held that:

> We should not, in the ordinary case, regard a system of education as suitable for <u>any</u> child capable of learning such skills, if it failed to instill in the child the ability to read, write to cope with arithmetical problems (emphasis added).

This supports the references in the Guidance to literacy and numeracy, and arguably goes further by suggesting that in law a local authority should, rather than may, specify these requirements.

While the focus in the above is on the child in question, the Guidance goes further and indicates that 'suitability' also has a public interest dimension[7] and through reference to safeguarding duties effectively updates the approach in the *Talmud Torah* case to incorporate concerns about 'radicalisation'. It states that:

> local authorities should interpret 'suitable' in the light of their general duties, especially that in s.13 of the Education Act 1996 relating *to the development of their community*[8] and that in s.175 of the Education Act 2002 requiring education functions are exercised with a view to safeguarding and promoting the welfare of children. Whilst these duties are very broadly drawn, it will be evident that if home education provided by a family taught children values or behaviour which was in conflict with 'Fundamental British Values' as defined in government guidance (for example by seeking to promote terrorism, or advocating violence towards people on the basis of their race, religion or sex), then it would not be in accordance with the authority's general duties to regard that education as being 'suitable'. However, there is no requirement on parents to actively promote the Fundamental British Values in the same way as there is for schools (9.4c).

This is a new approach, distinct from the previous Guidance. The relationship between 'radicalisation' and 'welfare' is complex and controversial and in the context of child law proceedings,, as opposed to education law, a body of case law and commentary exists that local authorities would be mindful to consider.

---

[7] These have been held to be legitimate by the European Court of Human Rights in *Konrad v Germany* (2006) ECHR app 35504/03, which is is now cited in the Guidance.

[8] This provision, not included previously, refers to the 'spiritual, moral, mental and physical development *of the community'.*

Without saying it, the Guidance above suggests that forms of education that would be considered 'unsuitable' are, on the basis of the examples above, only those which could give rise to criminal law proceedings and that it considers that this threshold complies with the duties on local authorities under section 26(1) of the Counter-Terrorism and Security Act 2015. That, combined with the important distinction between parents and schools about positive obligations, suggests that a high threshold exists before education at home in this context could be considered 'unsuitable'. The distinction here, while not cited, is supported by legal decisions from the European Court of Human Rights that have held that the legitimacy of the state to make controversial subjects, such as sex education, compulsory in schools is in part based on the possibility of parents being able to choose to home educate.[9]

This is an area where difficult judgments will be required by local authorities and overlaps with concerns about out of school settings. It is an area where, once again, the DfE's willingness to support local authority cases to 'test the boundaries of the current law' may be particularly pertinent (6.22).

The Guidance for the first time addresses and refers to 'socialisation'. It advises that:

> factors such as very marked isolation from a child's peers can indicate possible unsuitability. Suitable education is not simply a matter of academic learning but should also involve socialisation (9.4f)

This might prove both controversial and difficult to apply. In some cases it will be the negative forms of 'socialisation' in schools, such as bullying, that is problematic and the reason to home educate. That education is more than 'academic learning' is supported by legal sources noted above, that extend its meaning to incorporate 'development' more generally. But reassurance for parents is provided here by the reference to 'very marked isolation'; this is important as it makes clear that isolation, per se, should not of itself be seen as a problem. It is however not clear what terms such as 'isolation' and, even less so, 'socialisation' mean; for example it is not clear if socialisation with adults other than parents or older children is relevant; arguably they could and should be. Moreover, as some forms of isolation are practiced in schools and have been held to be lawful it would clearly be unacceptable to impose a higher threshold on home educators.[10]

Again emphasising the relevance of broader welfare based concerns in determining 'suitability', the Guidance makes clear that environmental, health and safety factors may be relevant factors (9.4g).

---

[9] See, *Kjeldsen v Denmark* (1976) App No 5095/71 (A/23).

[10] See, *R (on the application of L) v Governors of J School* [2003] UKHL 9, although a recent challenge to a school's practice here is currently be challenged in the courts: https://www.theguardian.com/education/2019/apr/03/isolation-of-children-at-academies-prompts-legal-action

Finally in this section the Guidance provides uncontroversial definitions of both 'efficient' and 'fulltime' (9.7-9). In the context of the latter, despite the lack of legal clarity and noting the importance of flexibility it advises that:

> local authorities *should be enabled by parents* to assess the overall time devoted to home education of a child on the basis of the number of hours per week, and weeks per year so that this information can be set alongside that relating to suitability to ensure that the home education meets the requirements of section 7 (9.9, emphasis added).

The use of the would 'should' here coheres with general tone in the new Guidance and the emphasis on the positive duties of local authorities.

Further Information

The Guidance concludes with a final section addressing a variety of issues. Those addressing 'Pressure exerted on schools by parents', Flexi-schooling', 'Unregistered settings', 'Safeguarding - use of tutors by parents providing home education' and 'Support for home educators' have been commented on above.

Children's rights and views
That the Guidance addresses this issue head on is a welcome change from previously as is the explicit reference here to Article 12 of the UN Convention on the Rights of the Child, which, as the Guidance advises: 'requires states to provide a right for children to express their views and for due weight to be given to those views, in accordance with the age and maturity of the child' (10.1). The limited application of this to education law generally supports the advice in the Guidance that, in effect, as children have no right to be heard in determining which school they attend the same applies to a parental decision to home educate. But the Guidance makes a distinction between a child's views providing evidence of the lack of suitability of education and where the views merely express a view not to be home educated. While the former can inform a local authorities assessment of suitability, in the latter, if there are no safeguarding concerns, the Guidance advises that local authorities should:

> seek to discuss the reasons for this with the parents and encourage them to consider whether home education is ultimately likely to be successful if their child is unhappy to be educated in this way (10.2).

There is significant space for the exercise of discretion by local authorities here.

What is significant is that the Guidance does not suggest that local authorities must or need to talk to children who are being home educated (unless the child has a SEN, (8.5)). Moreover no change to this is considered in the new consultation. This is an accurate statement of domestic law, although in schools the voice of the child is encouraged through the increasing practice of

school councils. Education law as a whole is out of step with child law provisions and its compatibility with Article 29 is a matter of debate. The Guidance could have gone further and advised that where a child, in particular an older child, wishes to attend school, the child should be advised that they are entitled, in theory, to make an application for a specific issue order under the Children Act 1989.

It remains the case that 'access to the child' can be requested only, but where a local authority considers for whatever reasons, including not having spoken to the child if relevant, that it is unable to determine whether or not the education provided is sufficient it should feel entitled to commence legal proceedings or refer the matter to social services.

Disputes between parents

While beyond the remit of education law, the Guidance addresses the situation where parents disagree about how a child should be educated and, in this context, notes, that the issue can be the subject of a specific issues order under the Children Act 1989. Such applications are a matter of private family law and a court is required to determine what it considers to be in the best interest of the child: a test which is different from the question in education law as to whether or not home education provided is 'suitable'. However the Guidance suggests that there is a potential role here for local authorities in attempting:

> to help parents reach a common view on what is in their child's best interests, drawing on support from those who know the child - such as staff at any school that he or she attends or has previously attended - although such mediation may not always be possible (10.4).

Where a child is a 'looked after child' and the local authority is acting as corporate parents, the position is different and questions or disputes about a child's education not simply a matter of private family law. But the Guidance advises that:

> It is legally possible for a looked-after child to be educated at home (for example by foster carers) if the local authority as corporate parent decides this is appropriate after discussion with the carers (10.23).

Acknowledging diversity

Under this heading the Guidance reiterates the importance of respecting the fact that EHE will 'reflect a diversity of approaches', including not following 'a traditional curriculum and using a fixed timetable that keeps to school hours and terms' and that 'one approach is not necessarily any more efficient or effective than another'. It also emphasises, implicitly, that the question of suitability relates to the individual child by advising that 'children learn in different ways and at different times and speeds' (10.14).

It links these general observations to issues of equal treatment by advising that:

> parents from all educational, social, linguistic, religious and ethnic backgrounds successfully educate children outside the school setting and these factors should not in themselves raise a concern about the suitability of the education being provided (10.15).

The Guidance, unlike previously, helpfully and correctly makes clear that there is statutory basis to this in its advice that:

> In discharging their responsibilities in relation to home education, local authorities should bear in mind that they are subject to the Public Sector Equality Duty contained in s.149 of the Equality Act 2010, and should ensure that their policy and practice in relation to home education is consistent with that duty. For example, a local authority should not assume that home education is any less likely to be successful when carried out by people with a particular protected characteristic; but equally the fact that a family has particular protected characteristics should not deter the local authority from taking action to secure a suitable education for a child who is not receiving suitable education at home (10.16).

Gypsy, Roma, and Traveller Children

Relevant to the discussion of diversity, the Guidance repeats the advice previously provided about these children: emphasising the need for understanding and sensitivity, but also that 'these families who are educating their children at home are treated in the same way as any other families in that position (10.22).