

Name/Name of Organisation/other body (*optional*)

HEdNI (Home Education, Northern Ireland)
--

Please select the category that best describes you as a respondent:

(Please tick one box only)

Parent/Guardian	
Pupil	
Member of School Staff (Teaching)	
Member of School Staff (Non-Teaching)	
Governor (individual)	
Board of Governors (Please insert name of school) _____	
Education/Sectoral Support	
Political Representative	
Local Government Representative	
General Public	
Other (please specify) Home Education Voluntary Organisation	X

3. Having read the Draft Policy for Elective Home Education, I consider that the draft policy:	Agree	Uncertain	Disagree	Not applicable
3.1 Provides relevant information about the Board's responsibility for Elective Home Education, clearly and concisely			X	
3.2 Outlines the procedure to be followed should parents decide to home educate their children			X	
3.3 Provides parents with a greater understanding of their role/responsibilities when deciding to home educate their children			X	
3.4 Provides parents with a greater understanding of the Board's statutory role/responsibilities for Elective Home Education			X	
3.5 Clarifies the role of the Education Welfare Service/Officer in relation to children who are home educated			X	
3.6 Clarifies the role of the School/School Principal in relation to children who are home educated			X	
3.7 Clarifies the role of other agencies in relation to children who are home educated			X	
3.8 Highlights the importance of establishing arrangements for safeguarding children who are home educated			X	

Cont. 3. Having read the Draft Policy for Elective Home Education, I consider that the draft policy:	Agree	Uncertain	Disagree	Not applicable
3.9 Provides information and clarifies the role of the ‘Named Officer’ as appointed by the Board			X	
3.10 Provides appropriate information about the arrangements for and frequency of monitoring			X	
3.11 Highlights the minimum standards that will be used for monitoring purposes			X	
3.12 Signposts resources/information that may be useful for parents who are home educating			X	
3.13 Provides information about the process to be followed to facilitate children with identified Special Educational Needs			X	
3.14 Provides parents with sufficient information to contact the named Board Officer			X	
3.15 Overall, I consider that this draft policy provides me with a clear understanding of provision for Elective Home Education for children within the Board’s area			X	

Please use the space below to comment further:

Comments are appended to the end of this document

4. Equality Consideration

Under Section 75 of the Northern Ireland Act 1998 all public bodies are obliged to consider the implications of any decisions on nine different groupings before decisions are implemented.

The two duties within this Equality legislation include promoting equality of opportunity and promoting good relations between all communities.

The equality of opportunity duty requires that the Boards shall, in carrying out all their functions, powers and duties, have due regard to the need to promote equality of opportunity:

1. Between persons of different religious belief.
2. Between persons of different political opinion.
3. Between persons of different racial groups.
4. Between persons of different age.
5. Between persons of different marital status.
6. Between persons of different sexual orientation.
7. Between men and women generally.
8. Between persons with a disability and persons without.
9. Between persons with dependants and persons without.

The Good Relations Duty requires that the Boards shall, without prejudice to their equality obligations, have regard to the desirability of promoting good relations:

1. Between persons of different religious belief.
2. Between persons of different political opinions.
3. Between persons of different racial groups.

In light of these obligations do you consider that review of provision in this area will impact positively or negatively on either Equality of Opportunity or the Promotion of Good Relations in any way?

Section 75 Category	Positive	Negative	Don't Know
Religious Belief		X	
Political Opinion		X	
Racial Group		X	
Age		X	
Marital Status		X	
Sexual Orientation		X	
Gender		X	
Disability		X	
Dependants		X	

If you ticked any of the above boxes please clarify your reason:

In making a lawful choice home educators open themselves up to unfair treatment. Any other minority characteristics they may **possess** tend to be highlighted as problems and worsen their treatment. For example home educating families have been flagged as an educational or welfare problem due to their religion, or lack of it, their age if they are unusually young or old for parenthood or their disability. The adversarial tone of this policy actively encourages the officers to find fault, which will exacerbate this problem.

Thank you for completing this survey. Your privacy is very important to us and we have taken every step to ensure your confidentiality and the security of your data. We will not at any time, release your personal data to third parties.

HEdNI (*Home Education Northern Ireland*)
Response to the Consultation on Elective Home
Education in Northern Ireland

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1) Introduction

This is a response from HEdNI to all five Education and Library Boards. HEdNI is an information portal and organisational space for Home Educators in Northern Ireland. HEdNI has no mandate to act on behalf of any of its members. This response has been drafted by a committee and published to interested parties for comments, but it does not claim to represent the views of all of the individuals affiliated with HEdNI.

The questions on this proforma cannot be reasonably answered given the serious errors of law that pervade the draft. It is impossible to 'clarify' any of the procedures or roles listed, if the information is given is legally inaccurate and informed by a prejudicial view of home education and home educating families.

To be clear: Elective Home Education is a legally permissible option, it is not a cause for either educational or welfare concern. Where there *are* educational or welfare concerns the appropriate duties and powers exist in law to investigate and address them.

This response covers three main areas -

A) The formulation of the policy. This policy has been drafted without sufficient preparation, professionalism or rigour. Basic legal principles have been disregarded, no research has been presented, important stakeholders have not been consulted, there are no costings and scant evidence of legal advice. This is an ill-conceived solution to an unidentified and unproven problem. In spite of the emphasis on children's rights and opinions within the draft, young people have not been given a proper opportunity to engage with the consultation.

B) The problems with the policy itself - crucially that it is beyond the legal powers of the boards, and takes an adversarial view of the relationship between parents and children.

C) The current situation and the reasons for the current lack of trust – the legal powers and duties of the Boards are routinely misrepresented, social services may be employed as an 'enforcement arm' and yet the data suggests no issues relating to home education. We also provide some recommendations for building a better relationship.

This response is very detailed as we feel that it is important to make sure to the best of our ability that no aspect is left unaddressed. We hope that it will serve as a reference and collated source of objections to this policy and any future schemes of this sort. Appendices at the end provide additional information and references.

1.1) Authors

The authors have each also submitted a personal response to their local Board. This response should be considered separately.

Sarah Dickinson - Consultation Response Coordinator and home educator

Maria Hanley - Political Liaison and home educator

Iain Johnston - Research Manager and home educator

Mairi Rivers - Communications Co-ordinator and home educator

Edward Underwood - Finance Manager and home educator

2) Formulation of the policy

This draft policy does not conform to principles of good policy making. Stakeholders were not consulted before drafting, and few were contacted afterwards. The draft fails to acknowledge or incorporate the experiences of related jurisdictions, quotes outdated legislation and relies on an inaccurate legal interpretation. It contains no research, costings, impact assessment or criteria for success. Young people did not have sufficient opportunity to make their voices heard and the whole process has been confused and opaque; apparently even to the Boards.

In A Practical Guide to Policy Making in Northern Ireland published by the Office of the First Minister and Deputy First Minister (OFMDFM) the following advice is given relating to evidence and research:

“The advice and decisions of policy makers are based upon the best available evidence from a wide range of sources; all key stakeholders are involved at an early stage and through the policy's development. All relevant evidence, including that from specialists, is available in an accessible and meaningful form to policy-makers. Key points of an evidence- based approach to policy-making include:

reviews existing research; commissions new research; consults relevant experts and/or uses internal and external consultants; and considers a range of properly costed and appraised options.”

The consultation document presented comprises only the Draft Policy without further detail. In spite of guidelines issued by the Office of the First Minister the draft policy and subsequent consultation have failed to:

- review existing research or present new evidence
- demonstrate any input from key stakeholders
- refer to examples of good practice inside or outside Northern Ireland
- take into account how other jurisdictions address the issue or any research undertaken (in particular England and Wales whose legislation shares the wording and intent of the Northern Irish Order)
- show the problem which is being addressed
- properly engage with those affected, particularly children and young people
- define criteria for success

- assess a range of costed alternatives
- provide an impact assessment
- provide necessary detail on operational elements such as the forms used
- clarify the scope and application of the proposed policy, apparently even to those drafting it

Prior to drawing up the policy the NEELB and SEELB acknowledge that no formal research was carried out. (FOI on 26th April) The BELB disagrees and cites policies in the South of Ireland and Birmingham City Council's Home Education Policy. It would appear that the draft under consultation resembles Birmingham's policy from some years ago. Birmingham County Council has been variously condemned by Ofsted and sued by relatives of Khyra Ishaq. The policy referenced has been dumped by the authority themselves, and replaced (in consultation with home educators) with one which is much improved.

In a separate FOI on 26th April all five ELBs acknowledged that no Stakeholders were consulted prior to drawing up the policy. This goes against the advice of the OFMDFM and standard good practice.

We find it surprising that the ELBs would even consider writing this policy without first consulting with the key stakeholders who the policy will most affect. Indeed Sarah Dickinson (HEdNI) was in contact with Ray Gilbert at the NEELB in September 2013 in relation to the writing of this policy long before this draft was published. She offered advice on the relevant legislative framework and recommended that those writing the policy engaged with home educators in a constructive way. It is clear that this advice was ignored. Education Otherwise is the largest Home Education charity and pressure group in the U.K. and should perhaps be the first port of call for researching home education, but they were not contacted. The list of those who should have been contacted and were not is lengthy, a serious oversight that HEdNI has attempted to rectify. However none of the home education bodies we have managed to contact has had the full period to research and consider, and there are certainly many who have not been given sufficient opportunity to respond.

As well as ensuring that policy is developed in a way which is consistent with the Programme for Government, it is important to take account of developments elsewhere - for example in other regions of the UK where similar policy strategic aims and priorities along with research might inform action in Northern Ireland and prevent costly duplication of effort. The Lancashire Elective Home Education

Policy¹ is generally considered to be an example of good practice - while not perfect it could be a great starting point.

The Belfast Board acknowledged the relevance of the English case law and guidance in a response to an FOI on the 27th May 2014:

"I enclose a response to your question : What is the Board's definition of a suitable education and what is the Board's criteria for establishing same for EHE ?

The responsibility for a child's education rests with his or her parents. While "suitable" education is not defined in the legislation we would concur with other educational bodies that a suitable education would be one that prepares and equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so. This definition is outlined in more detail in the guidelines for local authorities in England in regard to Home Education. The board would expect any child who is being home educated to access as a minimum, literacy and numeracy, to have opportunities to experience socialising with peers and to engage in physical activity suitable to their age, aptitude and ability and any special educational needs they may have.

To consider whether an educational programme is suitable, the board asks for a copy of the home education programme to be provided by the parent on a voluntary basis, and will also visit the home and the child on an annual basis - again parents facilitate this on a voluntary basis. On request the board may recommend some useful materials or websites for parents who are home educating or may offer guidance on aspects of learning."

This not only references the findings of *R v Secretary of State for Education and Science, ex parte Talmud Torah Machzeikei Hadass School Trust, 1985* but also directly quotes English Elective Home Education Guidelines for Local Authorities. It is a shame that their reading of the guidance and case law did not make a clear impact on the formulation of the draft, even though the Boards seem happy to quote excerpts in its defence.

¹ <https://tinyurl.com/lancsHE>

Are the Boards of the opinion that parents in Northern Ireland are less trustworthy than those in England? If so then they must provide properly reviewed research to support the need for this policy, and its effectiveness, in order to pass the necessary primary legislation required. No evidence has been produced to support the necessity for a proactive approach to the monitoring of home education, nor to support the effectiveness of the proposed scheme.

There has been a notable lack of engagement from the Boards during this consultation. In a written answer (ACQ 33619/11-15 - Jo-Anne Dobson MLA) the Minister of Education states:

“I have made clear that I expect the Boards to ensure engagement with as wide a range of stakeholders as possible including young people and their families as part of that consultation”

The Consultation Proforma states:

"Boards are mindful of the accessibility issues faced by some who may wish to provide feedback about this draft Elective Home Education Policy, and will upon request; make all associated documentation available, in different languages and formats as appropriate."

However a very limited list of stakeholders was contacted, and in answer to this FOI request:

“3. On the Consultation Strategy, four stakeholders are listed “Key Stakeholders – eg NICCY, CLC, HEdNI, SENAC”. The use of ‘e.g.’ implies there are more. Please could you provide me with the full list of these Key Stakeholders.

Response:

All schools and all parents, who are registered as educating at home, have been consulted. The four stakeholders named under Section 6 were provided with information through the lead Board, NEELB. However details of the consultation process are available on line through the Board website; all contributions to this consultation are welcome.”

FOI response Liz Fairclough BELB027/05/14

Other interested parties, such as Education Otherwise, are apparently expected to monitor the Board’s websites for such developments. According to our informal enquiries, it seems that even the schools who were listed as consultees and are presumably easily contacted by the Boards, were not all contacted.

The Minister of Education has stated several times that he wishes this consultation to be open and transparent, and to take account of the views of young people - but engagement with young people has been largely theoretical. The Consultation Strategy states:

“The Board recognises the importance of obtaining the views of children and young people. Consultation methods which are age appropriate will be used with the permission of parents.”

To our knowledge, one focus group was conducted for young people, and no age-appropriate materials have been produced for their use. Normal practice in such a consultation, impacting children and young people and seeking their response, would be to produce a Simple English version of the consultation pack.

Jayne Millar of the NEELB informed us that:

“There is not a child/young person’s version of the draft policy available. This was something that was given due consideration and it was determined that the content would be most appropriately explained in age appropriate terms during the face to face consultations with children and young people. We would be delighted to receive submissions from children and young people in addition to views collated as part of the Board’s direct engagement with the children/young people.”

This is discrimination on the grounds of disability as well as age; access to focus group meetings cannot be a barrier to engagement in the consultation. We don’t believe it would be considered acceptable to say to adults that the policy is too complicated to explain in writing, but there will be an opportunity to meet with somebody who has no knowledge of it and hear their explanation.

A close reading of the current policies and procedures of the five Boards, alongside the current Draft, makes it clear that the Draft owes much to the BELB’s 2005 policy – sharing not only most of the procedures and legal interpretation, but also significant wording and even duplicating that document’s copying-errors (in Schedule 13) and misquoted legislation. It seems that a particular view of the Boards legal powers and duties was formed by Education Officers within the BELB, this has then been repeated often enough between the Boards that it has accumulated a sort of authority. Thus the policy appears to refer primarily to its own antecedents for justification, legal authority and evidence.

There are no criteria offered for judging the success or failure of this policy, and no indication of the costs of implementation. This is a serious oversight given the high projected costs of a comparable scheme proposed in England in 2010.

The draft policy document is incomplete without the crucial forms (mentioned in the appendix) for use with home educating families. The forms are not merely administrative but form a crucial part of the policy. Enquiries have produced a statement that the forms are not yet finalised and cannot be produced, which speaks to the unfinished and ill-defined nature of the scheme. Draft forms should have been included with the draft policy, otherwise no full response is possible.

The crucial EHE1 and EHE2 forms apparently do not even exist in draft form:

"The construct of these forms, which have not yet been created, will be informed by the consultation process for Elective Home Education."

Liz Fairclough email 23/05/14

The method by which the assessments will be structured and recorded is an integral part of the policy. The pre-existing policies of the Boards acknowledge this and commonly include the forms as did the early draft (appendix 4 of this document).

This appears to be a policy with no particular aim in mind, and no way to tell if it has achieved anything for whatever it turns out to cost.

2.1) Confusion over authorship and accountability

The eventual function of this policy within each Board appears to be as yet undecided. According to email correspondence with Carol Johnston, Corporate Development Officer, NEELB (01/05/14):

"no information is as yet available as to if or how the *draft* policy may be amended by individual Boards until the consultation period has closed and all responses have been considered.

Should the proposed Education and Skills Authority (ESA) be established at a future date, it would be a matter for that new Authority to reconcile any differences that there may be in existing policy in this area."

Various Boards have repeatedly insisted that the consultations are separate, but interestingly they have done so using the same paragraph which appears in emails from all five Boards:

“This policy, presently in draft format is an ELB policy which each individual ELB will administer. It is not a single policy in that each ELB is a separate accountable authority and each Board is responsible for its own policy and as such is seeking to consult accordingly. However, the Boards are seeking to conduct consultation on this draft policy in a consistent manner across all ELBs. “

The Department of Education seems to take the opposite view, and describes this consultation as seeking a:

“common process through which they can effectively discharge the responsibilities that legislation places upon them...”

Letter from Anne Tohill, DENI, to HEdNI 30/05/14

If the consultations are separate then the identical responses to Freedom of Information Requests and informal enquiries are surprising. Certainly it seems that there is not enough separation to maintain the integrity of each Board’s individual considerations.

Without a clear understanding of the scope of this policy - local or regional, temporary (until the launch of the body which replaces them) or permanent - it is not possible to fully discuss its effect or operation.

- Would registrations under one scheme be transferable to another board on moving house, or would different criteria apply?
- Could the Boards be taking a different view of their legal duties? If so would they consider that other Boards are failing in theirs, or acting ultra vires (beyond their legal powers)?

If the policies are to be separate then they should be considered by each board on their merits, if they are linked then they should be conducted as one consultation in order to promote transparency, share resources and prevent the five-way duplication of effort.

The BELB has described the NEELB as the ‘lead board’ in an FOI response

“The four stakeholders named under Section 6 were provided with information through the lead Board, NEELB.”

FOI response Liz Fairclough BELB 27/05/14

Whereas the NEELB claims that

“There is no lead Board for this consultation exercise.”

Email from Carol Johnston NEELB 29/05/14

This suggests at the very least a confusion as to the scope of the different Boards' responsibilities and the effect of their consultations. The Minister in answer to an oral question on the 2nd June 2014 indicated that the NEELB at least initiated the process:

"I understand that the process came about as a result of legal advice given to the North Eastern Education and Library Board, which then proposed consultation on guidance. The other boards, which now seek to work in greater cooperation with one another, also believed that it was the right time to consult on the matter. "

However, despite the Minister's strong implication that the Department has not been involved a recent FOI response from BELB gives details of meetings between department officials in which they appear to be involved in shaping and creating the policy:

"... noted that DE is seeking some clarification from the ELBs on current practice in relation to Elective Home Education (EHE). DE is aware that the Boards have been working on a joint Draft Home Education Policy/Guidance Document in preparation for the future establishment of the Education and Skills Authority (ESA)."

And

"A possible issue which was noted related to possible future legal challenge from children who had been educated at home who believe they may have been denied an education was discussed in light of a recent similar case."

Meeting with ELBs and DE to Discuss Current Procedures/Issues in relation to Elective Home Education (EHE) 24/10/13, full text in Appendix 6 of this document.

This legal advice, in the absence of all other supporting materials, appears to be the sole justification and basis of this draft policy. While we acknowledge the importance of the principle of confidentiality of legal counsel, this principle cannot be used as a smokescreen to prevent effective public scrutiny. The date and import of the legal advice on which the entire policy hangs must be produced in the interests of open government.

In the absence of meaningful engagement from the Boards, answers to crucial questions and essential elements of the consultation document, this consultation and therefore our response to it is necessarily incomplete.

A brief comparison with the recent consultation on Area Based Planning (ABP) is interesting. While affecting a smaller group the consultation on Elective Home Education (EHE) is no less important to those involved. There are clear differences but both impact children across Northern Ireland, and both involve a co-ordinated consultation process managed within each Board. For that reason it is perhaps illuminating to glance briefly at the differing approaches.

The ABP consultation was sparked by the Minister and subject to the Department's terms of reference that referred to a viability audit, formal intervention and issues to be addressed *before* consultation. The Education Committee was briefed. The consultation period lasted over 14 weeks and was the subject of various press releases, an online response facility and website, awareness raising in stakeholder groups and the production of age-appropriate materials for school children to respond.

On the other hand, the EHE consultation appears to have no terms of reference at all, no research or prior assessment and to have happened without reference to the Department or the Education Committee. The consultation period was under 9 weeks over election time and exam season, was conducted entirely on paper and by email and not obvious even on the Board websites (though described in the consultation strategy as an "On-line Consultation"!). The consultation was not promoted in the press in any way and did not include a facility for young people to respond in an age appropriate way (apart from a sole young person's focus group which took place within a single Board).

3) The policy itself

3.1) Ultra Vires, beyond the legal powers of the Boards

3.1.1) The Education and Libraries (NI) Order 1986

The draft policy asserts that:

[p6] "(v) Boards have a statutory duty under Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986 to ensure that children in their area are receiving efficient full time education appropriate to his or her age, ability and aptitude, and to any special educational needs that he or she may have, and that parents fulfil their duty in this regard"

but Schedule 13 says no such thing.

The Department of Education in meetings with the Boards in October 2013 (see the full minutes, appendix 6 of this document) also used the term ‘ensure’, which appears nowhere in the relevant legislation. Department Officials also appear to have asked for opinions on whether legislation should be changed. The reasoning seems circular: the Boards and the Department think that the legislation says they have to ‘ensure’ an education, but the legislation doesn’t say ‘ensure’ so they can’t take the action they want, therefore they consider changing the legislation...:

“DE noted that current legislation places a duty on Boards to ensure that every child of compulsory school age has access to a suitable education ie Article 45 (1) of the Education and Libraries (NI) Order 1986 and Schedule 13. DE advised that they are keen to hear the ELBs views on the effectiveness of existing legislation as it relates to home education. “

Schedule 13 of the Education and Libraries Northern Ireland Order 1986 SI 1986/594.

“If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by article 45(1), the board shall serve on the parent a notice requiring him, within such period not being less than fourteen days from the service of the notice, to satisfy the board that the child is, by regular attendance or otherwise, receiving efficient full-time education suitable”...

The Boards have no duty to ‘ensure’ that children receive an education, the word appears nowhere in the relevant legislation, and yet that word continually comes up in relation to the Board’s duties – from Ministerial answers to conversations with the Board.

The scope of the Board’s legal duties is defined by the crucial phrase: “**If it appears**” (not ‘where it appears’ which is from the unamended version of the Order, wrongly quoted in the appendices of the draft). All the duties and powers of the ELB in this regard stem from an *appearance of failure* to perform parental duties. If there is no such appearance then there is no duty of any sort imposed on the ELB. Certainly they have no duty to undertake fishing expeditions, and they have no duty to ‘ensure’ anything.

HEdNI’s has sought external legal advice, this states that:

“Section 3(v) defines that boards have a statutory duty under schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 (“the 1986 Order”), to ensure that children in the board’s area are receiving full-time education suitable to their age, aptitude, ability, any special educational needs that they have, and that parents fulfil their duty in this regard. However, schedule 13 to the 1986 Order definitely does not impose a duty upon a board as described in the draft policy. Schedule 13 empowers boards to enforce the duty that parents owe to their children under article 45 of the same legislation. Article 45 imposes a duty on parents to cause their children to receive efficient full-time education suitable to their age, ability, aptitude, and any special educational needs that they may have, either by regular school attendance or otherwise. Therefore, **the duty being described as the board’s duty in this section of the draft policy, is in fact a parental duty and nothing whatsoever to do with the board.** The parental duty only becomes the board’s business if it appears to the board that it is not being honoured by the parents; “

(Emphasis in bold ours)

There has been some mention in focus groups of Article 44 as conferring some powers. Though it has not been made explicit it appears that the Boards believe that while parents do have a certain amount of freedom to choose their children’s education the Boards have a duty to check whether children are in fact receiving ‘efficient instruction’.

“Pupils to be educated in accordance with wishes of their parents

44. In the exercise and performance of all powers and duties conferred or imposed on them by the Education Orders, the Department and boards shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils shall be educated in accordance with the wishes of their parents. “

Article 44 is concerned with a general principle, rather than a duty. So it's something the Boards should pay attention to, but they're not obliged to carry it out in the same way as a rule or command. Quite the opposite; Article 44 is about protecting the state from parents’ demands (for example for certain types of school) while enshrining a certain amount of parental influence, rather than imposing

a duty on the state to act. It is equivalent to section 9 of the Education Act 1996 in England and Wales, which as education lawyer David Wolfe² points out:

...“doesn’t force the local authority or special needs tribunal to give parents what they want, merely requires them to have regard to the general principle of “accordance with parents’ wishes.”

In England, the Parliamentary Under Secretary of State for Schools made reference to The Belgian Linguistics case³ in rejecting calls for a free-standing “right to education”, explaining that it might have perverse or unintended consequences particularly with regard to extending rights to minority forms of schooling which the state would then be obliged to fund. The full text of the letter can be found on the “Dare to Know” blog⁴.

Furthermore, Article 44 mentions pupil rather than child, and home educated children are not pupils. The definition of the word pupil under the Act is “when used without qualification, means a person of any age for whom education is provided under the Education Orders”. In *the matter of an application by Grainne Martin for Judicial Review* the judge describes Article 44:

“Who is a ‘pupil’?”

Article 2 (2) of the 1986 Order defines ‘pupil’ as “a person of any age for whom education is provided under this Order”. Article 5 describes the stages and purposes of the statutory system of education. Article 6 imposes on Boards of education the duty to secure the provision of primary and secondary education in their areas. It is clear that an independent school such as the Bunscoil does not come within these provisions.

The applicant did not seek to argue otherwise. It follows that anyone who attends an independent school such as the Bunscoil is not a pupil within the meaning of Article 2 (2) of the Order since they are not being provided with education under the 1986 Order.”

*Courts NI website*⁵

So on this interpretation Article 44 cannot relate to home education because education is not provided under the Order for home educated children.

² <http://davidwolfe.org.uk/wordpress/archives/280>

³ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57525>

⁴ <http://daretoknowblog.blogspot.co.uk/2006/10/lord-adonis-on-fourfold-foundation.html>

⁵ <http://tinyurl.com/gmartinjr>

To interpret the Boards' duties as properly expressed by this policy would be to disregard primary legislation as well as the case law, related jurisprudence, experience and ministerial guidance of England where the wording of the relevant legislation is the same. Graham Stuart, in his capacity as the chairman of the All Party Parliamentary Group on Home Education, wrote to John O'Dowd, Northern Ireland Minister of Education, stating that:

“The situation is analogous to that in England and Wales, where local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis. Local authorities should intervene if they are alerted to a reason for doing so - but are not obliged, or indeed permitted, pre-emptively to seek reasons to intervene.”

Graham Stuart 8th May 2014

3.1.2) Other related jurisdictions

A response from the BELB to an FOI request on the 27th May 2014 (previously referenced), acknowledges the relevance both of English case law and guidance, and they state that in the course of their research:

“Board officers considered EHE policies used in other areas including the South of Ireland, Guidelines for LEAs from the Department for Children and Families (CS&F) and Birmingham City Council”

FOI response - see Appendix 1 of this response

In response to a query on which Birmingham policy they had looked at:

“Thank you for your interest in contributing to the consultation on the draft Elective Home Education Policy. Unfortunately we have no record of an actual date for the version considered. However it was during the academic year 2012/13”

"The Birmingham LEA policy would not have been recorded, but discussed. It would have been accessed through officer internet research and used in general terms to inform discussion. We, therefore, do not hold meeting notes in relation to this."

It must be said that it is hard to see what influence the guidelines or the recently much improved policy from Birmingham has had on this policy, unless they refer to an older policy already abandoned by the Birmingham Authority itself. It should be noted that the controversy surrounding Birmingham County Council should, at the very least, give rise to a certain caution in citing them as a supporting source.

The Irish home education law, on the other hand, is crucially underpinned by a Constitutional Right to home educate. Without creating such a fundamental right in Northern Irish Law no part of the Irish scheme can simply be transposed to this jurisdiction, even if it were desirable to do so.

3.1.3) The Children (NI) Order 1995

Only the Education and Libraries Act, and the United Nations Convention on the Rights of the Child are mentioned under 'Legislative Background'. However, according to correspondence with the NEELB the policy is required to

“ensure that the ELB discharges its statutory obligation in respect of the young person in accordance with existing legislative duty, which includes:

- The Children (Northern Ireland) Order 1995 Part II”

Email from Carol Johnston, Corporate Development Officer, NEELB 30/04/14

“Regrettably I am unable to identify for you the particular sections of the Children’s (NI) Order 1995 as all references relate to the Children’s (NI) Order 1995 generally.”

Follow-up email 06/05/14

We would assert that specific legal power must be cited when demanding entry to the home and access to children, rather than a general reference to an Order comprising 185 articles – none of which are directly applicable to the subject of this draft policy according to our own legal advice.

The ELBs themselves expressed doubt about whether this order is applicable in meetings with the Department in October 2013 (the full text of minutes can be found in appendix 6):

“There was some discussion around the Children’s Order 1995, and whether all home educated children are covered by this legislation.”

And yet we are told it is a cornerstone of the policy.

We are forced to speculate on how this legislation might be considered to give extraordinary rights of access to the home and home educated children. Paragraphs 17 and 18 refer to the duty to safeguard:

“18. (1) It shall be the general duty of every authority (in addition to the other duties imposed by this Part)—

(a) to safeguard and promote the welfare of children within its area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of personal social services appropriate to those children's needs."

Again the duties of the authority do not apply to all children. The duty is to "safeguard and promote the welfare of children within its area **who are in need**" (our emphasis in bold). In any event, the duty imposed by virtue of article 18 of the Children Order (in relation to children in need) definitely does not apply to ELBs. It applies only to "an authority", defined in article 2(2) of the Children Order as (either) a Health and Social Services Board, or a Health and Social Care Trust. An Education and Library Board is neither of these.

According to paragraph 17:

"For the purposes of this Part a child shall be taken to be in need if —

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled"

If a child is not in need according to the definition above then no duties or powers are conferred by this legislation.

It is offensive and unsupported by law or evidence to assert that children who are home educated are prima facie 'in need' according to this definition. Further, if simply being in the care of parents is taken to trigger welfare concerns, it follows that the Board would be required to inspect and monitor all households with children not in school, including those under compulsory school age or school children during the holidays.

Paragraph 3 of the Children (NI) Order is referenced in the draft document

[p5.] “(iii) The Principal will notify the school education welfare officer (EWO) of the parents intention, on form EHE including, where appropriate, the wishes and feelings of the child as per Part II, Article 3 Children (NI) Order.”

This paragraph in the draft appears to apply Article 3 only to the policy’s section on deregistration.

Article 3 states:

“(1) Where a court determines any question with respect to —

(a) the upbringing of a child;”...

“(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to —

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that —

(a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(aa) the court is considering whether to make an order under Article 7; or

(b) the court is considering whether to make, vary or discharge an order under Part V.”

The Children Order applies only to the courts and surely has no bearing on de-registration. Though it may be reasonable that the ELB should consider these factors when deciding whether to bring a case, the Order does not place any duty on ELBs and the Boards should not, as a matter of course, be

preparing a case for a School Attendance Order on every home educated child and certainly not before home education even begins. If the link between deregistration and Article 3 is more than a drafting error then it appears to be an attempt to restrict deregistration and impose the judgement of the Board at that time, which is unacceptable. Home Education is a legally sanctioned option and not a valid concern.

The correct order of action by an ELB seeking to make enquiries/ take action is:

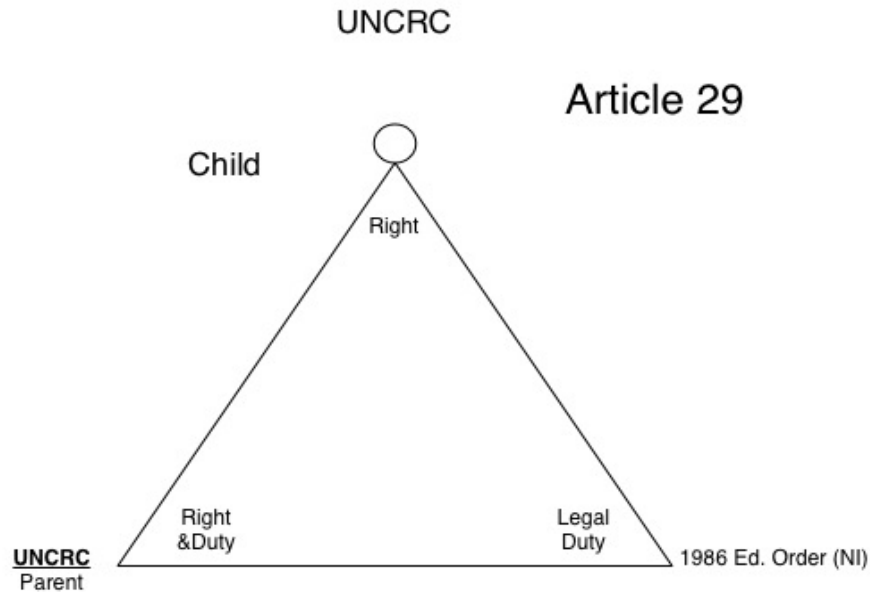
1. assumption of compliance with law
2. concerns raised (external force)
3. informal procedures
4. statutory procedures
5. court proceedings.

To apply statutory procedure, before proceedings occur, is to ask for evidence of innocence from those about whom there are no concerns. This makes a mockery of the presumption of innocence.

3.1.4) The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child was quoted to the children's focus group in Antrim 28/05/14 (NEELB) as the answer to the question 'why has all of this come about?'

Why has all of this come about?



How?

boards must assure themselves that all child has suitable educ...

(graphic copied by a parent with permission from the whiteboard after the meeting)

However the Convention is, as noted in the draft, not legally binding, containing no controlling language or mandates. Adrian L. James (a legal researcher in England writing principally about family law) makes a point that applies equally to Northern Ireland:

“UNCRC is not yet part of English law (nor are there any indications that it might become so in the foreseeable future) and there is therefore no statutory requirement requiring children's views to be ascertained and taken into account”.

James, A (2008) Children, The UNCRC, and Family Law in England and Wales in Family Court Review

Volume 46, Issue 1, pages 53–64

It cannot create powers that conflict with existing law. It is notable with regard to the intent of the legislator that the government do not consider these rights of such importance to as to incorporate them into UK law.

In any case the convention does not impose duties on individuals (such as parents) and:

“the intention of Article 12 is to encourage adults to listen to the opinions of children and involve them in decision-making. It gives a participatory rather than a decision-making role in matters affecting them. This is to be given due weight that is appropriate to the child’s age and maturity.”

*Children’s Rights Alliance*⁶

There is nothing in the Convention to suggest that their opinion must in every case be directly ascertained by government officials or that it is to be pursued at the expense of the other rights it enshrines.

“The Convention:

- explicitly recognises the family as the “fundamental group of society and the natural environment for the growth and wellbeing of...children” (Preamble)
- acknowledges that parents have the “primary responsibility” for their child’s upbringing and development (Article 18)
- affirms that the family itself requires protection and assistance to fulfil its responsibilities and places a duty on States to support parents in rearing their children (Article 18)
- states that children have a right to know and be cared for by their parents (Article 7)
- explicitly discourages the separation of children from their families (Article 9)
- provides that where children are separated from their parents, the State has an obligation to try to ensure contact between them is maintained in accordance with the best interests of the child (Article 9.3)
- provides for the principle of evolving capacity which means that the State must **respect the rights of parents to exercise the rights of young children on their behalf and that this responsibility is gradually transferred to the child as their capacity develops**. It also provides for parents to guide their children in the exercise of their rights (Article 5)”

Children’s Rights Alliance as above (emphasis in bold ours)

It is clear that the Convention does not require or permit the State to take the place of the parent in taking decisions about the best interests (educational or otherwise) of their child, but rather emphasises the role of parents and family. The moral duty to take children’s wishes into account is acknowledged by parents, what they struggle with is the idea that this is well served by compulsory interviews by strangers and routine overruling of parental judgement.

⁶ http://www.childrensrights.ie/sites/default/files/information_sheets/files/QandAtheUNCRC.pdf

The fact the UK is a signatory of the UNCRC does not place a positive duty to create laws in compliance with the UNCRC, rather it confers a duty to NOT make law and policy that is violation of the convention. Yet the requirement for home visits and assessment falsely presumes that the child would desire to have a stranger enter their home and ask intrusive questions about their learning, social, and emotional life. A general duty to consider the child's point of view does not translate into a power to compel the child to be interviewed or produce an opinion in public.

The late Katerina Tomsevski, former UN Special Rapporteur on the Right to Education, had this to say:

“The objective of getting all school-aged children to school and keeping them there till they attain the minimum defined in compulsory education is routinely used in the sector of education, but this objective does not necessarily conform to human rights requirements. In a country where all school-aged children are in school, free of charge, for the full duration of compulsory education, the right to education may be denied or violated. **The core human rights standards for education include respect of freedom. The respect of parents' freedom to educate their children according to their vision of what education should be has been part of international human rights standards since their very emergence.**”

*Office of the High Commissioner for Human Rights*⁷ (Emphasis in bold ours)

Finally we wonder why, given that the opinion of the child is of such value, the Boards did not make significant efforts to ascertain the views of children on this draft. One focus group does not make up for a lack of the simple English version of the policy and response proforma to enable them to understand and respond.

3.1.5) Legal advice to the Boards

According to the Minister of Education in Ministerial Answers on the 2nd June 2014 (AQO 6217/11-15):

“...the process came about as a result of legal advice given to the North Eastern Education and Library Board, which then proposed consultation on guidance. “

⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2185&LangID=E>

This legal advice has not been produced, and given that none of the legislation quoted or used in support of the draft appears to say what the draft claims that it says, we must ask whether proper legal advice was obtained on the duties and powers of the boards. We acknowledge the importance of confidentiality of legal counsel, but this principle cannot be used as a smokescreen to prevent the scrutiny of public bodies in the creation of policy. This legal advice has been the only justification offered to date for the proposed scheme, so the date and import of the advice must be released.

We are advised by Carol Johnston, Corporate Development Officer, NEELB that

“the nature of the advice received from the Board’s Joint Legal Service, at this stage in the policy development process re the draft Elective Home Education Policy, relates to the accuracy of the legislation referred to and the terms used (see part 1 Legislative Background, Appendix 2 and 3) only. Any feedback to the draft policy from the Joint Legal Service in respect of accuracy of legislation referred to and the terms used was received as part of the normal electronic document updating tracking process”

Email 06/05/14

It appears from this, and from a failure to reassure us otherwise despite repeated queries, that no legal advice was taken on the *interpretation* of legislation. Merely quoting the law accurately is insufficient (and the draft does not even quote accurately) – the interpretation is crucial. Any full opinion on the matter should surely have taken into account the case law and history of the linked jurisdictions of England and Wales, where the terminology used has been well defined.

Further, it seems that the limited legal oversight has been ineffectual, or at least is now many years out of date. The authors of the policy have quoted the original of Schedule 13, rather than the current version as amended in 2007. The Department of Education Circulars are also quoted in various forms: 2013/13 on page 6 and 2010/07 on page 7 (each circular supersedes the last). If the draft does not even quote the correct versions of the law, one must doubt the professionalism and expertise of the entire document.

3.2) Lacks evidentiary basis

In response to a Freedom of Information Request the NEELB states:

“With regard to research, the Board has not engaged any formal research programmes in this area. Policy development is however informed by the experience of the Board to date in the management of the area of elective home education.”

FOI response 07/05/14

Anecdotal evidence is no proper basis for policy.

Oddly, given that there is a single policy, the different Boards claim different research underlies it (see appendix 1 of this response). The Belfast Board officers apparently

“considered EHE policies used in other areas including the South of Ireland, Guidelines for LEAs from the Department for Children and Families (CS&F) and Birmingham City Council”

The English Elective Home Education Guidelines for Local Authorities have clearly had little effect on the draft. The Irish law on home education lacks coherence outside the Irish legal system, where the law is read in the context of the constitutional right to home educate. Birmingham is an example of bad practice condemned by OFSTED and is currently being sued by the siblings of a child who they knew was in need, but failed to protect.

Birmingham home education policy has changed considerably for the better in the last several years, and the Northern Irish draft most closely resembles the older versions. It would be interesting to know what version BELB considered informative, and why they would wish to hold to the older scheme when Birmingham has abandoned it.

No report has been published and no evidence has been provided to show that there is a problem to be addressed, that this policy will be effective at addressing it or how its effectiveness will be evaluated. No stakeholders were contacted prior to the draft of the policy, or during its formulation. There is not any indication that the experiences of England and Wales have been taken into account, despite the information provided by the Belfast Board – similar proposals in each area have been met with a formidable body of evidence gathered by home educators and subsequently abandoned.

Such solutions as are offered here should not be lightly adopted – there are serious human rights issues with demanding access to private homes, and disrupting the ability of parents to meet their legal duties.

Home educating parents have made efforts to gather data using Freedom of Information requests. It is clear that there is no reason from the information currently held to consider that home education presents a clear problem.

3.3) Potentially expensive, and entirely uncosted

In response to a Freedom of Information Request:

“How much is the total cost to date for drawing up the draft policy including cost of the upcoming Consultations?

What is the current estimated total cost to complete and finalise the policy?

What is the estimated yearly cost of implementing and policing the policy?”

The Board stated:

“In response to the first two points outlined in your request for the costs of policy development we do not hold records in this regard. Policy formulation is a core activity of all public sector bodies in the support of our delivery of services to the public and therefore costs for this activity are not separately recorded... **There is no specific budget allocated to EHE**”

FOI response 07/08/14 (*Emphasis in bold ours*)

Yearly visits (at a minimum), safeguarding assessments, monitoring and intensive involvement in home education will take money and time.

No response was received with regard to the projected costs of implementation, so we can only assume that no estimation was made. It is irresponsible to institute such a scheme without proper costing.

During the Badman Review of Elective Home Education in England (2009/10) the Minister was asked about the projected costs of a comparable scheme:

“**Ms Diana R. Johnson:** We estimate, subject to discussion with the Local Government Association, that the overall additional costs for implementing the registration and monitoring elements of the Badman Review recommendations will be £21.65 million in the first year with additional ongoing annual costs of £9.78 million.

We estimate that an additional support package for home educated children will cost a further £21 million in the first year rising to £22 million in subsequent years. This is based on an estimated cohort of 25,000 home educated children who all seek additional support. We know that this estimate may be too low and we will adjust our funding commitments as local authorities get more clarity over the numbers of home educated children and the services they may seek.

The 28 recommendations are wide ranging but the financial costs fall into the following broad categories:

<i>Estimated cost</i>	<i>First Year £</i>	<i>Ongoing £</i>
Registration and deregistering from schools	14,000,000	2,500,000
Monitoring	7,000,000	7,000,000
Training	350,000	280,000
Evaluation	300,000	0
Support package	21,000,000	22,000,000
Total	42,650,000	31,780,000

“

*UK Parliament Website*⁸

While it would not be possible to make a direct comparison, we are unconvinced that the Northern Irish Education and Library Boards should invest proportionally significant funds in providing an unmeasurable solution to an undemonstrated problem.

In order to implement this policy, with its significant administrative burden, the Boards would either have to

- divert funds from areas in which they actually have legal duties such as schools, or
- place the burden on families and children, leading to long waits for crucial decisions.

⁸ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091103/text/91103w0038.htm>

This money would be better spent on improving schools and the educational welfare of registered school children, and administrative delays cannot be allowed to prevent parents from meeting their legal obligations to their children.

Recent reports suggest that there is work to be done in schools, before addressing areas outside the legal competence of the Boards. Mr Kieran Donnelly, the Comptroller and Auditor General, on the 25th February 2014, issued "Improving Pupil Attendance : Follow-Up Report". Mr Donnelly said it is:

...“disturbing that around 20,000 pupils missed more than 15 per cent of their lessons in 2011-12. This equates to almost 6 weeks of lost learning for such pupils. Less than 4,000 of these pupils were referred to the Education and Welfare Service by schools despite their high levels of non-attendance.”

The motivation for the draft policy is entirely unknown, but *if* it was in any way linked to concerns about truancy we would once again reiterate that home education is a legally sanctioned choice and entirely distinct from that problem. Concerns about regular school attendance should be addressed with initiatives aimed at registered school children.

3.4) Opens the ELBs up to Liability

Attendees of the Youth Focus Group run by the NEELB were told that this policy was drafted in response to the Northern Board being sued by a home educated child, who had not received a suitable education. This we know to be untrue, or at least no case ever reached court. FOI data shows that no case has been brought against any Board regarding their duties under Schedule 13 in the last five years, nor would such a case be successful since the duty to educate is given to *parents* under Section 45 of the Education Order. As the Boards have no duty to educate or ensure an education they cannot be sued for a failure in this regard. Nor are they responsible for any child's physical, social or emotional health.

It is however clear that the primary motivation here is self-protection, rather than the often touted 'rights of children'. In meetings between the Department of Education and the Boards:

“The importance of monitoring and assessment of home educated children by the Boards was noted given the additional protection it provides to the Boards (especially in light of the recent case taken against the NEELB.)”

BELB Minutes 24/10/13, Appendix 6

Let us be absolutely clear that the Boards cannot currently be sued for a parent failing in their parental duty. The duty and therefore the liability of the Boards in the regard is very limited; they cannot be sued for failing to 'ensure' a suitable education, they have no duty to do so.

Our legal advice states:

"...section 5 of the draft policy seeks to impose minimum standards which are superfluous to the law. The parental duty under article 45 of the 1986 Order extends only to the provision of "efficient full time education suitable to age, ability, aptitude and any special educational needs a child has"."

The ELBs have attempted to take upon themselves the additional responsibility for ensuring that all children meet very high welfare requirements, and for ensuring that all children receive a certain level of education. They assume responsibility for ensuring that parents meet "The child's physical, social, emotional health and wellbeing needs" (p7, 5.) and that all children are "receiving efficient full time education appropriate to his or her age, ability and aptitude, and to any special educational needs that he or she may have" (p6, v).

If the Boards successfully take upon themselves the duty to ensure that children are educated they open themselves up to liability, not only for failures by home educating parents but also for schools who do not provide a suitable education tailored to the age, ability and aptitude of every child in their care.

In cases where an ELB takes out a School Attendance Order on a child for whom school education would not be appropriate (a gifted child working several years ahead of their age peers for example) they would by their action compel the parents to breach the requirements of the Education Order, as the parents would then be failing in their duty to cause their child to receive efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs he may have. By taking such steps the ELB would become party to any case brought against the parents to address the Section 45 failure, as they would have been the cause of it.

Since these responsibilities clearly do not spring from Schedule 13 of the Education and Libraries Northern Ireland Order 1986, they must (if they were in any way valid) derive from other unspecified statutory duties. They cannot be restricted to home educated children and must apply universally.

- Will a child who has been adequately educated, in or out of school, be able to sue the ELB for failing to notice that their social needs were not adequately met?
- Will the homes of registered school children be inspected to insure that such learning (e.g. homework) as takes place outside school occurs in a safe environment?
- Will children educated within the school system have a claim against the ELBs if they feel that they did not receive an education appropriate to their age, ability and aptitude, and to any special educational needs that they may have?
- Will the officers given these duties (with all the legal confusion, influx of previously unknown home educating families, time pressures and heavy administrative burden) be able to meet the standards so boldly set out?

A further potential liability exists with regards to the names of parents of a home educated child being recorded in relation to a welfare concern, purely because they home educate. This may impact on their career and income if they are a teacher, registered child-minder or are employed at any other job requiring background checks – and they would be able to claim against the Board if their employment was affected.

3.5) Conflation of welfare and education

It is offensive to assume that a particular group is more liable to pose a danger to their children than the general population without solid evidence. The draft policy is littered with references to ‘welfare’ and ‘safeguarding’, where it should address the specific duties under Section 13, which refers only to education. The tone is adversarial and threatening, this tone runs through the Draft and is clearly reflected in the minutes of meetings where the issues were discussed and decided.

The BELB minutes 24/10/13 (appendix 6 of this document) refer to unregistered home educated children as “missing children”

“The Boards also noted, however, that they consider that it is likely that there are **very low numbers of “unknown” children who are being educated at home. Boards advised that previously a committee had been set up to consider these “missing children.”**

DE enquired whether there is a potential risk for these children in terms of abuse or neglect which may need to be addressed or whether responsibility in such cases rests in the first instance with DHSSPS.”

The use of this term is both pejorative and meaningless. The descriptive term used immediately creates an impression that home educated children, who are known to GPs, friends, family, sports coaches, music teachers, librarians and more, are beyond all support and protection unless they are also known to the ELB. A body with no duty or powers regarding welfare.

No reason is offered why these children should be considered at risk, no evidence or justification is given. There is no legal requirement to make contact with the Boards and choosing not to do so is no grounds for any action, and yet Julie Humphries of the Department of Education suggested that they should access the information through welfare channels. Essentially an intention to use welfare where education powers won't work:

“She suggested it may be helpful to engage with DHSSPS on elective home education, in the absence of any legal requirement on parents to provide notification that they are home educating their children.”

BELB Minutes 24/10/13 Appendix 6 of this document

This is problematic on many levels.

- The Education and Libraries Order 1986 contains no duties or powers relating to welfare, on parents *or* on the Boards.
- The welfare rationale for the draft is entirely unstated, and no evidence is referred to in the document. It is very poor policy making to work on unstated and unsupported assumptions.
- It is unacceptable to claim that a particular group is more likely to pose a danger to their children rather than investigating concerns on a case-by-case basis.
- A conflict is assumed between parental choice and children's rights.
- Most importantly the conflation of education and welfare is liable to cause confusion, unnecessary referrals and increased overheads – putting children who are genuinely in need at greater risk of being overlooked.

The issue of safeguarding is referred to in order to justify the monitoring or investigation of Elective Home Education. However, this is not a function which pertains to elective home education (i.e. it is not a prescribed or statutory procedure) other than where there is existing evidence for concern - in which case referrals should be made to the appropriate agency.

Throughout the document parents and family homes are treated primarily as potential risks, as fundamentally dangerous to children, while the ELB is assumed not only to be essentially reliable and trustworthy but also to be trusted and liked by each individual child. The requirement for home visits and assessment falsely presumes that the child would desire to have a stranger enter their home and ask intrusive questions about their learning, social, and emotional life.

No system of checks or balances is introduced to protect families from unnecessary intrusion and interference. No acknowledgment is made of the dangers of such interference, or of the dangers (such as bullying, or academic failure) that home educated children may have already faced in schools. The presumption should be that children are safest with their primary caregiver, and that the Boards must concentrate their efforts on improving the safety and education of children in schools.

Education and Welfare are separate areas. If an officer enters a home on educational grounds they should assess the education and the education only. An existing duty requires any welfare concerns which arise to be passed on to Social Services but without welfare concerns there is no justification for a welfare assessment.

An assumption is made in the draft policy that home education necessarily raises welfare concerns and child protection services should automatically become involved:

[p5] - "2. Safeguarding a. The welfare of the child is paramount. Throughout all stages of the procedures outlined below, consideration will be given to any existing and/or potential safeguarding issues. The EWO for the school, if the child is on the register of a school, or, if deregistered, the designated officers for child protection in the CPSSS will be contacted on the same day that any concerns are noted. Whatever steps are deemed necessary to ensure that the safeguarding needs of the child are met at the earliest opportunity, will be taken, including onward referral to social services Gateway team. Further information may be found on the Safeguarding Board for Northern Ireland (SBNI) website at

www.safeguardingni.org/resources. Relevant information will be recorded on the EMS database. "

This is offensive, unsupported by evidence, and would place an added burden on stretched agencies with important duties, not to mention on families if it led to increased referrals.

The draft states that:

"CPSSS will be contacted on the same day that **any** concerns are noted"

(Emphasis in bold ours)

Without specifying the nature, seriousness or evidential weight necessary for concerns to be referred. If any or *all* concerns are referred to the CPSSS, then large numbers of spurious referrals will be made. Conversely if an EWO fails to refer a concern they may feel they would open themselves up to liability or censure – even if the concern was clearly raised maliciously or is so minor as to be ridiculous. Home Education Officers are effectively being invited to consider, with regard to families about whom there are no concerns, whether they can find a concern if they only look hard enough.

An Education Officer should not be required to view home educating families through the lens of institutionalised prejudice.

The Area Child Protection Committees' "A Short Guide to Regional Policy and Procedures" (linked from page 5 of the draft policy), states on page 13:

"**Remember** that an allegation of child abuse or neglect may lead to a criminal investigation therefore not to do anything that may jeopardise a police investigation, such as asking a child leading questions or attempting to investigate the allegations of abuse"

The DHSSPS NI's Safeguarding Document gives definitions of abuse, electing to home educate is not one. In section 3.47 it states

"**the education service itself does not have an investigative responsibility in child protection work.** However, schools and Education Welfare staff have a role in assisting social services by referring concerns and providing information which will contribute to child protection

investigations. Social services may on occasions ask staff working in education for information about a child where there are concerns about abuse or neglect".

Co-operating To Safeguard Children, DHSSPS, May 2003

(Emphasis in bold ours)

Education Officials have no legal duty or power to assess the safety of the environment, or the child's physical, social or emotional health. They have the same duty as all of us, and particularly those in positions of responsibility, to report any concerns to the appropriate agency. The draft policy talks about safeguarding but makes no reference to the Safeguarding Board Act.

"Each person and body to whom this section applies must make arrangements for ensuring that—

(a) their functions are exercised having due regard to the need to safeguard and promote the welfare of children"

s.12 Safeguarding Board Act (Northern Ireland) 2011⁹

(Equivalent to s.175 Education Act 2002¹⁰ England and Wales.)

According to the Government Elective Home Education Guidelines England¹¹ have a duty under section 175(1) of the Education Act 2002 to safeguard and promote the welfare of children. Section 2.12 states:

"A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children."

Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter family homes or see children for the purposes of monitoring the provision of elective home education.

If the environment is not safe then social services should be involved, it has nothing to do with education.

⁹ <http://www.legislation.gov.uk/nia/2011/7/section/12>

¹⁰ <http://www.legislation.gov.uk/ukpga/2002/32/section/175>

¹¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288135/guidelines_for_las_on_elective_home_educationsecondrevised2_0.pdf

The Board assumes responsibility for the best interests of the child.

[p6] "(ix) The Board/ESA named officer will assess the learning environment and the suitability of the programme to meet the educational needs of the child. The Board/ESA's decision as to the appropriateness or otherwise of the programme, **having due regard to the best interests of the child** and relevant legislation, will be communicated in writing by the named officer for EHE to those with parental responsibility. "

(Emphasis in bold ours)

The duty to educate makes no reference to the child's best interest, only to their educational needs. The child's best interest is a matter of judgement to be left to the parent except in truly exceptional circumstances. If the Education Officer believes that parents do not have their children's best interests at heart then they must make what referrals they consider necessary.

The 'Minimum Standards' are ill-defined:

[p7]. "5. Minimum Standards

The following minimum standards should apply for children who are home educated:

- The child is educated in an environment which is safe;
- The child has access to a conducive learning environment, appropriate to their age, ability and aptitude and to any special educational needs they may have;
- The programme is suitable and meets the learning needs of the child;
- The child's physical, social, emotional health and wellbeing needs are being met.

Board/ESA decisions will be made as to the suitability or otherwise of Elective Home Education based on these standards. "

and would be judged subjectively.

- What exactly constitutes a 'conducive learning environment'? Is such an environment deemed to be available in all schools to all children of all abilities and needs?
- What exactly are a child's 'social needs' and is the Education Officer in a position to judge them? Are they met for all children in all schools?
- How does the Education Officer judge the ability and aptitude of the child? Will they be applying tests of some sort? If so on the basis of what scale of achievement, educational philosophy and evidence? Will they be judging them inappropriately against the National Curriculum?

The parent of a child holds the legal duty to make these judgements precisely because they are best placed to do so. To routinely disrupt this with the crude judgements of a government authority is both illegal, contrary to the intention of the UNCRC and inappropriate.

According to HEdNI's legal advice:

"...section 5 of the draft policy seeks to impose minimum standards which are superfluous to the law. The parental duty under article 45 of the 1986 Order extends only to the provision of "efficient full time education suitable to age, ability, aptitude and any special educational needs a child has". The minimum standards in section 5 discuss requirements of an environment which is safe; that the child has access to a conducive learning environment; and that the child's physical, social, emotional health and wellbeing needs are met. None of these requirements are written into the article 45 parental duty and are supposedly an attempt to widen the scope of the parental duty, beyond that which the law requires. "

According to minutes from meetings between the Boards and the Department of Education concerns about social opportunities have informed this policy:

"The Boards expressed some concern as to the extent to which home educated children are provided with opportunities to mix in a social/team environment. However, positive examples of effective home education were also mentioned."

BELB Minutes 24/10/13, Appendix 6

Setting aside for the moment the rich social opportunities available to home educated children, the fact that the Boards are aware of positive examples, that they offer no evidence to support their concern, and that schools frequently fail to provide a good social/team environment; we should remember that there is no requirement under section 45 of the Education Order to provide 'opportunities to mix in a social/team environment'. The Boards simply have no role in this, nor should they.

Two potential issues arise from the confusion of roles and responsibilities between the Education Authority and the Social Services. First, one individual is being asked to carry out two distinct roles at once. Second, two agencies have responsibility for one task.

One officer attempting to assess both education and welfare in the entwined way described in this policy is liable to find that their assessment of one colours the other. Equally the responses to any concerns have the potential to become confused – for example a child with mixed welfare and educational issues may be assessed by someone with only the power to issue a School Attendance Order, and to refer them on for another round of expensive, time consuming and stressful assessments.

Confusion between different agencies as to who holds responsibility for safeguarding has had serious and sometimes tragic outcomes in the past. Social services should have control and all relevant data on welfare cases, other unrelated agencies should not carry out random parts of a delicate process. Particularly not where the other agency is attempting to institute a policy with considerable administrative overhead and a limited budget.

Attempts were made in England during the Badman review to implicate home education in the tragic case of Victoria Climbié.

The Victoria Climbié Foundation¹² said in February 2009 that they were...

"genuinely concerned about the link being made between Victoria Climbié and home education, and Victoria as a hidden child. Victoria was neither home-educated nor hidden".

"The reality is that there is no such thing as a 'hidden' child, only children who are allowed to fall through the gaps. The key issue here is how statutory services interact with children that are known within the child protection system."

In a speech to the National Social Services Conference 2003 Lord Laming also commented that Victoria was:

"known to no fewer than four Social Services Departments, three Housing Departments and two specialist Police Child Protection Teams. Furthermore, she was admitted to two different hospitals because of suspicions she was being deliberately harmed and she was referred to a specialist Child and Family Centre managed by the NSPCC."

The tragic death of Khyra Ishaq in Birmingham, the Council referred to by the BELB, has also been raised to support greater oversight of home education, both during the Badman Review and in

¹² <http://www.victoria-climbie.org.uk/>

conversation with the Boards. Khyra Ishaq was theoretically being home educated but in fact, her situation was as untypical of any home educated child as it would be possible to imagine.

“She initially went to school, with a 100 per cent attendance record. There her condition aroused suspicion, so that the school contacted the authorities. Nothing was done. Social workers subsequently visited her home, so it cannot be claimed they did not know where she was – one of the reasons now being advanced for registration of children. This whole tragic, abusive situation had nothing whatever to do with homeschooling”

Gerald Warner, Blogs, The Telegraph

Khyra Ishaq, like Victoria Climbé was failed by those who had every reason and power to act.

These combined elements:

- Limited personnel
- Time pressures
- Budgetary pressures
- No legal powers
- No legal duty
- Limited access to necessary information and history
- Confusion over the scope of responsibility
- Confusion between areas of responsibility
- Potential to undermine any future prosecution

are a recipe for disaster instead of improving welfare for any children.

Sufficient legal framework exists to protect children who need it. An EWO or other staff who makes appropriate referrals is fully meeting their legal duties with regard to safeguarding.

It should be noted that the Boards have made recent changes in safeguarding; lowering of the requirement of “barred list checking” for volunteers and others with access to children in school (see DENI website¹³).

¹³ [http://www.deni.gov.uk/disclosure_and_barring_arrangements - guidance for schools and employing authorities - volunteers - english version.pdf](http://www.deni.gov.uk/disclosure_and_barring_arrangements_-_guidance_for_schools_and_employing_authorities_-_volunteers_-_english_version.pdf)

Parents were told (at the final NEELB focus group on this policy) that the universal background checks of all those with access to children was the result of an atrocity during the troubles. That in recent years there had been no evidence of significant risk posed by volunteers and others under supervision in schools and so the requirement was “dialled back”.

A parent made the point that if the Board recognised that they had gone overboard in their safeguarding and had pulled back on a policy when there appeared to be little danger, why would they then form a new safeguarding policy for a setting with no proven associated risk?

3.6) Mandatory home visits

[p6] "(vi) The Board/ESA’s named officer for EHE, has responsibility for maintaining the database, making decisions with regard to the appropriateness or otherwise of programmes and **ensuring that families with children who are home educated are visited at least once a year.**"

(Emphasis in bold ours)

[p6] "(ix) The Board/ESA named officer will assess the learning environment and the suitability of the programme to meet the educational needs of the child."

[p9 - Appendix 1] "HOME VISIT TO ASSESS LEARNING ENVIRONMENT AND SUITABILITY OF PROGRAMME TO MEET LEARNING NEEDS OF CHILD (APPROPRIATE TO AGE, ABILITY AND APTITUDE OF CHILD/YOUNG PERSON)



HOME VISIT, COMPLETE RECORD EHE2, UPDATE EMS CONTACT LOG FORWARD RECORD OF HOME VISIT (EHE2) TO CEWO"

No person, group or authority, not even the police except in very tightly controlled circumstances, has the right of entry into your home. This should be made very clear in the policy and no adverse effects should result from the refusal of a home visit.

The cost of such as scheme must also be considered. These visits, and the attendant administration will take considerable man-hours.

3.7) Requirement to register, or the ‘expectation’ that the Board will be notified

In response to a written question (AQW 30468/11-15 Tabled Date: 03/02/2014 Answered On Date: 11/02/2014) the Minister for Education states:

“Parents are not required to notify their Education and Library board that they intend to educate their child at home unless the child has previously attended school or has a statement of special educational needs. The total figures therefore may be higher.”

In response to a written question (AQW 9311/11-15 Tabled Date: 06/03/2012 Answered On Date: 26/03/2012) the Minister for Education states:

“Parents of every child of compulsory school age are legally required to ensure that their child receives full-time education suitable to his or her age, ability and aptitude; either by regular attendance at school or otherwise. There is no legal requirement for them to register the child with a school.

If parents choose to home educate there is no legal requirement for them to advise their Education and Library Board or the Department of their decision. “

In meetings with the BELB in October 2013 (full text of the minutes in appendix 6 of this document) the Department of Education acknowledged that there is no legal duty for parents to register as home educators. Because of this they wanted to press for access to confidential DHSSPS data in order to identify home educated children without their consent.

As well as gathering information about children who are deregistered, the draft states an 'expectation' that parents will notify the board even where they have never been registered.

[p5 3.ii] "Where a child has never been registered in a school it is the Board/ESA's expectation that parents would notify the Board/ESA that they are home educating their children and follow the arrangements in this guidance"

This effectively requires a parent to apply for a licence to carry out their legal duty and there is clear implication that not all registrations will be accepted:

[p.7] "(i) **Once an EHE programme has been considered suitable** by the Board/ESA, parents will be provided with the name of the officer with responsibility for managing EHE with whom they should liaise."

(Emphasis in bold ours)

[Appendix one (flow chart)] "NOTICE OF PARENTAL EXPRESSION OF INTEREST FORWARDED TO CEWO



REQUEST RECORDED ON EMS SYSTEM "

Appendix one of the Draft clearly describes an application process ('expression of interest' and 'request') rather than a simple notification, and it should be remembered that even notification is not required by law.

It is not clear what effect a failure to register would have on any future assessment (should the family become known to an ELB) but there is no legal duty on the parent to notify the Board. Ignorance of the expectation or a decision not to comply gives no information at all about the education being provided and must not be enough to flag a 'concern'. This should prominently be made explicit.

The parent of a child holds the legal duty to provide an education precisely because they are best placed to make the necessary judgements and arrangements. It is illegal, and contrary to the stated desire to put the child's interests first, to disrupt this important relationship other than in exceptional circumstances.

Given the administrative burden of this policy there are liable to be considerable delays in processing, assuming that parts of the schools' budget are not diverted for this purpose. What will parents of children not registered with a school be expected to do in the period before their programme is approved?

Further, what appeal or review system will be open to parents whose application to home educate is refused or revoked? The right of appeal to such a decision is crucial.

3.8) Assuming powers to dictate the content of the education provided

The Draft repeatedly refers to assessing the suitability of the 'programme', and suggests strongly that it must be judged acceptable before home education commences. The comparative merits of different educational methods and philosophies are a matter of opinion and considerable debate, there is no 'gold standard' of education against which 'programmes' can be compared.

[p6] "(viii) Following receipt of S.A.1 parents should forward a copy of their EHE Programme to the Board/ESA named officer for EHE to enable the Board/ESA to reach a decision that the proposed programme for the child is efficient and appropriate to the age, ability and aptitude of the child, and to any special educational needs he or she may have."

"(ix) The Board/ESA named officer will assess the learning environment and the suitability of the programme to meet the educational needs of the child. The Board/ESA's decision as to the appropriateness or otherwise of the programme, having due regard to the best interests of the child and relevant legislation, will be communicated in writing by the named officer for EHE to those with parental responsibility. "

[p.7] "(i) **Once an EHE programme has been considered suitable** by the Board/ESA, parents will be provided with the name of the officer with responsibility for managing EHE with whom they should liaise."

(Emphasis in bold ours)

Legal advice commissioned by HEdNI states:

"Section 3(viii) of the draft policy appears to be requiring parents to forward a copy of their home education programme to the board. But there is no legal requirement for a parent to do that, still less any legal power for the board to seek it. The board only has the power to ask for information (or means of satisfying it) that suitable education being provided, if it has cause for concern in this regard – i.e. if it appears to the board that the parent is failing to perform their article 45 duty. The fact that a child is being home educated is not, in and of itself, sufficient for it to appear to the board that the parent is not answering their article 45 duty. **On the contrary, if it is known to the board that the parent is home educating, then the board should presume that the parent is complying with its article 45 duty, just as much**

as if that parent were sending their child to school and that child were in regular school attendance; “

(Emphasis in bold ours)

An early draft of this policy included appendices detailing the forms to be used during assessments (see Appendix 4 of this document). We consider these indicative of the thought process of the drafting group, and we have been unable to gain an assurance that these documents will not be used on the ground despite their omission from the draft.

The fact that Appendix 1 of the Draft refers to forms ‘EHE1’ and ‘EHE2’ as part of the application process (but not appended) is not comforting in this regard, given that the forms from the original draft seem to be designed for the stages in the process indicated.

The forms in the earlier draft show a very clear expectation that home education will resemble school-at-home, for example a timetable is requested and a space is provided to detail the parent’s teaching qualifications. This assumption is misplaced, and this was acknowledged by the Boards in meetings with the Department of Education:

“Boards noted that parents of home educated children do not have to teach the NI Curriculum so the use of standardised test is not always appropriate.”

BELB Minutes 24/10/13, Appendix 6

Teaching methods within a school are shaped by requirements and constraints simply not present in a home environment. The strength of home education is its flexibility – child to child, day to day, hour to hour, home education can change and adapt. There is a wide spectrum of home educating philosophies and methods to fit the needs of every child and every family.

Home education is co-constructed within families and thus cannot be measured and assessed using the standards of a school environment. Most home educating families (including those who use a curriculum) take a flexible approach to home educating and adapt to their children's changing needs. A suitable education need not involve a planned programme of study, but may instead develop organically to meet the child’s requirements. The concept of submitting a 'programme' (which you are then presumably required to stick to) is wildly inappropriate when applied to home education.

“1. Learning does not necessarily follow the linear progression indicated by school programmes. A consequence of this is that children frequently do not adhere to the age

related norms and targets used in schools; they are able to progress at their own rate. Progress towards age related norms is often characterised by fits and starts rather than a smooth continuous process. Thus a child who may appear to be behind at a certain point may well catch up and overtake school bench marks in the future. Many home educated children learn to read 'late' by school standards but are not disadvantaged in anyway by this and go on to become proficient readers in their own time."

Harriet Pattison, Research Summary Appendix 4

The idea that parents, who have the legal duty to educate, must gain the approval of a body with no such duty before carrying it out makes no legal sense.

Further, no allowance is made for what is commonly known as 'de-schooling', a period of time where the child and the family recovers from the stresses of school. In this period little that would be demonstratively educational may take place, but it is crucial for the success of home education. The programme cannot be in place ready for the child to leave school and begin as the Draft requires:

[p5. 3]"(ii) In cases where a parent may be considering EHE, it is the Board/ESA's expectation that the school should advise the parent that the child or young person should continue to attend his or her registered school until such times as the programme is in place."

A parent whose child is being failed by their school has a legal duty to act to provide a suitable education, the Board should not prevent the parent from carrying out their legal duty.

HedNI have sought legal advice which we quote below:

"At section 3(ii) of the draft policy it is stated that it is the Board/ESAs expectation that a school should advise: "*the parent that the child or young person should continue to attend his or her registered school until such times as the [elective home education] programme is in place*". However, this is to impose a burden additional to law. Regulation 4 of the Registration and Attendance of Pupils Regulations (Northern Ireland) 1974 ("the 1974 Regulations") provides that a parent shall not withdraw their child from a school at which the child is a registered pupil, before "acquainting the principal with [their] intention to do so." This does not require a parent to discuss the matter with the school principal, nor does it require the parent to ensure that a suitable home education programme is in place first. In fact, in the

case of R v Gwent County Council, ex parte Perry [1985] 129 Sol. J 737, a case where a local education authority in Wales (Gwent County Council) insisted that a child stay on in school until a home education programme was satisfactorily established, the court considered that the parents should be given time by the local authority to set up arrangements for home education; “

The Board’s named officer is to have responsibility for decisions with regard to the appropriateness or otherwise of programmes of education.

[p6]”(vi) The Board/ESA’s named officer for EHE, has responsibility for maintaining the database, making decisions with regard to the appropriateness or otherwise of programmes and ensuring that families with children who are home educated are visited at least once a year.”

Without explicit reassurance on this matter we assume that the officer does not have extensive experience and training in home education methods and experience. This officer is therefore in no way qualified to understand the provision being made, even if they had a duty to attempt to do so.

3.9) Usurps the parental role

If the Education and Library Boards were to take over this fundamental duty to ensure that a suitable education is provided it would usurp the parental role, which would be both inappropriate and in contravention of the UNCRC, which emphasises family and parents in their role as protectors and advocates.

The presumption should be that parents are adequately meeting their legal duties and that there is no conflict between children’s rights or best interests and their parent’s wishes. This policy shifts towards a presumption that parents are untrustworthy and requires that they prove otherwise. This is not in the interests of children.

The Draft states:

[p6] "(x) In cases where a parent fails to demonstrate that the child is receiving efficient full time education, appropriate to his or her age, ability and aptitude, and to any special educational needs he or she may have, the Board/ESA may take legal action in accordance

with the Education and Libraries (Northern Ireland) Order 1986, Schedule 13 or Article 55 of the Children (Northern Ireland) Order 1995."

[p7] "5. Minimum Standards

The following minimum standards should apply for children who are home educated:

- The child is educated in an environment which is safe;
- The child has access to a conducive learning environment, appropriate to their age, ability and aptitude and to any special educational needs they may have;
- The programme is suitable and meets the learning needs of the child;
- The child's physical, social, emotional health and wellbeing needs are being met.

Board/ESA decisions will be made as to the suitability or otherwise of Elective Home Education based on these standards."

[p6]"(viii) Following receipt of S.A.1 parents should forward a copy of their EHE Programme to the Board/ESA named officer for EHE to enable the Board/ESA to reach a decision that the proposed programme for the child is efficient and appropriate to the age, ability and aptitude of the child, and to any special educational needs he or she may have."

The underlying assumption in the quotes above is that the parent is an inadequate educator and carer; and that they must prove otherwise. Throughout the document parents and family homes are treated primarily as potential risks, as fundamentally dangerous to children, while the ELB is assumed to be not only essentially reliable and trustworthy, but to be trusted and welcomed by the individual child.

No system of checks or balances is introduced to protect families from unnecessary intrusion and interference. No acknowledgment is made of the dangers of such interference, or of the dangers (such as bullying, or academic failure) that home educated children may have already faced in schools.

The presumption should be that children are safest with their primary caregiver, and that the Boards should concentrate their efforts on improving the safety and education of children in schools.

In fact the duty of the authority is reactive. While the Boards certainly must act if they are presented with evidence that no education is being provided, there is absolutely no justification in law to seek

out problems or to require that a family proactively demonstrates the worth of their chosen educational approach; in the same way that we are not required to proactively demonstrate that we are innocent of theft or neglect in the absence of reasonable concerns.

Budgetary and time constraints in the administration of this labour intensive process, combined with the confusion of roles and responsibilities for welfare and education, are liable to exacerbate the institutional prejudice evident in this document and promote snap-judgements, with post hoc justification and evidence.

3.10) Children with SEN

Many families associated with HEdNI have children with SEN. Some have always intended to home educate, while others are doing so because their child's unique needs were not being met in the school environment. While some would still consider using schools if a suitable one was available in their area, many others have come to a decision that a home education provides a superior alternative. In this light, we are concerned that the parents' expertise regarding their own child is not acknowledged.

In the BELB minutes of the meeting between ELBs and the Department of Education they mention that:

“The ELBs queried whether the statementing procedure took precedence over the parent's choice to EHE.”

BELB Minutes, 24/10/13, Appendix 6

We would firmly assert that the statement is binding on the Boards, not parents, and cannot take precedence over the legal exercise of a parents choice in the pursuit of their legal duty to educate.

Parents who have children with SEN home educate their children for a number of reasons, including:

- Unsuitable local provision in school
- Dispute over the suitability of a provision
- Provision in existing statement is not being met
- Reluctance to issue a statement
- Disagreement over how the child's needs are best met.
- Lack of flexibility in the school system to meet the child's unique needs
- Breakdown in relationship between parents and school

- Child isolated, bullied or unhappy at school
- Child making unsuitable progress despite having support
- Medical or physical needs not being met

It must be understood that even where a child's special needs are being adequately met in school, there will always be a need for some families to home educate. Some children find the unfamiliar and noisy environment of a classroom disconcerting and difficult. Other children who have health issues may not be in a position to risk contracting infections in an environment that poses a higher risk. There may also be greater opportunities in a home environment for children to respond to a different curriculum, therapy or style of education.

The draft indicates that children with SEN must demonstrate 'progress.' Nowhere in the text is a similar demand placed on all home educated children. This is clearly discriminatory, as it places demands on children with SEN that are uniquely tied to their disability. There is also no legal requirement for 'progress' in the Education Order. The draft further suggests that their de-registration is conditional on Department of Education approval:

[p6.4.i] "On occasion it may also be necessary for an Educational Psychology assessment to be arranged by the Board/ESA in order to ensure that reasonable and adequate progress is being made"...

It is far from clear that the assessments mentioned would be at the request of, or with the consent of, the parents. While we are disturbed by the prospect of an assessment being ordered against the wishes of the parents, the policy is also unclear about whether there would be an appeals process instituted where a disagreement ensues. Parents are the experts when it comes to their own child, and this is especially true in families where a child has SEN. They often welcome professional advice and information that can be added to their own unique knowledge, but do not wish to be told how to educate by someone who does not take account of their specialist expertise.

Conversely, 'on occasion' is very vague. If parents wish to voluntarily initiate access to this service, then the policy provides no mechanism for them to do so. It has been the experience of many of the families associated with HEdNI that access to this sort of assessment is often slow and ineffective in

schools. The policy allows for assessments and interventions to be administered to families on the say-so of officials; the families are not encouraged to be active participants and are not provided with the opportunity to either opt out or initiate access to services.

It is notable that this requirement for an “educational psychology assessment” was universal in the initial draft (appendix 4 of this document) but has now been restricted to children with special educational needs. Again, applying a different standard to children with Special Educational Needs in this regard is potentially discriminatory.

The Draft further states that:

[p7] “(ii) For children with a Statement of Special Educational Needs, the mechanism for bringing about a change in the provision detailed in the statement is the annual review. Parents and schools must liaise with the Board/ESA’s Special Education section in this regard. Department of Education approval is required to name anything other than grant aided school provision in a child’s Statement of Special Educational Needs. In accordance with the statutory rules for Northern Ireland 1974, Number 78 and Department of Education Circular 2010/07.

HEdNI’s legal advice states:

“Section 4(ii) of the draft policy states that “*Department of Education approval is required to name anything other than grant aided school provision in a child’s statement of special educational needs.*” It states that this is in accordance with the 1974 Regulations and DENI Circular 2010/07. However, this is a complete misstatement of the law. In particular, article 10 of the Education (Northern Ireland) Order 1996, which itself is entitled “*special educational provision otherwise than in a grant aided school*” states that a Board may arrange for the special educational provision (or any part of it) to be made in Northern Ireland otherwise than in a grant aided school (see article 10(1)(b)). It is accepted that article 10 is subject to article 12, which states the Department must consent to the child being educated at somewhere other than a grant aided school, but article 12(1A) clearly states that these provisions do not apply to a Board deciding, for the purposes of article 16(5), whether a parent has made suitable arrangements. It is therefore denied that DENI approval would be needed if elective home education were to be named in a child’s statement of special educational needs.”

The draft policy implies that it will require an Annual Review and special permission from the Department of Education before a child with a statement of SEN can be home educated. This is not the case. The draft policy signposts to the 1974 Regulations and the 2010 circular but neither of these documents make any reference to SEN statements; the relevant legislation is Article 10 of the 1996 Education Order¹⁴ and Parts IV and VI of the SEN Code of Practice¹⁵:

- An Annual Review is not required by law before a child becomes home educated, although the Board may wish to bring forward the Review.
- Where a child is home educated, it is the Board rather than the school which organises the Review, whereas by implication if the child were still to be treated as a pupil it would be up to the school, therefore the draft policy misleads the school.
- It is not necessary for home education to be "named" in the statement, unless the Board has agreed to pay for the provision.

The Boards clearly stated in meetings with the Department that the parent, in home educating, has opted out of the statement process. This matter was to be raised with the Special Education Team, we can only speculate on their opinion.

“Boards asked if DE could provide some clarification on the position in relation to children who have a statement of special needs which has been agreed by the Board, but where a parent then elects to home educate and has, therefore, technically opted out of the statement process.”

BELB Minutes, 24/10/13, Appendix 6

Very few families receive any of the provision that is made in a statement of SEN once the parents have elected to home educate their child. While some parents do want the statement to remain in place with a view to perhaps returning to the school system in the future or having access to specialist teachers, others would prefer to have the statement ceased.

Finally, HEdNI has deep concerns about the impact that home visits will have on the emotional well-being of children with SEN. Many such children have great difficulty dealing with change and

¹⁴ <http://www.legislation.gov.uk/nisi/1996/274/part/II/crossheading/special-educational-provision-otherwise-than-in-a-grantaided-school/made>

¹⁵ http://www.deni.gov.uk/index/support-and-development-2/special_educational_needs_pg/special_needs-code_of_practice_pg.htm

unfamiliar situations. Some of these children have already been let down by the school system in the face of bullying or unsatisfactory experiences with school staff. Carole Rutherford, co-founder of AIM, a national campaign and support group for parents and carers living with autism, elaborated on the added considerations for these families in relation to home visits and interviews:

“Children with autism find change very difficult and often hold fixed and rigid views about people and the places where they are used to coming into contact with that person. If a child is used to seeing a professional/ teacher therapist in school then bringing that person into their home places that person out of context in their minds, and they can find it very difficult to interact with that person even though they are well used to doing so in school.”

3.11) Yearly monitoring

[p.7] "7. Monitoring of Elective Home Education Programmes

(iii) The Board/ESA will monitor EHE programmes on **at least an annual basis** to ensure the child is receiving efficient full-time education suitable to his or her age, ability and aptitude and to any special educational needs he or she may have. The child’s opinion will also be taken into consideration. "

(Emphasis in bold ours)

There is no legal duty to monitor home educating families as a matter of course. Ongoing monitoring is intrusive, expensive, unreasonable and disproportionate.

Graham Stuart, chairman of the All Party Parliamentary Group on Home Education wrote to the Minister of Education on the 8th of May 2014 stating that:

“Local authorities should intervene if they are alerted to a reason for doing so - but are not obliged, or indeed permitted, pre-emptively to seek reasons to intervene. Accordingly, the annual monitoring by Boards prescribed by section 7(iii) of the draft Policy would be inappropriate“

It is also unlikely to provide a full and accurate picture of the education provided. The report and/or visit will most likely reflect the parent’s articulacy, and their skill at record-keeping and presentation more accurately than the education being provided. This discriminates against families where the parents are unused to dealing with authority figures, where they lack the experience, funds or skills

to present themselves effectively. Parents with higher incomes, university qualifications and management level jobs are in a better position.

There is no evidence to suggest that such qualifications or experience indicate that they will provide a better standard of education. Again, those skills which are essential for the administration of a school are being looked for and valued in home education, when they are entirely irrelevant.

Children who have been unhappy in school are likely to be fearful that they will be forced to return and should not be subjected to interview or assessment.

Under the pressures of attempting to administer such a complex and labour intensive scheme with limited budget and personnel, it is highly unlikely that officers would be able to form a fair and complete picture of the education provided. They would better spend their time carrying out their legal duty to inquire *if* there is a concern, and in building real constructive relations with the home educating community.

3.12) Direct access to home-educated children

[p.7.7] "...

The child's opinion will also be taken into consideration. "

[p7 (appendix 1)] "IF REQUIRED INITIAL VISIT BY DESIGNATED EWO INCLUDING OPPORTUNITY TO SEEK OPINION OF CHILD/YOUNG PERSON"

There is no specific information given in the Draft about in what circumstances the child will be interviewed, how a refusal to permit an interview will be interpreted, and what consequences there would be for a family that did not allow the officer to meet their child.

It was noted in meetings between the Department of Education and the Boards that

"Boards cannot assess home educated children without the parent's consent."

BELB minutes 24/10/13, Appendix 6

The UNCRC, as noted in the Draft has no legal force. However, even if it did Article 12 requires five steps to be taken for the effective realisation of this right where the child is invited to give views in formal proceedings. These steps fall under the following headings: preparation; the hearing;

assessment of the capacity of the child; information about the weight given to the views of the child; and, complaints, remedies and redress. None of these appear to be in place in the Draft Policy.

We are concerned by the original draft of the policy document (appendix 4 of this response) which clearly indicates a desire to meet with the child without parental supervision and that any parental refusal will be 'noted'. While this has been removed in the final draft it does little to reassure us as to what view would be taken should the parents refuse access to the child, since this is unspecified.

The Draft is also not clear on what the effect of the child's view will be. The *parent* has a legal responsibility to provide a suitable education; the child's opinion is not decisive. Many children in school are vocal in their desire to be elsewhere but their opinion is not sought or given legal weight.

We acknowledge the moral duty to take children's wishes into account, we dispute that this duty is well served by compulsory interviews by strangers and routine overruling of parental judgement. The duty imposed by the UNCRC to take the views of children into account does not translate into a duty on the child to submit to interview or produce opinions on demand.

3.13) Data protection issues

The requirement for the School to notify the Board's education welfare officer encourages Principals to breach the Data Protection Act. HEdNI's legal advice suggests:

"Section 3(iii) states that the principal of the school in question will then notify the board's education welfare officer (EWO), using a form (EHE), that the parent has elected to home educate and to withdraw their child from school. However, the principal of the school in question would have no right to do so and, in sharing such information with the EWO, the principal would, in my view, be committing some form of offence under the Data Protection Act 1998 ("the DPA 1998") and would also (or alternatively) be acting in violation of Article 8 of the European Convention on Human Rights (the right to private and family life), consequently breaching section 6 of the Human Rights Act 1998 ("the HRA"), because the principal would be disclosing information to a third party without proper or lawful justification for doing so (see cases of JR 57's Application [2013] NIQB 33; and also JR 54's Application [2011] NIQB 77). Section 3(vii) of the draft policy is suspect on this basis also - as this part seems to be requiring the principal of the school to record information of equally doubtful necessity; "

Repeated reference is made to a database for Electively Home Educated children. It is not clear how the information would be acquired and what it would be used for. The database would contain the most sensitive of personal information, many families would not be willing to consent to the process, it is unnecessary and no legal obligation requires it. We are not convinced that such a database would be acceptable within the terms of the Data Protection Act.

Some light may be thrown on plans by the BELB minutes of 24/10/13 (see appendix 6 of this document):

“It was agreed that there would be merit in a regional database which contained sufficient detail to enable Boards to identify all home educated children and for the provision of data sharing with for example GPs, DHSSPS.

Boards suggested the use of medical numbers, to track a child from birth as one possible approach to capturing details of all home educated children. This system could be implemented/used by all agencies as well as reliably capturing all compulsory school-age children. “

It must be clear that this misuse of children’s data would be of serious concern to all parents and not only those who home educate. It is not acceptable for the Department of Education to institute such a scheme by stealth, under a vague reference in a relatively obscure policy document. The minutes speak of ‘reliably capturing all compulsory school-age children’ to track all children from birth and allow data sharing across agencies without parental consent or knowledge.

Graham Stuart, Chairman of the All Party Group on Elective Home Education states, in his letter to the Minister of Education (8th May 2014):

“I want to raise the issue of the planned "Education Management System" database proposed in Section 3(iv) of the Policy. This week, the Welsh Government dropped plans to make home educating families join an official register, following an official consultation. Rather than pressing ahead with such a licensing scheme, I submit that it would be better for Education and Library Boards to concentrate on improving the support and resources available for home educating families, in accordance with their individual wishes.”

3.14) Loss of deregistration on demand

[p5] 3. (ii) In cases where a parent may be considering EHE, it is the Board/ESA's expectation that the school should advise the parent that the child or young person should continue to attend his or her registered school until such times as the programme is in place.

The parent has the legal duty to provide an education. Where the education being provided by a school is inadequate, or the environment is unsuitable or dangerous, then the parent has a duty to respond - if necessary by removing the child with immediate effect. It should be noted that in every case we are aware of the child has been withdrawn only after extensive discussions with the school, but it would be equally legal to have no contact beyond a letter of notification.

The parent's ability to meet their legal duty would be significantly undermined by any institutional delay. The child's well-being and education would be harmed, and the Boards would be responsible in law.

The Draft Document states that

[p6] "(vii) When parents take the decision that their child or young person is to be removed from the school register for the purpose of EHE, the school will be advised to use Code 3 (temporary code) to record the period of absence between when the parent informs the school that they intend to educate at home until the issuing of the certificate of attendance (S.A.1). When S.A.1 has been issued the pupil may then be removed from the General Register. Ref: DE Circular 2013/13."

Register. Ref: DE Circular 2013/13 states:

"REGISTRATION CODE: 3

Brief Description	Elective Home Education
Statistical Meaning	Attendance not required

Physical Meaning	Out for whole session
DE Definition	A registered pupil whose parents/carers have elected to educate at home and have advised the school or ELB of the position.

Additional useful information:

This code should be used from the date a parent advises the Principal that they have decided to educate their child at home until the Principal provides a certificate of attendance (Form S.A.1) to the parent, which states the reason for removal as “elective home education”. When Form S.A.1 is issued, the pupil can be removed from the General Register and there will no longer be a requirement to record their attendance.

A completed copy of this form should be held by the school and a copy forwarded to the respective Education Welfare Service for information.”

Statutory Rules for Northern Ireland, 1974, Number 78 state:

“6. (1) A parent shall not withdraw his child from a school at which the child is a registered pupil except after acquainting the principal with his intention to do so.

(2) Upon the withdrawal from school of a registered pupil the principal shall furnish to the parent in respect of the pupil a certificate of attendance as in Form S.A.I. in the schedule and **shall at the same time delete from the General Register the name of the pupil.”**

(Emphasis in bold ours)

There is no ability to delay deregistration in law, there is no discretion on the issue of S.A.1. and it should not be turned into a *de facto* notification of intent (or indeed application) to home educate. If on the other hand the 'expectation' is merely a hope then it should be made explicit that no adverse effects or conclusions would arise where parents do not meet that expectation.

The administrative burden of this scheme is considerable and without significant investment in this unnecessary scheme families will most likely be forced to endure considerable waits. During this waiting period the parents will be in dereliction of their legal duty to educate, through no fault of their own.

3.15) Administrative burden

This scheme will require many man-hours to implement; as well as the time spent on actual visits and assessments there would be significant investment required for case-specific preparation, internal

Board administration/evaluation and travel expenses. It would also place a disproportionate administrative burden on the families being assessed, who are neither legally obliged nor incentivised to comply.

The Boards, or the body that replaces them, will either have to allocate considerable resources to a project which falls outside their legal duties and at the expense of areas within their responsibility, or else they can administer it slowly and ineffectually. This would

- subject children and families to long waits before de-registration and approval
- interfere with the performance of their actual legal duties
- render impossible the performance of their fabricated duties regarding safeguarding and welfare and thus potentially open them to liability
- promote snap judgements, slapdash monitoring and unprofessional conduct

We believe that the most conscientious and admirable of education officers would find it impossible to meet the standards set; we are sure that there is no desire within the Boards to place families and children at risk in this way.

The “Education and Training Inspectorate, Report of a Follow-up Inspection, The Education Welfare Service in Northern Ireland” May/June 2006 states that

“reference was made to the capacity of the EWS to maintain a high quality of provision against increasing caseloads and staff cutbacks. It was stated frequently that the current levels of budgetary constraints are adversely affecting the morale and well-being of the EWOs.”

While in the Northern Ireland Assembly concerns have been raised about the level of investment in the Education and Welfare Service¹⁶:

“Roy Beggs (UUP)

: I thank the Minister for his answer. Will he acknowledge that education welfare officers now require the same social work qualifications as other social workers? What is he doing to address the anomaly in the wage structure that results in many unnecessary vacancies in education welfare officer positions as people move elsewhere for better paid jobs?”

and

“John O'Dowd

¹⁶ <http://www.theyworkforyou.com/ni/?id=2012-04-23.7.0>

: Go raibh maith as an cheist sin. I have no plans to reduce the budget line for education welfare officers in the Department. All our education and library boards invest a substantial amount of money in the work of education welfare officers, and I am continually reviewing my budgets to see whether we can find a surplus. That is very difficult in the current circumstances, but if we come across surplus or unspent funds we will redirect them to where they are most needed."

Hansard 23rd April 2012

In meetings with the Department of Education the two Boards made it clear that they do not have the staff to undertake regular visits.

"Two Boards do not currently provide this service due to staff shortages which has made this more difficult to maintain, particularly in Board areas which cover a large geographical area."

BELB Minutes, 24/10/13, see appendix 6

The economic situation is not such that money can be spent on pet projects with no clear purpose.

3.16) Equality

Under the draft policy as well as under current practice Parents and children are expected to agree to be interviewed at home by a representative from the Board.

Fears have been expressed that the home could be deemed to be too cramped, too tidy, too messy, too isolated, have too many pets, be too urban with no outside play space, or too rural in a remote area. The age of the parent could also become a "welfare issue" with the parent being judged too old or too young.

"Welfare issues" could also include unfounded socialisation concerns; objection to home education from the non-resident parent as part of ongoing access/maintenance dispute; neighbours reporting children for playing outside during "school hours"; the Board officer taking a different stance on religion; the parent having previously suffered from depression; a preference for alternative medicine; not being registered with GP or the GP not having seen the child within a particular timeframe; the family being seen as "too large"; an only child being seen as lonely or enmeshed. Where the parent has a disability, the authority may arbitrarily decide that the child is home educated in order to be a carer.

Not all children are able or willing to show work or to talk about themselves, and this will be particularly stressful knowing that not saying enough or saying the wrong thing will make it difficult to continue home education.

Given the tone of the draft and the strong emphasis on identifying every possible source of concern, characteristics such as religious belief, age, marital status, gender, sexual orientation, disability and age are very liable to be assessed as potential welfare or educational issues, impacting negatively on equality.

3.17) In summary

We can find little if anything to recommend in this policy. From legal errors to offensive assumptions the Draft is fundamentally flawed and unacceptable. We have the impression that the Boards are very surprised by the strong reaction the Draft has provoked; that they genuinely believed that they had these duties and that the policy was a supportive way of getting current practice 'on to paper'. Current practice on the ground certainly seems to echo the scheme expressed in the Draft before us.

We have every faith in the goodwill of the Boards towards home educating families, we hope that now they have an accurate picture of their legal powers and duties, as well as of the feelings of home educating families, they will act within those powers on home education. Hopefully this consultation will lead not only to the scrapping of the Draft Policy but also to an improvement in practice and in the relationship between home educators and the Boards.

4) Current Situation

An understanding of the current situation is valuable in trying to understand the motivation and aims of the Boards, and to understand the threat perceived by home educators. The conclusions drawn are necessarily somewhat speculative but it is very clear that there is no apparent problem with the provision made by parents, a worrying level of compliance with the illegal demands of the Boards and a possible correlation between a failure to comply and the raising of welfare concerns.

Statistics gathered by home educating parents through the use of Freedom of Education Requests give no indication of any educational or welfare problem associated with home educating families. The very high incidence of compliance with requests for work samples and access to the home

suggests that the powers and duties of parents and Boards are not made clear, while a possible correlation between refusal and referrals to social services is deeply concerning. There is no justification for the use of welfare agencies as an enforcement arm of the Education and Library Boards.

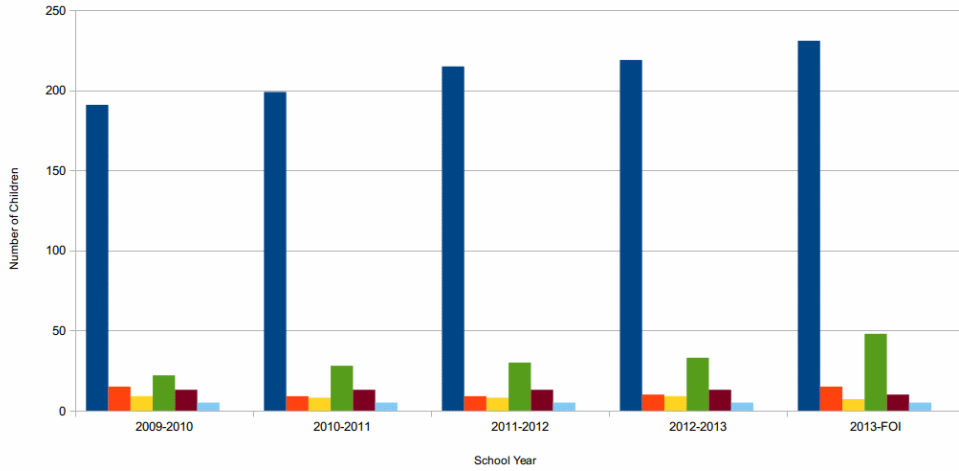
Parent's experiences of interaction with the Boards have been very varied, but even parents with the most positive experiences are aware of and concerned by the bullying tactics used with some families to gain access to homes, works samples and children. The threat of compulsion that runs through the draft document is thrown into sharp relief by the underlying atmosphere of distrust and fear.

4.1) Statistics

Home educating parents have collected what data they can through Freedom of Information requests, in order to make an attempt to understand the motivation of the Boards in seeking such broad powers. Nothing we have been able to discover supports a need for wider ranging powers, indeed there is evidence that the current behaviour of the Boards often exceeds their legal powers and tips over into misrepresentation and on occasion harassment.

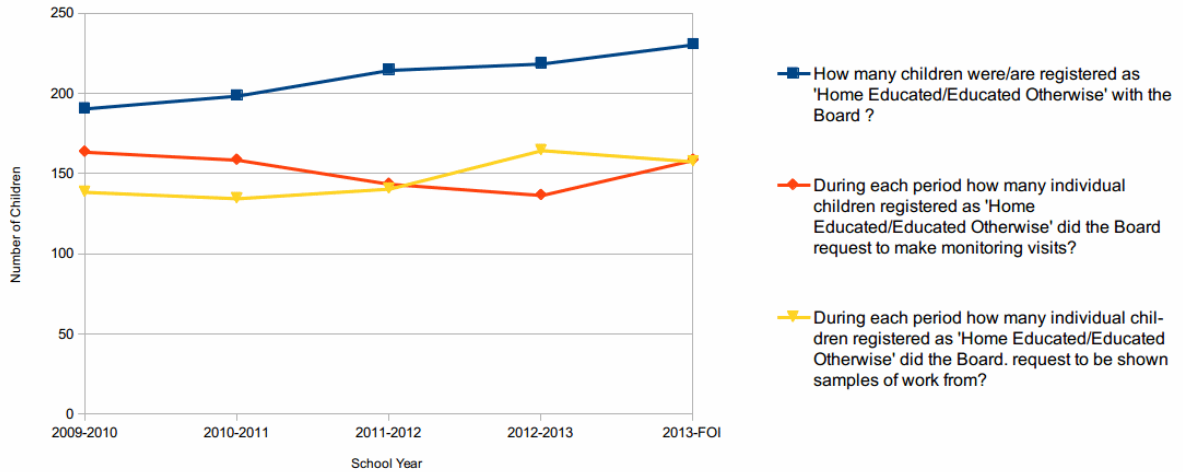
The high levels of compliance with the requests of the Boards suggests that many parents are not aware of their choice in the matter, while the fact that no serious intervention has been necessary suggests that home educating parents are competently discharging their legal duties.

Compilation of Data Gathered From Freedom of Information Requests to All NI ELBs

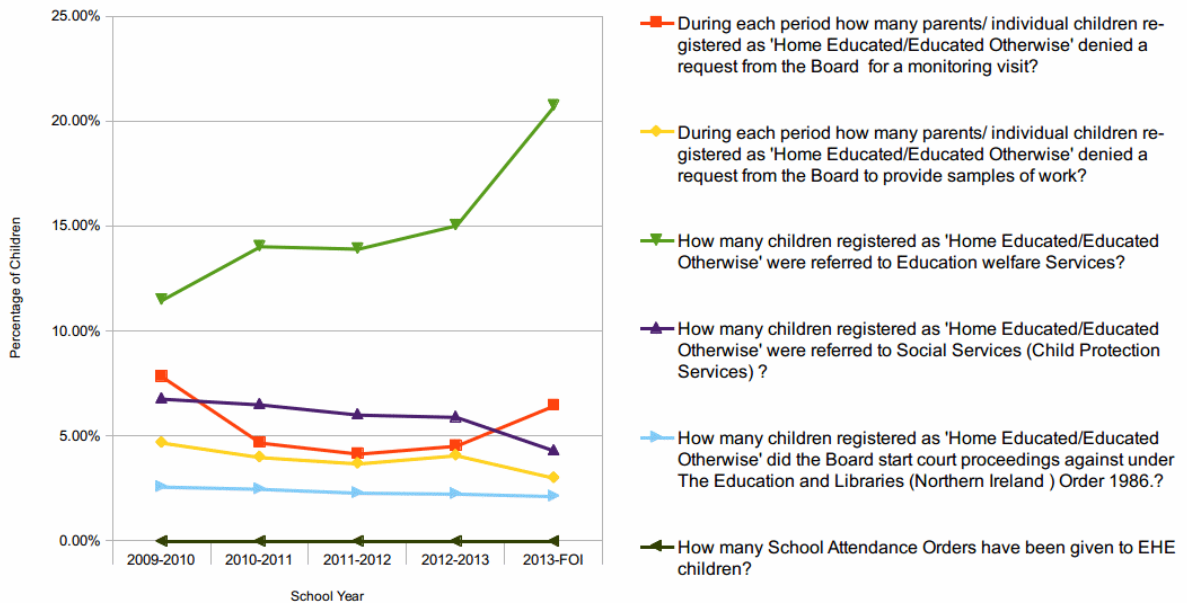


- How many children were/are registered as 'Home Educated/Educated Otherwise' with the Board ?
- During each period how many parents/ individual children registered as 'Home Educated/Educated Otherwise' denied a request from the Board for a monitoring visit?
- During each period how many parents/ individual children registered as 'Home Educated/Educated Otherwise' denied a request from the Board to provide samples of work?
- How many children registered as 'Home Educated/Educated Otherwise' were referred to Education welfare Services?
- How many children registered as 'Home Educated/Educated Otherwise' were referred to Social Services (Child Protection Services) ?
- How many children registered as 'Home Educated/Educated Otherwise' did the Board start court proceedings against under The Education and Libraries (Northern Ireland) Order 1986.?
- How many School Attendance Orders have been given to EHE children?

Comparison of Number of EH/EO Children and Requests for Monitoring visits or Samples of Work



Comparison of Data as Percentage of Known HE/EO Children



These graphs show the collection gathered via Freedom of Information Requests from the Northern Ireland Education Boards. However, it represents a ‘worst case scenario’ because of Freedom of Information Exemption Section 40 – Personal Information. For the statistics dealing with denying monitoring visits, those who denied to provide samples of work, those that were referred to Child Protection Services/Social Services and in the case of one Board the number of Children Court cases that were started against under the Educations and Libraries (NI) Order 1986, Boards cited Exemption 40 which masks low numbers to prevent them identifying the families involved. In these cases an arbitrary figure of five was applied to represent that Board’s response. Five was chosen as some Boards that used Exemption 40 indicated that where it was applied the figure would be no greater than five. Therefore in these cases the figure provided may be artificially inflated.

Furthermore the NEELB indicated that in the year September 2013 onward, those that denied a monitoring visit included a family of four who had moved without leaving a forwarding address. And that in the years September 2009-August 2010, September 2010-August 2011, September 2011-August 2012 and September 2012 – August 2013 three of the children listed as not supplying samples of work, refusing monitoring visits and being referred to Child Protection/Social Services, were of one

family. It is unknown if it was the same family being referred each year, but it seems a plausible theory.

When an individual asks for his or her own personal data under the Freedom of Information Act, this should be treated as a 'subject access request' under the Data Protection Act. Requests for one's own data are exempt under section 40(1) of the Freedom of Information Act. This is an absolute exemption. The applicant should be advised of the procedure for making a subject access request.

In most circumstances, for requests for the personal data of a third party (someone other than the applicant), the application of section 40 will turn on whether disclosure of the information to a member of the public would be 'fair', under the Data Protection Principles in the Data Protection Act. Officials should consult experts where the application of section 40 is difficult or unclear: getting a decision wrong may result in a breach of the Data Protection Act 1998.

Given that we are not privy to personal Data it is impossible to know how accurate these numbers are. For example we cannot be certain if it was the same family who declined to show samples that were referred to CPS/SS. We have therefore provided Data based on a worst case scenario; where we know that figure was no greater than five we used five.

As the graphs show; since September 2009 the Northern Ireland Education and Libraries Boards have not had to start court proceedings against any home educating families. Nor have they had to issue any School Attendance Orders.

4.1.1) Conclusions from data.

We cannot and do not claim the data provided is wholly accurate or complete, as previously stated due to some ELBs applying Freedom of Information Exemption Section 40.

This causes difficulties in drawing firm conclusions from the data because it may well be artificially increasing some figures. For example one ELB split a question into Primary and Post Primary and applied Exemption Section 40 to both. This creates a combined total of 10 children for that particular question whereas the true figure could be as low as 2 for that particular ELB. Despite this there seems to be a link between the number of children where home visits and the provision of samples of work have been refused and the number of children referred to CPS/SS.

Given that legally a parent does not need to take part in monitoring visits or provide samples of work on request from an ELB, it is a grave concern that the ELBs appear to be referring families to CPS/SS on the grounds of non-compliance with their demands. We believe that the Boards should investigate whether referrals to CPS/SS are being misused as a penalty for perceived lack of cooperation and whether Social Services are being co-opted as an 'enforcement arm' for the Education and Library Boards. This concern is borne out by the experiences of parents discussed below.

Some conclusions can still be drawn from the information supplied:

- No SAOs have been issued in regards to known Home Educated children from September 2009 to the date the Freedom of information requests were made (April 2014 in most cases and to the NEELB in February 2014)
- In no cases have the parents of home educated children been found to have failed in their duties under Article 45 of the Education and Libraries (NI) Order 1986.
- Compliance with demands is very high
- There appears to be a correlation between noncompliance and welfare referrals

It would seem counter-intuitive to increase the regulation of a section of the community who have been, according to available data in the time frames used, compliant with the law and effective in fulfilling their legal duties.

Based on the number of requests for monitoring visits or samples of work and the level of compliance with these requests, it seems plausible that education officers are misrepresenting their legal powers and the duties of parents. In other words it seems that they are not making it clear that accepting monitoring visits and providing samples of work is entirely voluntary; where the Boards have concerns these can be addressed in other ways, for example by means of written reports. It seems unlikely that given a clear choice such a high proportion of families would request assessments and home visits.

We feel that in any future drafts and or policy, as well as in practice, it should be made abundantly clear that visits and the provision of samples of work are entirely voluntary and that where evidence is required it can be supplied in a variety of formats.

It is worth noting that the Health and Social Care Trusts were also contacted to ask about the incidence of Welfare issues among home educated children. None were able to answer the request. We are informed that

“the data reports do require reporting against the “Education and Learning” domain contained within the UNOCINI Pathways. Therefore to fully explore the request every referral of a child of school age received by the Gateway Service over the Past five years would require an extensive manual search by staff”

or

“this information is not held centrally within the Trust.”

Nothing in the above information suggests that there is reason to investigate home education as a potential problem. Despite the fact that the Boards consistently request home visits, ongoing monitoring and samples of work (all of which are beyond the requirements of the law) they have never felt it necessary to exercise their legal powers of enforcement under Schedule 13.

The high incidence of compliance with the demands of the Boards reflects, as will be seen below, a strong tendency towards misinformation with regard to a parent’s duty to engage with the Boards, and pressure on parents to comply, sometimes backed up with the use of Social Services as an enforcement arm to gain access. Worries in this regard are not allayed by minutes of meetings between the Boards and the Department of Education in October 2013. Here a department official clearly suggests the use of the welfare route to gain information where parents quite legally decide not to provide it:

“She suggested it may be helpful to engage with DHSSPS on elective home education, in the absence of any legal requirement on parents to provide notification that they are home educating their children.”

BELB Minutes 24/10/13 Appendix 6 of this document

4.2) Experiences

The Draft Policy as outlined is concerning enough, but doesn't arise out of nowhere. The current situation is one of deep mistrust between home educators and the Boards. Given this we believe that the Draft Policy could be used by officers to bully and intimidate their way into homes, and to insist

on parents' compliance with unlawful requirements. Personal stories inform the reading of both the policy and the data, forming the background to the policy's publication and consultation.

Trust starts with the Boards accurately representing their legal powers and duties; while they continue to misrepresent their powers and duties it is impossible for parents to use them for support or information.

Peer advice in the home education community is consistent: avoid or minimise contact since it carries a serious risk and no discernible benefit. It should be noted that even families who have good relationships with their Board tend to give the same advice and make the same objections to compulsion.

The experience of home educating families throughout Northern Ireland is very mixed. Stories of Board contact range from them being supportive, through misrepresenting the law, to outright harassment. Some parents are so concerned about putting their families at risk that they have been unwilling to attend focus groups, or submit responses to the consultation for fear of becoming 'known'. We have asked parents who home educate in Northern Ireland for their experiences, which inform the reading of the Boards' proposals and our interpretation of the data above.

There are many examples of intrusive or unreasonable demands by representatives from the Boards:

- In some cases parents have been asked repeatedly about how the child is socialising, rather than about what the child is learning. In one instance the representative from the Board pushed the family for the child to attend a particular Sunday School in order to socialise.
- Some parents have been quizzed about their own academic qualifications.
- On occasions Board representatives have been quite insistent on meeting the children at home, or having the family show or send samples of the children's work. One family showed the Board samples of academic work but the Board ignored this and simply wanted to talk about getting the child back into school.
- Parents have also been asked for timetables showing which subjects are studied on different days, without any indication that the Board accepts and understands different methods of home education which need not involve traditional academic subjects and schedules.

- There is no evidence that Boards detail concerns in such a way that parents can respond. Families have experienced a 'one stage process', whereby any resistance to the officer's preferred process is met with a formal notice to satisfy; no informal opportunity is given to respond to concerns at an early stage.

Some schools and some Boards don't seem to understand the process for taking a child off the school roll:

- One family had to explain to the school how to process the paperwork for removing the child from the school roll and then didn't hear from the Board for nearly three years before a visit was requested.
- In another case the school didn't want anything to do with taking the child off the roll and advised the parent to contact the Board directly instead.
- Another family found that the Board wanted to scrutinise and approve all aspects of their home education - which they were also told should comply with the National Curriculum - before the parents were "allowed" to deregister, and the Board reported the family to social services for "non-compliance."

Families who have not been pushed for contact have also had mixed experiences and are often uncertain of their position:

- One family told the Board that their child wouldn't be starting school because they would be home educated. The parents haven't been asked to attend any meetings or fill in any paperwork.
- In another case a health professional informed the Board that the child was home educated and the sole contact with the Board regarding this child was a brief conversation a few years ago. The parents weren't told what they could expect from the Board in terms of future contact so they have no idea whether they have been left alone on purpose or whether they have been overlooked. They are not willing to take the risk of asking.
- A third family has not taken up an offered school place and has never heard anything from the Board. The parents are extremely relieved as the representative from the Board who deals with local home educating families does not have a good reputation.

Current forms used by the Boards include

- the unnecessarily detailed and intrusive example from the BELB, which includes an 11 page assessment document with spaces for evidence of progress, detailed requirements for ICT support, opinions to be recorded on how 'well maintained' materials are
- the SELB 'information for parents' which requires the parent to submit an education plan for assessment, mention of the child's opinion when moving from school to home, mentions various ways of providing evidence, and doesn't require ongoing monitoring
- the WELB information which places a strong emphasis on home visits and on the financial costs of home education

The NEELB have no policy but detailed their 'procedures' to representatives of Education Otherwise and HEdNI. These include an emphasis on home visits as the 'gold standard' and the taking of notes to be cleared later with the parent. These procedures don't seem to be reflected in the experiences of canvassed parents who report no paperwork and a notable reluctance to put any concerns on paper to be addressed.

Current policy and practice shows a strong tendency to misrepresent the law and apply pressure for access to homes and families beyond that required by law. Uncertainty, misrepresentation and pressure seem to characterise the experiences even of parents who describe their relationship with the Boards as 'good'. In any future drafts and or policy, as well as in practice, it must in future be made abundantly clear that visits and the provision of samples of work are entirely voluntary and that where evidence is required it can be supplied in a variety of formats.

This policy would erode what little trust exists already. One parent making notes on a focus group with the WELB said:

"...until now, we thought of our relationship with the Board as a positive one and had not been suspicious of them, but the draft policy implies that they are suspicious of us as a home educating family."

Re WELB focus group 22nd May (comments sent to HEdNI 09/06/14)

5) Conclusion

An effective home education policy should foster co-operation between the education authorities and home educating families, supporting them to provide an excellent education for their children. HEdNI

believes that such a relationship is possible but only if built on the firm foundations of an accurate view of the legal powers and duties of the Boards, a flexible and responsive system to support such a policy, and an acknowledgement of the parent as prime advocate for their children.

This draft policy cannot legally be enforced, and to attempt to implement it would encourage the intimidation and bullying of new or otherwise vulnerable home educating families.

No evidence has been provided to suggest that a system of licensing and monitoring is needed or would even be beneficial. Indeed such evidence as we have been able to gather suggests that the Boards already consistently overreach their legal powers, placing considerable pressure on families to comply with their demands; and yet they discover few problems with the education being provided. Northern Irish parents should be presumed to be trustworthy and engaged, fulfilling their legal duties.

As the draft points out, there is no financial support available for elective home education. Parents who spend their time and resources on pursuing the best education for their children deserve more than suspicion and the threat of being overruled. Budgets are limited and this is a poor use of money and time.

The Lancashire Policy mentioned could provide a good model and starting point for discussion (though it should be noted that HEdNI would object to the database it describes). It would represent a great leap in the right direction and an excellent basis for a policy, being a part of a wider respectful system which is also responsive and cost-effective. We hope the Boards will take the opportunity offered by Mike Snelson (Acting Principal Adviser, Quality and Continuous Improvement) of that Local Authority to share his experience.

We hope that the principle of law that puts children under the care and protection of their parents, except in extreme circumstances, will be respected, and that it will be acknowledged that we should not assume a tension between parental choice and children's rights. Indeed parental choice should be assumed to be in support and defence of their children's rights.

We suggest that the ELBs take this opportunity to show that they can act within the law, that they seek positive engagement with home educating families and that they can be trusted. We trust that

the Minister of Education will seek to support parents and the Boards in creating a relationship not based on fear or misrepresentation of the law.

Appendices

Appendix 1 - FOI responses, collated

as of 29th May 2014

1. How much is the total cost to date for drawing up the the draft policy including cost of the upcoming Consultations?

BELB

This information is not held. Work was undertaken as part of board officer's normal duties and a breakdown is not identifiable.

NEELB

In response to the first two points outlined in your request for the costs of policy development we do not hold records in this regard. Policy formulation is a core activity of all public sector bodies in the support of our delivery of services to the public and therefore costs for this activity are not separately recorded.

SEELB

The Board does not hold specific information about the cost of policy development, consultation and implementation as it is part of the core business of the Board and its Officers.

WELB

To date the work undertaken on this policy and the consultation has been completed by ELB Officers as part of their existing role.

SELB

To date the work undertaken on this policy and the consultation has been completed by ELB Officers as part of their existing role.

2. What is the current estimated total cost to complete and finalise the policy?

BELB

This information is not held. Work was undertaken as part of board officer's normal duties.

NEELB

In response to the first two points outlined in your request for the costs of policy development we do not hold records in this regard. Policy formulation is a core activity of all

public sector bodies in the support of our delivery of services to the public and therefore costs for this activity are not separately recorded.

SEELB

The Board does not hold specific information about the cost of policy development, consultation and implementation as it is part of the core business of the Board and its Officers.

WELB

Work to complete the policy will be undertaken by ELB Officers as part of their existing role.

SELB

Work to complete the policy will be undertaken by ELB Officers as part of their existing role.

3.What is the estimated yearly cost of implementing and policing the policy?

BELB

This information is not held. There is no budget allocated to EHE. Board Officers carry out these duties as part of their responsibilities within the board's education department.

NEELB

The Board does not hold records in relation to the cost of implementing and policing policy including the draft EHE policy.

SEELB

Unknown. The policy is at draft stage.

WELB

Until the consultation is complete, the policy finalised, and operational aspects of the policy agreed the yearly cost cannot be given.

SELB

Until the consultation is complete, the policy finalised and operational aspects of the policy agreed the yearly cost cannot be given.

4. What legal advice has the Board taken before drafting the proposed policy and from who?

BELB

When developing a policy, as a matter of good practice, any policy which makes reference to other statutory regulations is referred to the board's in house solicitor to ensure if statutory regulations are cited appropriately.

NEELB

The Board would where appropriate seek a legal view on aspects of the legislation both from in-house services and professional legal services as needed.

Response 2.

This element of your request was considered under the legislation and is being withheld under section 42(1) of the Freedom of Information Act. This exemption is for legal professional privilege (advice privilege).

As part of the process in applying this exemption your request was considered carefully and a public interest test applied.

Given that this request seeks this information in the midst of the policy development and the public consultation cycle, it is deemed that the public interest test supports the application of this exemption.

SEELB

The Board has sought advice to ensure that the eventual policy is compliant with the provisions of the Education and Libraries (Northern Ireland) Order 1986.

WELB

Applying FOI Exemption 42(1) as the draft policy is out for consultation and further legal advice may be required.

SELB

This information is exempt under FOIA Section 42(1), legal professional privilege. This exemption applies whenever complying with a request would reveal information that is subject to 'legal professional privilege' (LPP). LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice. Section 42 of the Freedom of Information Act is a qualified exemption and is subject to a Public Interest Test which has been completed.

5. What research has been done by the Board before drafting the Proposed Policy, by who?

BELB

Board officers considered EHE policies used in other areas including the South of Ireland, Guidelines for LEAs from the Department for Children and Families (CS&F) and Birmingham City Council

A follow up FOI was requested from the BELB :

“Please could you provide all correspondence and meeting notes where Birmingham was mentioned or discussed in the context of elective home education.

The reply was:

“The Birmingham LEA policy would not have been recorded, but discussed. It would have been accessed through officer internet research and used in general terms to inform discussion. We, therefore, do not hold meeting notes in relation to this”

NEELB

With regard to research, the Board has not engaged any formal research programmes in this area. Policy development is however informed by the experience of the Board to date in the management of the area of elective home education.

SEELB

To date the Board has not conducted any formal research regarding the draft policy. It is engaged in a consultation process and will take into account all information, replies and comments received when drafting a final policy on Elective Home Education.

WELB

Previous research has been undertaken, with officers at different stages considering a range of materials/sources related to the management of Elective Home Education.

6. What is the Board’s definition of a suitable education and what is the Board’s criteria for establishing same for EHE?

BELB

The BELB would expect any programme deemed to be suitable to be appropriate to the age, aptitude and ability of the child.

Response 2.

The responsibility for a child's education rests with his or her parents. While "suitable" education is not defined in the legislation we would concur with other educational bodies that a suitable education would be one that prepares and equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so. This definition is outlined in more detail in the guidelines for local authorities in England in regard to Home Education. The board would expect any child who is being home educated to access as a minimum, literacy and numeracy, to have opportunities to experience socialising with peers and to engage in physical activity suitable to their age, aptitude and ability and any special educational needs they may have.

To consider whether an educational programme is suitable, the board asks for a copy of the home education programme to be provided by the parent on a voluntary basis, and will also visit the home and the child on an annual basis - again parents facilitate this on a voluntary basis. On request the board may recommend some useful materials or websites for parents who are home educating or may offer guidance on aspects of learning.

NEELB

You have asked about the Board's definition of a suitable education and what is the Board's criteria for establishing same for EHE. The Board's definition of a suitable Education is derived from Article 45 of the Education and Libraries (Northern Ireland) Order 1986 places a duty on the parent of a child of compulsory school age to make sure that he/she receives efficient full time education suitable to his/her age, ability and aptitude and to any special educational needs that he/she may have, either by regular attendance at school or otherwise.

Response 2.

The Board considers a suitable education for a child to be efficient full time education suitable to his age ability and aptitude and to any special educational needs he may have, in accordance with Article 45 of the Education and Libraries (Northern Ireland) Order 1986.

Response 3

With regard to determining what is a suitable education, it is a matter for educational professionals within the Board, by exercising their professional judgement and expertise and in the context of their education experience, to ascertain whether the education being

provided by a parent is efficient, full time education suitable to their child's age, ability and aptitude and to any special educational needs their child may have.

Given that educational interests, strengths and needs will vary with each individual child the Board does not hold specific criteria in relation to what is "suitable education".

SEELB

The Board is required to adhere to the definition provided by the Education and Libraries (Northern Ireland) Order 1986 that every child should receive an efficient full-time education suitable to their age, ability and aptitude and to any special educational needs they may have.

WELB

Definition of suitable education:

"efficient full time education suitable to his age, ability and aptitude and to any special educational needs he may have" (The Education & Libraries (NI) Order 1986 Article 45 (1))
Criteria will not be agreed until the Consultation is complete and responses collated and reviewed.

SELB

Current SELB policy does not define 'suitable education' but does refer to information within its policy which may be helpful to a parent who has chosen to electively home educate including guidance on weekly teaching hours, equipping children and young people for life and the information it will seek as evidence of suitable education. The SELB policy is attached.

However it should be noted that the SELB is awaiting the outcome of the current consultation on the Draft Elective Home Education Policy which will inform future policy and its operational aspects.

7. How much yearly funding does the Department of Education give the Board for each EHE child, EHE as a whole or how is it funded?

BELB

The board does not receive identified funding for children who are not on the roll of a school. This includes EHE children.

NEELB

You have asked about the current yearly allocated budget for EHE and the current actual cost of dealing with and implementing current EHE Policy. There is no specific budget allocated to EHE.

SEELB

There is no specific budget allocated to Elective Home Education.

WELB

The WELB receives no funding

SELB

The SELB receives no funding

8. What is the current yearly allocated budget for EHE and the current actual cost of dealing with and implementing current EHE Policy?

BELB

There is no budget allocated to EHE but officers will carry out these duties as part of their responsibilities within the board's education department.

NEELB

The Board does not have a formal written EHE Policy currently. Whilst the Board does not have a formal policy there are procedures in place to enable the Board to meet its statutory responsibility. We do not hold records of costs specific to dealing with and implementing the arrangements currently in place.

Response 2.

The Board does not have a formal written EHE Policy currently. Whilst the Board does not have a formal policy there are procedures in place to enable the Board to meet its statutory responsibility. We do not hold records of costs specific to dealing with and implementing the arrangements currently in place.

SEELB

None. The Board does not provide funding for EHE.

WELB

There is no allocated budget, WELB Officers currently act in relation to EHE as part of their existing role.

SELB

There is no allocated budget, SELB Officers currently act in relation to EHE as part of their existing role.

Appendix 2 - FOI data

How many children were/are registered as 'Home Educated/Educated Otherwise' with the Board ?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	74	70	61	49	59
SEELB	53	59	68	77	75
BELB	5	5	8	11	7
WELB	45	43	48	48	45
SELB	14	22	30	34	45
TOTAL	1191	199	215	219	231

During each period how many individual children registered as 'Home Educated/Educated Otherwise' did the Board request to make monitoring visits?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	74	70	61	45	62
SEELB	53	59	68	77	75
BELB	5	5	8	11	7
WELB	19	4	5	1	11
SELB	13	21	2	3	4
TOTAL	164	159	144	137	159

SEELB: It is normal practice to request a meeting annually with all parents of young people being home educated. Alternatively parents can opt to send a report with accompanying samples of work in order to satisfy the Board that an appropriate education is being provided. So have assumed all Children

During each period how many parents/ individual children registered as 'Home Educated/Educated Otherwise' denied a request from the Board for a monitoring visit?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	3	3	3	3	7
SEELB	5	5	5	5	5
BELB	0	0	0	1	1
WELB	6	0	0	0	0
SELB	1	1	1	1	2
TOTAL	15	9	9	10	15

SEELB: Personal information is exempt under section 40 of the Freedom of Information Act 2000 if disclosure would contravene one or more of the data protection principles. Any disclosure under the Freedom of Information Act 2000 must be fair, lawful and in compliance with the data protection principles. The SEELB can however indicate that where data has been withheld, based on the potential identification of an individual, figures are less than 5. The number of parents who refused to provide samples of work was below 5 in any of the requested periods. So an Arbitrary figure of 5 has been used as that is the max amount.

During each period how many individual children registered as 'Home Educated/Educated Otherwise' did the Board. request to be shown samples of work from?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	74	70	61	65	64
SEELB	53	59	68	77	75
BELB	0	5	8	11	7
WELB	12	1	0	0	0
SELB	0	0	4	12	12
TOTAL	139	135	137	153	146

SEELB: It is normal practice to request a meeting annually with all parents of young people being home educated, but the board does not specifically ask for samples of work. Alternatively parents can opt

to send a report with accompanying samples of work in order to satisfy the Board that an appropriate education is being provided.

WELB: EWS may have been shown work in the course of the visit but will not have requested to see samples.

During each period how many parents/ individual children registered as 'Home Educated/Educated Otherwise' denied a request from the Board to provide samples of work?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	3 (1 Family)	3 (1 Family)	3 (1 Family)	3 (1 Family)	1
SEELB	<5	<5	<5	<5	<5
BELB	0	0	0	1	1
WELB	1	0	0	0	0
SELB	0	0	0	0	0
TOTAL	<9	<8	<8	<9	<7

SEELB: Personal information is exempt under section 40 of the Freedom of Information Act 2000 if disclosure would contravene one or more of the data protection principles. Any disclosure under the Freedom of Information Act 2000 must be fair, lawful and in compliance with the data protection principles. The SEELB can however indicate that where data has been withheld, based on the potential identification of an individual, figures are less than 5. The number of parents who refused to provide samples of work was below 5 in any of the requested periods.

How many children registered as 'Home Educated/Educated Otherwise' were referred to Education welfare Services?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	0	0	5	1	7
SEELB	<5	<5	0	<5	<5
SEELB PP	<5	<5	0	0	0
BELB	0	0	0	0	0
WELB	0	0	0	0	0

SELB	12	18	25	27	36
TOTAL	<22	<28	30	<33	<48

NEELB: Stated that one family of 4 had moved without leaving a forwarding address in the year Sept'13

SEELB: Personal information is exempt under Section 40 of the Freedom of Information Act 2000 if disclosure would contravene one or more of the data protection principles. Any disclosure under the Freedom of Information Act 2000 must be fair, lawful and in compliance with the data protection principles. The SEELB can however indicate that where data has been withheld, based on the potential identification of an individual, figures of less than 5 have been suppressed.

BELB Note. All requests for Home Education are routinely referred through the Education Welfare System.

WELB: From 2011 to the current date an initial home visit/monitoring visit is conducted by EWS but the individual families are not active cases to EWS following that initial home visit/monitoring visit Prior to 2011 children registered as home educated were not referred to the EWS. (Awaiting Confirmation)

How many School Attendance Orders have been given to EHE children?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	0	0	0	0	0
SEELB	0	0	0	0	0
BELB	0	0	0	0	0
WELB	0	0	0	0	0
SELB	0	0	0	0	0
TOTAL	0	0	0	0	0

How many children registered as 'Home Educated/Educated Otherwise' were referred to Social Services (Child Protection Services)?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept2-Aug13	Sept13-Date Asked
NEELB	3 (1 Family)	3 (1 Family)	3 (1 Family)	3 (1 Family)	0

SEELB	0	0	0	0	0
BELB	0	0	0	0	0
WELB	5	5	5	5	5
SELB	5	5	5	5	5
TOTAL	10	10	10	10	10

WELB: Applying FOI Exemption 40 – the WELB is unable to provide this information as the small numbers to whom it would apply may lead to possible identification of the families concerned. Using 5 as an arbitrary figure as other boards have indicated they have not provided an exact figure if the amount is less than 5.

How many children registered as 'Home Educated/Educated Otherwise' did the Board start court proceedings against under The Education and Libraries (Northern Ireland) Order 1986.?

	Sept09-Aug10	Sept10-Aug11	Sept11-Aug12	Sept12-Aug13	Sept13-Date Asked
NEELB	0	0	0	0	0
SEELB	0	0	0	0	0
BELB	0	0	0	0	0
WELB	0	0	0	0	0
SELB	5	5	5	5	5
TOTAL	5	5	5	5	5

The SELB is not supplying this information in accordance with FOIA Section 40(2). This exemption covers the personal data of third parties (anyone other than the requestor) where complying with the request would breach any of the principles of the Data Protection Act. In this case it is very likely that release of the small numbers involved may lead to possible identification of the families concerned. Where no figure has been given due to Exemption 40 being applied an arbitrary figure of 5 has been used. As some Boards have indicated where Exemption 40 was applied the figure would be no greater than 5.

Comparisons:

	Known EHE Educated Otherwise children	Referred to Child Protection/social Services	SAOs to HE/Educated Otherwise Children	Court Proceedings brought by the Boards under the Education and Libraries (NI) Order 1986
Sept09-Aug10	191	5	0	5
Sept10-Aug11	199	13	0	5
Sept11-Aug12	215	13	0	5
Sept12-Aug13	219	13	0	5
Sept13-	231	10	0	5

NEELB: Stated 3 Children Referred to Child Protection/Social Services each year from Sept 2009 to August 2013 were from one family. It is unknown if it was the same family each year.

WEELB: Applied FOI Exemption 40 to the number of Children referred to Child Protection/Social Services due to the small numbers to whom it would apply may lead to possible identification of the families concerned. A figure of 5 was applied as other Boards indicated where information was not given due to risk of identification the figure was no greater than 5. This means the Number of Children referred could be artificially inflated.

SELB: Applied FOI Exemption 40 to the number of Children referred to Child Protection/Social Services and Number of Court cases brought against EH/EO families under the Education and Libraries (NI) Order 1986 due to the small numbers to whom it would apply may lead to possible identification of the families concerned. A figure of 5 was applied as other Boards indicated where information was not given due to risk of identification the figure was no greater than 5. This means the Number of Children referred could be artificially inflated.

Appendix 3 - Legal Briefing

Legal Briefing prepared by Sarah Dickinson for HEdNI with reference to legal counsel.

This briefing has been made freely available to home educators, MLAs and others who have sought HEdNI's input. It may therefore be quoted by those who are not affiliated with HEdNI and use of this briefing should not be taken to indicate HEdNI's involvement in the formulation of any other response.

Background:

Legal (relevant legislation included on page 2 for your reference)

The Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order") article 45 creates a duty for **parents** to "cause [the child] to receive efficient full time education suitable to his age" etc...

The duties of ELBs stem from **Schedule 13** – "*if it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by article 45(1), the board shall...*"

The duty is triggered by outside forces and is purely reactive, if there is no appearance of failure there is no duty. No duty to go looking for problems, no duty to monitor. Home education is not in itself a valid concern but a legally protected option.

There are no safeguarding duties under the 1986 Order; adequate duties to refer any concerns to social services apply to all who deal with children.

*The NEELB has claimed (in correspondence) that further duties arise from **The Children (Northern Ireland) Order 1995 ("the Children Order")**, giving a list of things that courts must have regard to when determining any question with respect to "3.(a)the upbringing of a child" including the wishes of the child, their emotional and physical needs and so on...*

Article 3 of the Children Order applies only to the courts. Though it is reasonable that the ELB should consider these factors when deciding whether to bring a case, the Children Order does not place any duty on ELBs.

The ELBs **should not as a matter of course be preparing a case for a School Attendance Order on every home educated child**. Nor should there be a presumption that a home educated child is 'in

need' as defined by article 17 of the Children Order. In any event, the duty imposed by virtue of article 18 of the Children Order (in relation to children in need) definitely does not apply to ELBs. It applies only to "an authority", defined in article 2(2) of the Children Order as (either) a Health and Social Services Board, or a Health and Social Care Trust. An ELB is neither of these bodies.

The correct order of the ELB seeking to take action / make enquiries of a parent who is home educating is: assumption of compliance with law -> concerns raised -> informal procedures -> statutory procedures -> court proceedings.

To apply statutory procedure, before proceedings occur, is to ask for evidence of innocence from those about whom there are no concerns. **This makes a mockery of the presumption of innocence.**

The United Nations Convention on the Rights of the Child is, as noted in the draft, not legally binding, containing no controlling language or mandates. It cannot create powers. The government do not consider these rights of such importance to as to incorporate them into UK law.

There is no power to delay deregistration: Regulation 4 of the Registration and Attendance of Pupils Regulations (Northern Ireland) 1974 ("the 1974 Regulations") provides that a parent shall not withdraw their child from a school at which the child is a registered pupil, before "*acquainting the principal with [their] intention to do so.*" This does not require a parent to discuss the matter with the school principal, nor does it require the parent to ensure that a suitable home education programme is in place first.

Data protection issues – the Principal passing information to the Boards on deregistration may be guilty of an offence under the **Data Protection Act**.

With added detail, from our legal advice:

The Education and Libraries (Northern Ireland) Order 1986 (“the 1986 Order”) article 45 creates a duty for **parents** to “cause [the child] to receive efficient full time education suitable to his age” etc...

The duties of ELBs stem from **Schedule 13** – *“Where it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by article 45(1), the board shall...”*

The duty is triggered by outside forces and is purely reactive, if there is no appearance of failure there is no duty. No duty to go looking for problems, no duty to monitor. Home education is not in itself a valid concern but a legally protected option.

There are no safeguarding duties under the 1986 Order; adequate duties to refer any concerns to social services apply to all who deal with children.

Section 3(v) defines that boards have a statutory duty under schedule 13 to the Education and Libraries (Northern Ireland) Order 1986 (“the 1986 Order”), to ensure that children in the board’s area are receiving full-time education suitable to their age, aptitude, ability, any special educational needs that they have, and that parents fulfil their duty in this regard. However, schedule 13 to the 1986 Order definitely does not impose a duty upon a board as described in the draft policy. Schedule 13 empowers boards to enforce the duty that parents owe to their children under article 45 of the same legislation. Article 45 imposes a duty on parents to cause their children to receive efficient full-time education suitable to their age, ability, aptitude, and any special educational needs that they may have, either by regular school attendance or otherwise. Therefore, the duty being described as the board’s duty in this section of the draft policy, is in fact a parental duty and nothing whatsoever to do with the board. The parental duty only becomes the board’s business if it appears to the board that it is not being honoured by the parents;

and

... section 5 of the draft policy seeks to impose minimum standards which are superfluous to the law. The parental duty under article 45 of the 1986 Order extends only to the provision of “efficient full time education suitable to age, ability, aptitude and any special educational needs a child has”. The minimum standards in section 5 discuss requirements of an environment which is safe; that the child has access to a conducive learning environment; and that the child’s physical, social, emotional health and wellbeing needs are met. None of these

requirements are written into the article 45 parental duty and are supposedly an attempt to widen the scope of the parental duty, beyond that which the law requires.

*The NEELB has claimed (in correspondence) that further duties arise from **The Children (Northern Ireland) Order 1995 (“the Children Order”)**, giving a list of things that courts must have regard to when determining any question with respect to “3.(a)the upbringing of a child” including the wishes of the child, their emotional and physical needs and so on...*

Article 3 of the Children Order applies only to the courts. Though it is reasonable that the ELB should consider these factors when deciding whether to bring a case, the Children Order does not place any duty on ELBs.

The ELBs **should not as a matter of course be preparing a case for a School Attendance Order on every home educated child**. Nor should there be a presumption that a home educated child is ‘in need’ as defined by article 17 of the Children Order. In any event, the duty imposed by virtue of article 18 of the Children Order (in relation to children in need) definitely does not apply to ELBs. It applies only to “an authority”, defined in article 2(2) of the Children Order as (either) a Health and Social Services Board, or a Health and Social Care Trust. An ELB is neither of these bodies.

The correct order of the ELB seeking to take action / make enquiries of a parent who is home educating is: assumption of compliance with law -> concerns raised -> informal procedures -> statutory procedures -> court proceedings.

To apply statutory procedure, before proceedings occur, is to ask for evidence of innocence from those about whom there are no concerns. **This makes a mockery of the presumption of innocence.**

There is no requirement to provide a programme:

Section 3(viii) of the draft policy appears to be requiring parents to forward a copy of their home education programme to the board. But there is no legal requirement for a parent to do that, still less any legal power for the board to seek it. The board only has the power to ask for information (or means of satisfying it) that suitable education being provided, if it has cause for concern in this regard - ie. if it appears to the board that the parent is failing to perform their article 45 duty. The fact that a child is being home educated is not, in and of itself, sufficient for it to appear to the board that the parent is not answering their article 45 duty. On the contrary, if it is known to the board that the parent is home educating, then the

board should presume that the parent is complying with its article 45 duty, just as much as if that parent were sending their child to school and that child were in regular school attendance;

The United Nations Convention on the Rights of the Child is, as noted in the draft, not legally binding, containing no controlling language or mandates. It cannot create powers. The government do not consider these rights of such importance to as to incorporate them into UK law.

There is no power to delay deregistration: Regulation 4 of the Registration and Attendance of Pupils Regulations (Northern Ireland) 1974 (“the 1974 Regulations”) provides that a parent shall not withdraw their child from a school at which the child is a registered pupil, before “*acquainting the principal with [their] intention to do so.*” This does not require a parent to discuss the matter with the school principal, nor does it require the parent to ensure that a suitable home education programme is in place first.

At section 3(ii) of the draft policy it is stated that it is the Board/ESAs expectation that a school should advise: “the parent that the child or young person should continue to attend his or her registered school until such times as the [elective home education] programme is in place”. However, this is to impose a burden additional to law. Regulation 4 of the Registration and Attendance of Pupils Regulations (Northern Ireland) 1974 (“the 1974 Regulations”) provides that a parent shall not withdraw their child from a school at which the child is a registered pupil, before “acquainting the principal with [their] intention to do so.” This does not require a parent to discuss the matter with the school principal, nor does it require the parent to ensure that a suitable home education programme is in place first. In fact, in the case of *R v Gwent County Council, ex parte Perry* [1985] 129 Sol. J 737, a case where a local education authority in Wales (Gwent County Council) insisted that a child stay on in school until a home education programme was satisfactorily established, the court considered that the parents should be given time by the local authority to set up arrangements for home education;

Data protection issues – the Principal passing information to the Boards on deregistration would be guilty of an offence under the **Data Protection Act**.

Section 3(iii) states that the principal of the school in question will then notify the board’s education welfare officer (EWO), using a form (EHE), that the parent has elected to home educate and to withdraw their child from school. However, the principal of the school in question would have no right to do so and, in sharing such information with the EWO, the

principal would, in my view, be committing some form of offence under the Data Protection Act 1998 (“the DPA 1998”) and would also (or alternatively) be acting in violation of Article 8 of the European Convention on Human Rights (the right to private and family life), consequently breaching section 6 of the Human Rights Act 1998 (“the HRA”), because the principal would be disclosing information to a third party without proper or lawful justification for doing so (see cases of JR 57’s Application [2013] NIQB 33; and also JR 54’s Application [2011] NIQB 77). Section 3(vii) of the draft policy is suspect on this basis also - as this part seems to be requiring the principal of the school to record information of equally doubtful necessity;

Children with Special Educational Needs are not subject to the extra restrictions cited by the draft:

Section 4(ii) of the draft policy states that “Department of Education approval is required to name anything other than grant aided school provision in a child’s statement of special educational needs.” It states that this is in accordance with the 1974 Regulations and DENI Circular 2010/07. However, this is a complete misstatement of the law. In particular, article 10 of the Education (Northern Ireland) Order 1996, which itself is entitled “special educational provision otherwise than in a grant aided school” states that a board may arrange for the special educational provision (or any part of it) to be made in Northern Ireland otherwise than in a grant aided school (see article 10(1)(b)). It is accepted that article 10 is subject to article 12, which states the Department must consent to the child being educated at somewhere other than a grant aided school, but article 12(1A) clearly states that these provisions do not apply to a board deciding, for the purposes of article 16(5), whether a parent has made suitable arrangements. It is therefore denied that DENI approval would be needed if elective home education were to be named in a child’s statement of special educational needs;

Legislation

Education and Libraries (Northern Ireland) Order 1986 SI 1986/594

Article 45

1. The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise.

Schedule 13 Enforcement of duty imposed by article 45

Part 1

(1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If—

(a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the board it is expedient that the child should attend school,

the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a “school attendance order”), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

The Children (Northern Ireland) Order 1995

Child's welfare to be paramount consideration

3. (1) Where a **court** determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that—

- (a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
- (aa) the court is considering whether to make an order under Article 7; or
- (b) the court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

17. For the purposes of this Part a child shall be taken to be in need if—

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled,

and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

18. (1) It shall be the general duty of every authority (in addition to the other duties imposed by this Part)—

- (a) to safeguard and promote the welfare of children within its area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of [F2 social care] appropriate to those children's needs.

(2) For the purpose principally of facilitating its general duty under this Article, every authority shall have the specific powers and duties set out in Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on it by this Article may be provided for the family of a particular child in need or for any member of his family, if the service is provided with a view to safeguarding or promoting the child's welfare.

(4) The Department may by order amend any provision of Schedule 2 or add any further duty or power to those mentioned there.

(5) Every authority—

(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority has power to provide by virtue of this Article or Article 19, 21, 27, [F3 34C to 34E, 35A or 35B]; and

(b) may make such arrangements as it sees fit for any person to act on its behalf in the provision of any such service.

(6) The services provided by an authority in the exercise of functions conferred on it by this Article may include giving assistance in kind or, in exceptional circumstances, in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, an authority shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support, [F4 of any element of child tax credit other than the family element, of working tax credit] [F5, of an income-based jobseeker's allowance or of an income-related employment and support allowance].

[F6(10) The Treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The following extracts relate to home education of pupils.

Article 3

In all actions concerning children, whether undertaken by public, or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take appropriate legislative and administrative measures.

States Parties shall ensure that the institutions, services and facilities responsible for the care and protection of children conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

Article 12

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative of an appropriate body, in a manner consistent with the procedural rules of national law.

Article 28

States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

Make primary education compulsory and available free to all;

Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance on the case of need;

Make higher education and vocational information and guidance available and accessible to all children;

11

Take measures to encourage regular attendance at schools and the reduction of drop out rates.

States parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present convention.

States Parties shall promote and encourage international cooperation on matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

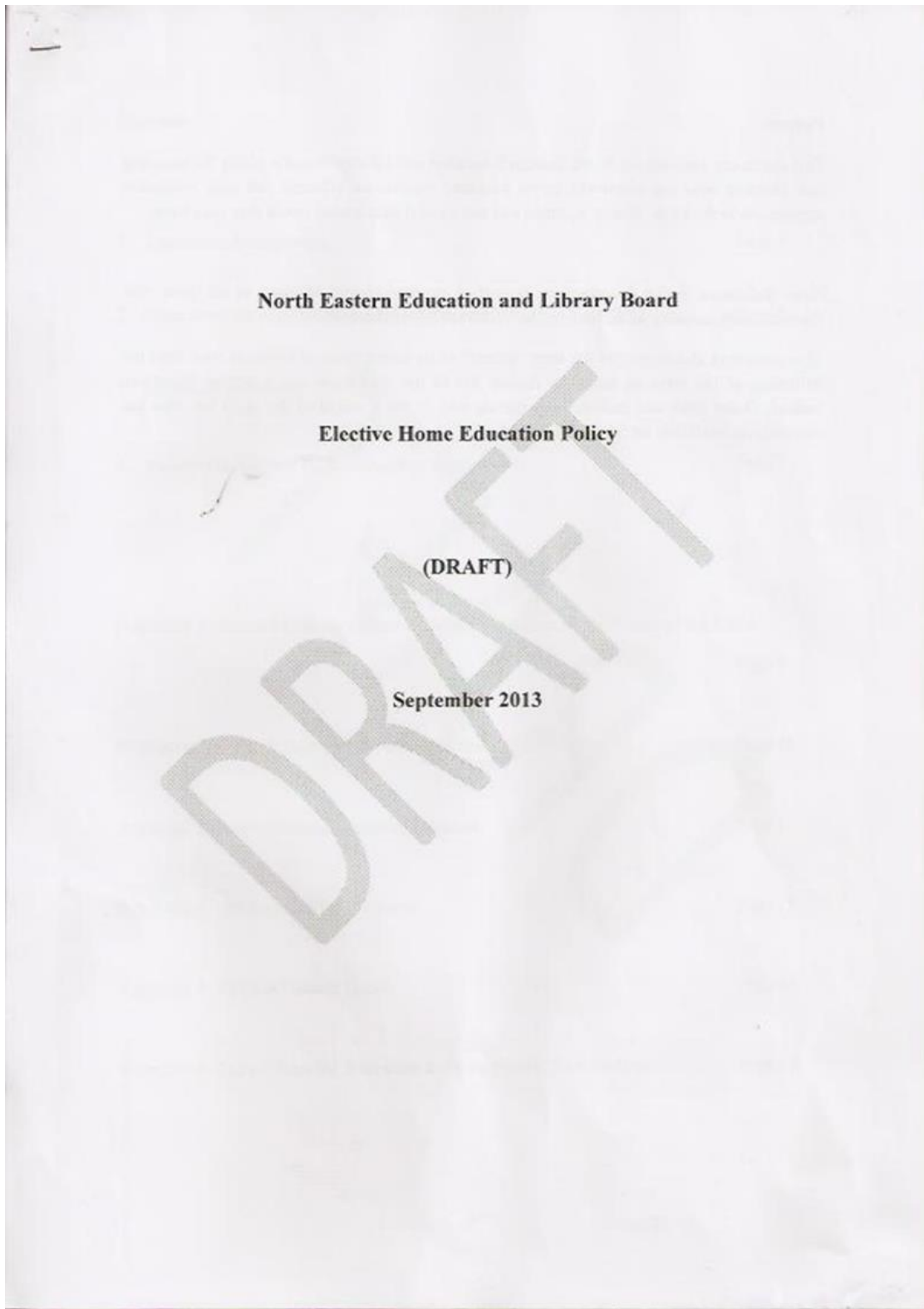
Article 29

States Parties agree that the education of the child shall be directed to: the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principle enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; the development of respect for the natural environment.

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

Passed unanimously by the United Nations General Assembly on 20 November 1990 and entered into force on 2 September 1991.

Appendix 4 - Earlier Draft, September 2013



Purpose

This document outlines the North Eastern Education and Library Board's policy for ensuring that children who are electively home educated receive an efficient full time education appropriate to their age, ability, aptitude and any special educational needs they may have.

Note: Reference in this document to '*parent or parents*' should be taken as all those with Parental Responsibility as defined by the Children (NI) Order 1995.

This document also considers the term "parent" as including those individuals who meet the definition of the term as stated in Article 2D of the Education and Libraries (Northern Ireland) Order 1986 and includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has care of the child.

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1. Legislative Background

1.1 The Board considers that the welfare of the child is paramount as determined by the Children (Northern Ireland) Order 1995.

1.2 Although not legally binding, the Board recognises the United Nations Convention on the Rights of the Child. A number of these rights are summarised in Appendix 1 where duties on parents and authorities in respect of children's education and welfare are outlined.

1.3 In relation to the Elective Home Education of children, the Board recognises the right of parents to make provision for the education of their child in accordance with the provisions of Article 45 of the Education (Northern Ireland) Order 1986.

This states that:

"In the exercise and performance of all powers and duties conferred or imposed on them by the Education Orders, the Department and boards shall have regard to the general principle that, so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils shall be educated in accordance with the wishes of their parents."

However, parents are placed under a duty to ensure their child is educated in accordance with the provisions of Article 45 of the said Order:-

"The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at a school or otherwise."

1.4 This guidance relates to children and young people of compulsory school age. This is defined in the Education and Libraries (Northern Ireland) Order 1986 (1986 No 594-(N13) Article 46 (1) as follows:

"Subject to the following provisions of this Article, in this Order the expression 'compulsory school age' means any age between four years and sixteen years and accordingly a person shall be of compulsory school age if he has attained the age of four years and has not attained the age of sixteen years."

The date of 2 July in the year the child becomes of compulsory school age will be used as a determinant in accordance with the peer group.

1.5 Boards have a statutory duty under Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986 to ensure that children in their area are receiving efficient full time education appropriate to their age, ability and aptitude, and to any special educational needs that they may have, and that parents fulfil their duty in this regard.

In pursuance of this duty the Board has identified a Designated Officer for Elective Home Education responsible for managing Elective Home Education in the Board's area and liaising with all relevant authorities. The Designated Officer for Elective Home Education will delegate duties to other board officers as required e.g. in regard to carrying out appraisal and monitoring visits.

2. Procedures for Elective Home Education

A summary of these procedures is found at Appendix 2.

2.1 The Board's identified Designated Officer for Elective Home Education is responsible for managing Elective Home Education, including maintaining a database of all children educated at home, making decisions with regard to the appropriateness or otherwise of programmes and ensuring that families with children who are home educated are visited at least once a year.

It is the responsibility of the Designated Officer for Elective Home Education to liaise with other Board services as appropriate. In this regard the Designated Officer for Elective Home Education will lead a Board team bi-annual review of all records, so that there is joint responsibility for safeguarding and promoting the welfare of children educated at home.

2.2 The Designated Officer and other board officers will follow the NEELB Child Protection Policy and the Regional Area Child Protection Committee Policies and Procedures where concerns are identified. Advice will be sought and referrals may be made in accordance with these procedures, in cases where parents fail to engage with the Board, where the programme of education does not meet the child's needs, or where there are any concerns regarding the safeguarding of children.

2.3 It is the Board's expectation that parents should promptly notify the Board that they have made a decision to home educate their children and follow the arrangements in this guidance. This applies both when children have never been registered in a school in Northern Ireland and when children are withdrawn from school.

2.4 Schools and Board officers should bring to the attention of the Designated Officer for Elective Home Education any children whom they are aware of being electively home educated.

2.5 For children who are registered in a school, and where consideration is being given to Elective Home Education, those with parental responsibility are encouraged to discuss the matter with the child's school Principal and/or the Education Welfare Officer(s), in cases where the family is already involved with the Education Welfare Service.

The Principal and/or Education Welfare Officer will seek the views of the child or young person, appropriate to his or her age, ability and aptitude and to any special educational needs he or she may have, and take account of the child's views. This information will be shared with the Designated Officer for Elective Home Education.

2.6 In cases where a parent may be considering Elective Home Education, it is the Board's expectation that the child should continue to attend his or her registered school until such times as the programme is in place.

2.7 When parents remove a child from school for the purpose of Elective Home Education, the school will use Code 3 (temporary code) to record the period of absence between when the parent informs the school that they intend to educate at home until the issuing of the certificate of attendance (S.A.1). When S.A.1 has been issued the pupil may be removed from the General Register. Ref: DE Circular 2013/[13].

The school may wish to give parents any work that the pupil has produced during the year, rewards and other material, if requested in writing by the parents.

2.8 Before commencing Elective Home Education the Board considers it good practice for parents to forward an outline of the proposed Elective Home Education Programme to the Board for its consideration. A suggested proforma is found in [Appendix 3](#). This will enable the Board, having due regard to the best interests of the child and relevant legislation, to reach a preliminary decision whether the proposed programme for the child is likely to be efficient and appropriate to the age, ability and aptitude of the child, and to any special educational needs he or she may have.

On receipt of this proposal parents will be provided with the name of a board officer with whom they should liaise regarding the proposed programme.

2.9 The officer will, within a period of 15 working days, carry out an initial appraisal visit, to confirm that the programme is in place, and to discuss any outstanding issues.

2.10 The Board's view that the programme and home arrangements are suitable will then be communicated in writing to those with parental responsibility.

2.11 Where the Board does not consider the programme suitable, the reasons will be given and parents will have a further opportunity to provide the Board with an amended programme within 4 weeks. On receipt of this amended programme a further appraisal visit will be carried out within 15 working days. After consideration, and if the Board considers the programme now suitable, the provisions of paragraph 2.10 will apply.

2.12 Should the programme remain unsuitable, in the interests of the child, a referral will be made to the Education Welfare Service, or other body as appropriate. (para. 2.15 and Appendix 6)

2.13 For children with a Statement of Special Educational Needs, Department of Education approval is required to name anything other than grant aided school provision in a child's Statement of Special Educational Needs. The mechanism for bringing about a change in the provision detailed in the statement is the Annual Review. Parents and schools must liaise with the Board's Special Education section in this regard.

2.14 The Board has no statutory responsibility to make a financial contribution to parents who chose to make educational provision for their child through Elective Home Education. However the Board has a statutory duty to provide certain services to all children. Contact details for such services are found in [Appendix 5](#). The board officers will also be able to provide general advice on matters such as the curriculum, teaching and learning, assessment support organisations and public examinations, if required.

2.15 In all cases where a parent fails to demonstrate that the child is receiving efficient full time education, appropriate to his or her age, ability and aptitude, and to any special educational needs he or she may have, the Board may take legal action in accordance with the Education and Libraries (Northern Ireland) Order 1986, Schedule 13 or Article 55 of the Children (Northern Ireland) Order 1995. See [Appendix 6](#).

3. Minimum Standards

3.1 The Board will apply the following minimum standards to Elective Home Education programmes:

- The child is being educated in a safe environment.
- The child has access to a suitable learning environment.
- The programme meets the learning needs of the child and is appropriate to his or her age, ability and aptitude and to any special educational needs he or she has.
- The programme includes the teaching and learning of Literacy, including English, Numeracy and includes the use of ICT.
- The child's physical, social, emotional, health and wellbeing needs are being met.

3.2 Board decisions as to whether an Elective Home Education programme meets these standards will be made based on evidence gathered from the initial Elective Home Education proposal, the initial appraisal visit(s) and from on-going monitoring visits.

4. Monitoring Elective Home Education Programmes

4.1 In accordance with the Data Protection Act (1998) and the Freedom of Information Act (2000) the Board will maintain a confidential electronic database of children receiving Elective Home Education, together with records of appraisal and monitoring visits. These records will be reviewed bi-annually by a multidisciplinary team of Board officers, led by the Designated Officer for Elective Home Education.

4.2 The Board will monitor Elective Home Education programmes on at least an annual basis to ensure the child is receiving efficient full time education suitable to his or her age, ability and aptitude and to any special educational needs he or she may have.

4.3 At the initial appraisal visit(s) and at each subsequent monitoring visit the board officer will discuss the Elective Home Education programme in detail, how it is structured, and will ask to see examples of the child's work. The officer will use the report proforma found at [Appendix 4](#) to record relevant information.

4.4 At each monitoring visit the board officer will also seek parental permission to speak either confidentially or with the parent present, with the child, to seek his or her views regarding the programme of home education and knowledge/awareness of how to keep safe. If parental permission is refused, this will be noted on the record of the monitoring visit.

4.5 Should the board officer or parent have cause for concern in relation to any issues these should be discussed during the monitoring visit.

4.6 On occasions it may be necessary for an Educational Psychology assessment to be arranged by the Board in order to ensure that reasonable and adequate progress is being made, or to determine the nature and extent of any special educational needs the child may have.

4.7 Parents can also contact the Board's Special Educational Needs Branch directly, or may make a request to the Board to carry out statutory assessment if there are concerns about a child's learning needs. Special Education Branch contact details are found in Appendix 5.

Appendix 1

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The following unofficial summary of the full text of a number of the Articles relate to the home education of pupils, and the responsibilities of parents and the Board in their regard.

Reference: www.niccy.org

Article 3

All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.

Article 5

The State must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.

Article 12

The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.

Article 14

The State shall respect the child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance.

Article 18

Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.

Article 19

The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.

Article 23

A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

Article 28

The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity.

Article 29

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

Article 30

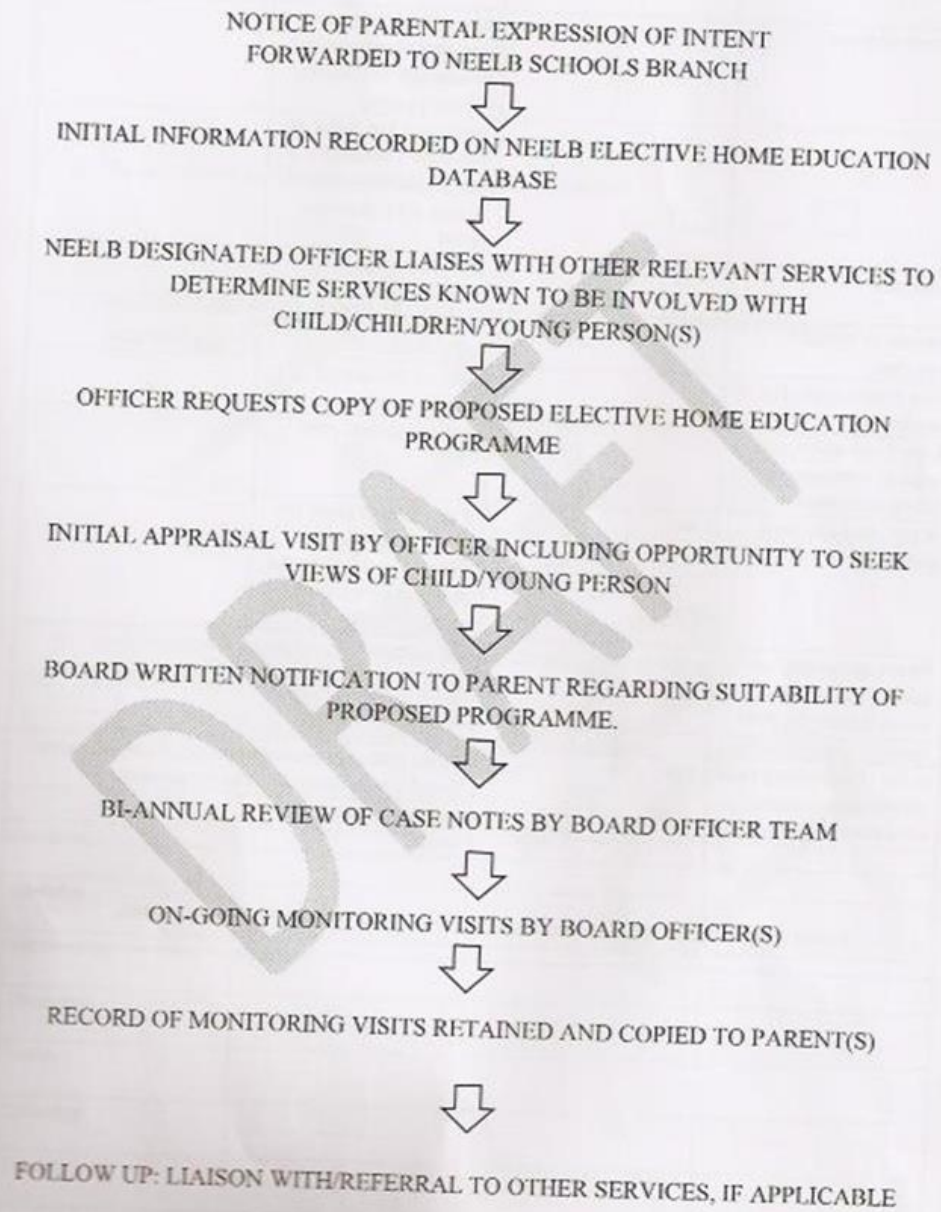
Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.

Article 41

Wherever standards set in applicable national and international law relevant to the rights of the child that are higher than those in this Convention, the higher standard shall always apply.

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**Appendix 2: North Eastern Education and Library Board Elective Home Education
Flowchart**



Appendix 3: Parental proposal for Elective Home Education – Complete one per child.

Full name of child		Date of birth	
Home address		Name(s) of those with parental responsibility Please tick to indicate if both parents' address is the same as the child's address – if not please provide details on a separate sheet	
Postcode		Home telephone number	
Mobile telephone number		Email address	
Last school attended (if applicable)		Date of last school attendance	
Date from which you wish to commence home education		Current school year	
Is the child a looked after child	Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, please state the name and contact address and telephone of the child's social worker	
Please detail any special educational needs which the child has			
Is the child subject to a statement of special educational needs	Yes <input type="checkbox"/>	If yes, please provide the name of the education board which maintains the statement	
	No <input type="checkbox"/>	Date of statement issue.	

1. Please state your reasons for electing to home educate the child or young person.

2. Please provide the child or young person's views regarding the decision to home educate.

3. Do you intend to follow the Northern Ireland curriculum?

Yes No

4. Please provide details of the programme you wish to follow. Additional material may provided (e.g. copy of course outline).

5. In the following space, please provide the weekly education programme for your child or young person.

Day of the Week	Morning session Time:	Afternoon session Time:	Evening session (for example, clubs, societies or groups attended)
Monday			
Tuesday			
Wednesday			
Thursday			
Friday			
Saturday			
Sunday			

6. Total number of hours per week dedicated to this programme _____

Appendix 4: Monitoring Visit Record proforma

ELECTIVE HOME EDUCATION

Report of Home Visit

(date)

Name(s) and address of parent(s):
Tel.
E Mail:
Name(s) and D.O.B. of child/children educated at home
Reasons given for decision to educate at home
Details of child's/children's Special Educational Needs (if applicable)
Details of other children not being educated at home
Teaching qualifications held by parents
Other relevant parental qualifications/experience/expertise
Teaching environment
Resources and teaching approaches
Timetable/structure
Literacy, including English
Numeracy
Use of I.C.T.
Assessment
Educational visits
Opportunities for interaction with other children
Child's/children's own views
Area(s) for development (if applicable)
OTHER RELEVANT COMMENTS

Report written by [.....]

Copy retained in Schools Branch and copies forwarded to parents and Chief Educational Welfare Officer.

Appendix 5: NEELB contact details

Education Welfare Service - monitors school attendance and pupil welfare

County Hall

182 Galgorm Road

Ballymena

BT42 1HN

Telephone: 028 2566 2563

Schools Branch - manages Elective Home Education

County Hall

182 Galgorm Road

Ballymena

BT42 1HN

Telephone: 028 2566 7763

Special Education Branch - advice about NEELB services for children with Special Educational Needs

County Hall

182 Galgorm Road

Ballymena

BT42 1HN

Telephone: 028 25662560

Appendix 6: The Education and Libraries (NI) Order 1986

Duties of parents to secure full-time education for their children.

Article 45 (1) The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at a school or otherwise.

(2) The provisions of Schedule 13 shall apply to the enforcement of the provisions of paragraph (1) and a parent who contravenes the provisions of that Schedule shall be guilty of an offence and liable to the penalties provided by paragraph 4 of that Schedule.

Schedule 13: Enforcement of duty imposed by Article 45 as to education of children of compulsory school age.

School attendance orders

27. For paragraphs 1 and 2 of Schedule 13 to the 1986 Order (school attendance orders) there shall be substituted—

“1.—(1) If it appears to a board that a parent of a child of compulsory school age in its area is failing to perform the duty imposed on him by Article 45, it shall serve a notice in writing on the parent requiring him to satisfy the board, within such period (not being less than fourteen days beginning with the day on which the notice is served) as is specified in the notice, that the child is, by regular attendance at school or otherwise, receiving suitable education.

(2) If—

(a) a parent on whom a notice has been served under sub-paragraph (1) fails to satisfy the board, within the period specified in the notice, that the child is receiving suitable education, and

(b) in the opinion of the board it is expedient that the child should attend school,

the board shall serve in the prescribed manner on the parent an order (referred to in this Order as a “school attendance order”), in the prescribed form, requiring him to cause the child to become a registered pupil at a school named in the order.

(3) Unless it is revoked by the board or a direction is made in respect of it by a court under paragraph 6, a school attendance order shall (subject to any amendment made by the board) continue in force—

(a) where the school named in the order provides education for pupils up to the upper limit of compulsory school age or beyond, for so long as the child is of compulsory school age;

(b) where the school does not provide education up to or beyond that age, until the pupil has reached the age at which he would normally leave that school.

(4) Where a grant-aided school is named in a school attendance order the Board of Governors of the school shall admit the child to the school.

(5) Sub-paragraph (4) does not affect any power to suspend or expel from a school a pupil who is already a registered pupil there.

(6) In this Part "suitable education", in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

1A.—(1) Sub-paragraphs (2) to (5) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child, other than a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Before serving the order, the board shall serve on the parent a notice in writing—

(a) informing him of its intention to serve the order,

(b) specifying the school which the board intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives, and

(c) stating the effect of sub-paragraphs (4) and (5).

(3) A voluntary or grant-maintained integrated school shall not be specified in a notice under sub-paragraph (2) unless the board has consulted the managers of the school.

(4) If the notice specifies one or more alternative schools and the parent selects one of them and notifies the board accordingly before the expiration of the period of fourteen days beginning with the day on which the notice is served, the school selected by him shall be named in the order.

(5) If before the expiration of the period mentioned in sub-paragraph (4) the parent—

(a) applies for the child to be admitted to a school other than the school or schools specified in the notice; and

(b) notifies the board accordingly,

then, if as a result of the application the child is offered a place at that school, that school shall, subject to sub-paragraph (7), be named in the order.

(6) If at any time while a school attendance order is in force with respect to a child, other than a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) the parent applies for the child to be admitted to a school other than the school named in the order; and

(b) as a result of the application the child is offered a place at a school, the board shall, subject to sub-paragraph (7), at the request of the parent amend the order by substituting that school for the one previously named.

(7) Sub-paragraphs (5) and (6) do not apply where the school at which the child is offered a place is an independent school unless, in the opinion of the board, the school is suitable to his age, ability and aptitude and to any special educational needs he may have.

1B.—(1) Sub-paragraphs (2) and (3) apply where a board is required by virtue of paragraph 1(2) to serve a school attendance order in respect of a child for whom it maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(2) Where the statement specifies the name of a School that school shall be named in the order.

(3) Where the statement does not specify the name of a school—

(a) the board shall, in accordance with paragraph 10 of Schedule 2 to the Education (Northern Ireland) Order 1996, amend the statement so that it specifies the name of a school, and

(b) that school shall then be named in the order.

(4) Where—

(a) a school attendance order is in force in respect of a child for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996, and

(b) the name of the school specified in the statement differs (for whatever reason) from that specified in the order,

the board shall amend the order so that it names the school specified in the statement.

2.—(1) This paragraph applies where a school attendance order is in force in respect of a child.

(2) If at any time the parent applies to the board requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education otherwise than at school, the board shall comply with the request, unless it is of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school.

(3) If a parent is aggrieved by a refusal of the board to comply with a request under sub-paragraph (2), he may refer the question to the Department.

(4) Where a question is referred to the Department under sub-paragraph (3), it shall give such direction determining the question as it thinks fit.

(5) Where the child in question is one for whom the board maintains a statement under Article 16 of the Education (Northern Ireland) Order 1996.

(a) sub-paragraphs (2) to (4) do not apply if the name of a school is specified in the statement, and

(b) in any other case a direction under sub-paragraph (4) may require the board to make such amendments in the statement as the Department considers necessary or expedient in consequence of its determination.”.

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Appendix 5 - Research Summary, Home Education & Autonomous Learning

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- Thomas, A and Pattison, H (2012) *Informal home education: Philosophical Aspirations put into Practice*, *Studies in Philosophy and Education*¹⁷
- Thomas, A. and Pattison, H. (2013) *Informal Learning and Home Education*, in: Hancock, R. & Collins, J. (Eds) *Primary Teaching Assistants: Learners and Learning*, London, Routledge/Open University Press
- Pattison, H (2014) *Rethinking Learning to Read – The challenge from children educated at home*. Unpublished PhD thesis publicly available 1 July 2014¹⁸
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Our joint and separate research projects have covered over 400 families with a wide geographical net including the UK, USA, Australia, Ireland and Europe. Our work has included a range of home educating styles and philosophies from the highly structured to the very unstructured and autonomous styles of education. Our research has been conducted via a number of research methods included observation, participant observation, interviews including group interviews and family interviews, case studies, discourse analysis, questionnaire analysis.

We acted as advisors to the all-party Parliamentary Group on home education in 2010. We submitted joint Uncorrected Evidence to the Select Committee Inquiry into the Badman Review (Uncorrected Evidence 16 www.publications.parliament.uk) and subsequently assisted in compiling the University of London, Institute of Education invited response to a Government White Paper relating to home education in 2010. We co-authored an invited written brief on home education on behalf of the Institute of Education for David Cameron when he was leader of the Opposition. Alan Thomas has been consulted prior to home education legislation in Australia (Victoria and Tasmania) and Ireland. We have also spoken extensively nationally and internationally about our research.

¹⁷ <http://link.springer.com/content/pdf/10.1007%2Fs11217-012-9299-2.pdf>

¹⁸ <http://etheses.bham.ac.uk/5051>

Key Findings

1. Home education covers a wide variation in educational styles which families are likely to adapt over time in accordance with a range of factors. Some may wish to use a structured approach similar to that used in school. Other approaches may depend more on the child's own interests and wishes, the age of the child, the family circumstances, the number of years the family has been home educating, the age of the child and the desire to sit external examinations. The result is that structure, including the making of advance plans, can vary greatly not only between families but within families at different points of their children's education.
2. Children who have been withdrawn from school after difficult experiences frequently require a period of rest and recuperation before being emotionally able to embark on school style learning programmes.
3. Learning does not necessarily follow the linear progression indicated by school programmes. A consequence of this is that children frequently do not adhere to the age related norms and targets used in schools; they are able to progress at their own rate. Progress towards age related norms is often characterised by fits and starts rather than a smooth continuous process. Thus a child who may appear to be behind at a certain point may well catch up and overtake school bench marks in the future. Many home educated children learn to read 'late' by school standards but are not disadvantaged in anyway by this and go on to become proficient readers in their own time.
4. Some key areas including the basic skills of literacy, numeracy and computer/IT skills are often learned not by having lessons in these areas but during the course of everyday activities at home and in the wider community. For example, in our research we have found many children who have learned to read with very little if any of the kind of teaching which may be necessary in a school setting.
5. Subject matters addressed at home can vary widely and often encompass skills and areas of knowledge not included on the school curriculum. We have found that some children follow passionate interests for years, going deeply into their subject matter. Sometimes these interests peter out; sometimes they form the basis for higher, formal education and careers.

6. Subject matters addressed at home can vary widely and often encompass skills and areas of knowledge not included on the school curriculum. We have come across children with deep subject knowledge, sometimes in uncommon areas, to name a few: the Russian Revolution, computing, aeronautics, cookery, jewellery making, creative writing, Japanese culture, boat design and a wide variety of craft and technical skills such as spinning, weaving, bee keeping, welding, rabbiting. We also found children pursuing music and sports to quite high levels as well as for recreational purposes. Whilst the subject matter may sometimes be unusual we have found that children are able to develop thinking skills such as critical analysis, problem solving, logical and creative thinking and self-expression in a variety of forms through their interests.

7. School pedagogy tends to be based around direct transmission styles of teaching and to employ reading and writing as its chief methods. Home education is, in general, in a better position to make use of a wider range of learning mediums; for example conversation, exploration and observation. At home play continues to be an important learning experience often well into the age range at which it would be considered purely recreational in formal education. One of the results of this diversity of learning modes is that there may be a less than conventional audit trail of children's learning in the form of written work.

8. Parents do not need to be subject matter experts themselves in order to enable their children's learning. Parents often learn alongside their children or are able to offer practical and emotional support to children's own learning projects and interests. Children become independent learners able to pick their own projects and set their own goals. This has been noted as a particular strength of home educated children joining higher education; they are much more used to the independent styles of study required by universities.

9. On a social level, home educated children tend to mix with a wider age range of children than do school children where social life is often within age determined classes. Home education groups tend to include children of all ages and in some instances eg at clubs or evening classes children learn alongside adults. Time spent with siblings is often seen as an advantage of home education.

Alan Thomas PhD, FBPS
Harriet Pattison PhD
Institute of Education, University of London

Appendix 6 - FOI information, BELB Minutes

Appendix I: Minute 24 October 2013

Meeting with ELBs and DE to Discuss Current Procedures/Issues in relation to Elective Home Education (EHE)

DATE: Thursday 24 October at 2.00pm 2013

VENUE: Antrim Board Centre

Attendees:	DE	Anne Tohill Andrea Jamieson Julie Humphries Yvonne Quee
	BELB	Jill Trotter
	NEELB	Jayne Millar
	SEELB	Sybil Skelton
	SELB	Ruth Bell
	WELB	Philomena McDermott

1. Introductions

- Following introductions Anne noted that DE is seeking some clarification from the ELBs on current practice in relation to Elective Home Education (EHE). DE is aware that the Boards have been working on a joint Draft Home Education Policy/Guidance Document in preparation for the future establishment of the Education and Skills Authority (ESA).

2. Legislative position/Numbers of Home Educated Children/ "Missing Children"

- DE noted that current legislation places a duty on Boards to ensure that every child of compulsory school age has access to a suitable education ie Article 45 (1) of the Education and Libraries (NI) Order 1986 and Schedule 13. DE advised that they are keen to hear the ELBs views on the effectiveness of existing legislation as it relates to home education.

- The Boards raised an issue in terms of information on those children who are being educated at home. Boards advised that whilst they have details of home educated children within their Board area: a) where the child has previously been registered at a school; or b) if a Board has been contacted by a parent to alert them that they wish to educate their child at home there may be other children who are educated at home and of whom the Boards have no knowledge.
- Currently, therefore, it is not possible to ascertain the number of children who are being home educated. (Board representatives mentioned the increased number of newcomer children may have led to a further increase in the figures.) The Boards also noted, however, that they consider that it is likely that there are very low numbers of “unknown” children who are being educated at home. Boards advised that previously a committee had been set up to consider these “missing children.”
- DE enquired whether there is a potential risk for these children in terms of abuse or neglect which may need to be addressed or whether responsibility in such cases rests in the first instance with DHSSPS.
- Boards confirmed that there is currently no sharing of data eg with DHSSPS, ie GP, health visitors, child development records, apart from the Education Welfare Officers in boards who share information on children across board areas. ELBs also noted that families experiencing particular difficulties tend to move around between different Board and Trust areas.
- The Boards advised that they have previously raised this matter with DHSSPS and noted that, whilst the Board’s interest is in relation to the child’s educational provision, if the Board noted a concern over a child’s welfare this is raised with DHSSPS.
- Boards queried whether there is a need to review existing legislation to provide greater protection for “missing children” eg a possible requirement for parents to register with GPs (for example) that their child is being educated at home. It was noted that this would need to be explored further including whether this issue falls under the remit/responsibility of DHSSPS as there are facets which relate to child welfare/protection issue in addition to children’s educational provision.

- It was agreed that there would be merit in a regional database which contained sufficient detail to enable Boards to identify all home educated children and for the provision of data sharing with for example GPs, DHSSPS.
- Boards suggested the use of medical numbers, to track a child from birth as one possible approach to capturing details of all home educated children. This system could be implemented/used by all agencies as well as reliably capturing all compulsory school-age children.
- A possible issue which was noted related to possible future legal challenge from children who had been educated at home who believe they may have been denied an education was discussed in light of a recent similar case.
- Boards advised that the Safeguarding Board for Northern Ireland (SBNI) is working to ensure that all children's agencies work together to safeguard children. The Designated Officers for Child Protection Education Group (DOCPEG) group was also mentioned. The group is chaired by Mary Potter (DE) and it was noted that there may be merit in seeking views from this group.
- Julie Humphries advised that she is currently working with DHSSPS regarding information sharing on Looked After Children. She suggested it may be helpful to engage with DHSSPS on elective home education, in the absence of any legal requirement on parents to provide notification that they are home educating their children.
- There was some discussion around the Children's Order 1995, and whether all home educated children are covered by this legislation.

Action – Anne, Andrea and Julie to speak to Mary Potter to explore whether there is an opportunity/potential to share data through the SBNI.

3. Monitoring Arrangements/Assessment

- Boards provided varied responses as to the extent to which they undertake assessments of home educated children and the frequency of this (eg every 12 months). Some used CASS to undertake monitoring. Two Boards do not currently provide this service due to staff shortages which has made this more difficult to maintain, particularly in Board areas which cover a large geographical area.

- Boards noted that parents of home educated children do not have to teach the NI Curriculum so the use of standardised test is not always appropriate.
- The Boards enquired if the DE Education and Training Inspectorate (ETI) may have a role to play. It was noted that ETI's role relates to children in the school setting.
- The Boards expressed some concern as to the extent to which home educated children are provided with opportunities to mix in a social/team environment. However, positive examples of effective home education were also mentioned.
- The importance of monitoring and assessment of home educated children by the Boards was noted given the additional protection it provides to the Boards (especially in light of the recent case taken against the NEELB.) It was noted that Boards cannot assess home educated children without the parent's consent.

4. Children with Statements

- Boards asked if DE could provide some clarification on the position in relation to children who have a statement of special needs which has been agreed by the Board, but where a parent then elects to home educate and has, therefore, technically opted out of the statement process. The ELBs queried whether the statementing procedure took precedence over the parent's choice to EHE.

Action – DE to raise this matter with the Special Education Team on the code of practice and if appropriate DSO.

5. Child Protection/Safeguarding issues

- ELB noted that there is an issue around children who may be on a child protection register and whether they are/should be deemed un-suitable for home education. It was noted that this is an area which requires further exploration/clarification.

6. Development of Regional EHE Guidance-Update

- Boards agreed that they would prefer to have regional EHE guidance, where all ELBs follow consistent approach. The ELBs advised that the draft Elective Home Education Policy

/Guidance document will be considered by the Chief Executives before going out for consultation. The ELBs agreed this would be shared with DE at consultation stage.

- NEELB confirmed that it is no longer the intention that it will develop EHE guidance solely for the NEELB area, as it is felt that the regional guidance will likely be completed in the near future.

Action – Boards to share Regional Home Education Policy/Guidance document with DE at consultation stage

7. Next Steps/Follow-up

- DE to take views of Mary Potter as Chair of Safeguarding Board for Northern Ireland (SBNI) in regards to data sharing with other agencies.
- DE will seek clarification on the issue of children with statements for forward transmission to Boards.
- DE to keep under consideration any future possible review of existing legislation in respect of “missing children”.
- DE to explore/clarify if children on a child protection register should be allowed to be electively home educated.
- Boards to share Regional Home Education Policy/Guidance document with DE at consultation stage