Consultation Response from

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I am sending a document because the proprietary consultation proforma on the website is not compatible with my Free Software.

Having read the Draft Policy for Elective Home Education, I consider that the draft policy: Provides relevant information about the Board's responsibility for Elective Home Education DISAGREE

Clearly and concisely outlines the procedure to be followed should parents decide to home educate their children

DISAGREE

Provides parents with a greater understanding of their role/responsibilities when deciding to home educate their children

DISAGREE

Provides parents with a greater understanding of the Board's statutory role/responsibilities for Elective Home Education

DISAGREE

Clarifies the role of the Education Welfare Service/Officer in relation to children who are home educated

DISAGREE

Clarifies the role of the School/School Principal in relation to children who are home educated DISAGREE

Clarifies the role of other agencies in relation to children who are home educated

DISAGREE

Highlights the importance of establishing arrangements for safeguarding children who are home educated

DISAGREE

Provides information and clarifies the role of the 'Named Officer' as appointed by the Board DISAGREE

Provides appropriate information about the arrangements for and frequency of monitoring DISAGREE

Highlights the minimum standards that will be used for monitoring purposes

DISAGREE

Signposts resources/information that may be useful for parents who are home educating DISAGREE

Provides information about the process to be followed to facilitate children with identified Special Educational Needs

DISAGREE

Provides parents with sufficient information to contact the named Board Officer DISAGREE

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 DISAGREE

My Background

I have carried out extensive research into what sort of arrangements **local authorities in England** make for dealing with elective home education families in their areaⁱ, including where children have a statement of special needs. My research into variations in the use of **Alternative Provision** funding led to improved national guidance and an increased take-up amongst local authorities.ⁱⁱ

Following the publication of the **Westminster Education Committee Report into Support for Home Education**ⁱⁱⁱ at the end of 2012, I investigated where home education was situated and published an analysis based on information from over 130 authorities^{iv}. A complementary analysis of staffing costs revealed huge disparities^v. I have given oral evidence to **Government Committees** and my research has been cited in **Committee Reports**^{vi}. My research is also used to inform the ongoing work of the **All Party Parliamentary Group for Home Education at Westminster.**^{vii}

My research into local protocols for managing **home education and SEN statements**^{viii} helped to shape the home education section in the recently published final **SEN Code of Practice for England**^{ix}. My review of current information on the **SEN and Disability Local Offer** throughout England has nation-wide coverage^x, with appropriate contact details where available. I have also published a detailed summary of **SEN Pathfinder spending**^{xi}, measuring performance - particularly in the area of parental engagement - against the original funding bid.

I have also carried out research into policy and practice^{xii} amongst **local authorities in Wales** and used the results to expose the mistaken assumptions behind proposals - since dropped - to change the law on **home education in Wales**^{xiii}. I established what was actually happening on the ground by obtaining answers from all the **Welsh local authorities**.

In 2007 the Department for Education and Skills at Westminster consulted on Elective Home Education Guidelines^{xiv}, and as Chair of Education Otherwise Government Policy Group^{xv} I made a submission which recommended pilot projects aimed at promoting positive working partnerships between local authorities and home educators.

"Local authority duties could better be interpreted as providing an advice and support service, for example: a fulltime telephone helpline service; establishment of informative council website pages on elective home education resources; liaising and mediating where appropriate with other children's service departments, the extended curriculum team and extended schools provision for the wider community; fostering links between the home education community and the Further Education sector; and ensuring that the home education community is included in circulars on wider community provision for children and young people, concluding that "it is only through engagement with the local community that the authorities will discover the most cost-effective way to meet their responsibilities." xvi

Recommendations

As members of the Education Committee have already taken an interest in the

draft policy, it could make sense for the Committee to look into this further. I also note that while MLAs refer - correctly - to "**policy**", the Minister tends to say "**guidance.**" This is perhaps the source of some of the current difficulties.

If the Department were to issue guidance, then the boards' policy could simply be to follow Government guidance.

It would be easier to start from scratch than attempt to salvage this particular policy, and as a starting point the boards and the Committee could consider the guidelines in England, and possibly talk to local authorities in England which are regarded as a model of good practice such as **Lancashire**^{xvii}.

Any future consultation must also enable home educated **children and young people** to participate at whatever level they feel comfortable, including - but not limited to - providing **Easy Read or Young Person's version** of any consultation documents at the outset, and also respecting children and young people's wishes as to whether they prefer their own separate consultation meetings or would rather join in group discussions at a family level.

Introduction

In 2012 the Education Minister gave the following numbers for home educated children: Belfast Education and Library Board 6; South Eastern Education and Library Board 52; Southern Education and Library Board 39; Western Education and Library Board 35; North Eastern Education and Library Board 47. Total 179^{xviii}.

I note that **MLAs** from four different parties and five different areas have put questions to the Minister about the proposed draft policy, including three members of the **Education Committee** have questioned the Minister about this policy, including the **Chair and Deputy Chair.****

The topics covered include the reasoning behind the draft policy; why does it go beyond the law/gold-plate the law; why go further than other countries in UK; has the Minister looked at what happens in other countries; where did this idea come from; will it curtail the freedom of families who home educate for religious reasons; will the Education Committee look at it; will the Minister check it before it is finalised; what engagement has there been with families over the draft policy; and what is the role and responsibility of the Education and Library Boards.

On June 23rd Minister John O'Dowd said "The law has said that the guidance requires to be reviewed...I regret the fact that the boards did not

present me with the consultation documents before issuing..."xx

I also note that **Graham Stuart, Chair of the Education Committee at Westminster,** has written to the Minister saying that the policy appears to misrepresent the role and responsibilities of Education and Library Boards regarding parents who elect to home educate their children.

Mr Stuart goes on to say that the position set out in Schedule 13 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.

Mr Stuart also pointed out that the **Welsh Government** has dropped plans to make home educating families join an official register and stated 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 individual wishes.**

The law is quite straightforward and I can't understand why the draft policy makes such a half-hearted attempt at explaining it. Children have a right to be home educated, including where the child has a statement of SEN.

It is parents who are responsible for their child's education, not the board, and it is parents - not the board - who are responsible for the outcome. Schools must delete the child's name from the register following notification from parents.

The duty of the board is reactive not proactive, ie the law provides for the board to step in if and only if it appears that parents are failing in their duty. Any welfare or safeguarding concerns should be referred to the appropriate agencies for follow-up.

The draft policy has cut and pasted various gobbets of law which purport to justify the process set out in the document, including the **United Nations Convention on the Rights of the Child,** xxii the **1986 Education and Libraries Order** and the Children Order 1995xxiv.

It is hard to single out the most striking error, but nowhere does the law say that boards have a statutory duty to ensure that all children in their area are receiving efficient full time education. Furthermore, it is astounding that anyone could believe the **UNCRC****v offers any justification whatsoever for the board's monitoring home education or interviewing home educated children.

The policy seeks to create the impression that boards will be very busy helping

home educated children but on closer scrutiny the activity seems restricted to holding on to the parents' programme for a couple of weeks before revealing whether or not it has been accepted, and sending someone out from "welfare" once a year with a list of hoops the family has to jump through in order to be allowed to continue home educating.

I have set out a brief summary of the law below:

- 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. [Article 45, Education and Libraries (Northern Ireland) Order 1986***
- 2. Elective home education by parents is one type of "education otherwise". xxvii
- 3. The State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.[Article 2 of the First Protocol, European Convention on Human Rights**xviii]
- 4. Parents do not have to seek permission to home educate. Where a child is a registered pupil at a school and parents notify the school that they wish to take the child out in order to home educate, the school must delete the child's name from the school register. [Regulation 6(2) of- The Registration and Attendance of Pupils Regulations (NI) 1974 [No. 78]]
- 5. The right to be home educated applies equally where the child has a statement of special educational needs. The statement must continue to be reviewed annually.[Article 10, Education Order (Northern Ireland) 1996*** + Parts IV and VI of the SEN Code of Practice.****
- 6. If it appears to the board that any parent is failing to cause his/her child to receive full-time education suitable to age, ability and aptitude and any special educational needs, the board shall serve a notice in writing on the parent requiring him to satisfy the board that the child is receiving suitable education. If the parent subsequently fails to satisfy the board, and in the opinion of the board it is expedient that the child should attend school, the board shall serve a school attendance order.[Schedule 13, Education and Libraries (Northern Ireland) Order 1986xxxi]

Critique of the Legal Process set out in the Draft Policy

The legal process in Northern Ireland for taking a child out of school bears little resemblance to the draft policy. Circular 2013/13 - Attendance Guidance and Absence Recording By Schools**xxii states that "a pupil's name may be removed from a school's register after...Parent advises that child is being removed under Regulation 6(2) of- The Registration and Attendance of Pupils Regulations (NI) 1974 [No. 78], for example elective home education."

Regrettably, the board's draft policy departs from the law and seeks to persuade schools and parents that home education has to be approved by the board, despite the fact that the law does not provide

any justification for the board to approve or deny permission to home educate.

The draft policy also attempts to convince schools that parents must submit a home education "programme", although there is no basis in law for this. The draft policy then goes even further, asking schools to collude in presenting the programme as a bona fide requirement, and wanting schools to wait until parents confirm that the programme is ready, before taking the child's name off the school register.

The draft policy gives extremely bad legal advice to schools, implying that it is in some way up to the school to decide when a child's name can be deleted from the school register. This contradicts the **1974 Regulations 6. (2)** and is not condoned by **DE Circulars****xxxiii. The DE Circular says that the school should send a copy of the **SA1 form** to the board at the same time as it gives the original to parents. In other words, form **SA1** becomes de facto notification of home education.

The draft policy entirely misrepresents **Code 3** to imply - wrongly - that the law obliges schools to keep prospective home educated children on roll pending consideration by the board. In fact, **Code 3** appears to have been first introduced in 2010 via Circular 2010/07 as a way to mark the register in the event that the school knows the child is to be home educated and the child has ceased attending but where the school hasn't yet supplied the **SA1 form****xxxiv.

There is nothing in the Circular to indicate that **Code 3** should be used as a way of delaying taking the child's name off the school register. **Code 3** seems designed for use in similar circumstances to **Code C in the 2008 DCSF Guidance on Keeping Pupil Registers in England,** ie for a very short period of time between the school's being made aware of home education and the information reaching the local authority.

The proposed draft policy wrongly says "(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".

(In passing I note that the draft policy quotes from an out-of-date version of **Schedule 13*****. This is puzzling, as the old version is only available on the Government website as a scanned image pdf which someone would have download, open and then type out the relevant paragraphs by hand, in contrast to the up-to-date version which is prominently displayed and can simply be copied and pasted. This suggests that the authors of the draft policy have not actually sourced the legislation from the Government website, but instead have taken the information from a secondary document.)

Education and Library Boards in Northern Ireland are given the power to issue School Attendance Orders by virtue of Schedule 13 of the Education and Libraries Order 1986** which states that

"(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."xxxvii

The duty to ensure that the child receives education is clearly placed on the parent, **not** on the board. Should the board seek to go beyond its remit by taking over responsibility for the child's education, a corresponding legal liability would come into play, which I can only imagine is not what the board intends.

The word "appears" in Schedule 13**xxviii means that the board is only required to take action after a problem has come to light. It is only after this stage that the parent is required to "satisfy" the board that a suitable education is being provided. At the outset, the board should **not** be asking parents for evidence. There is no requirement in law for parents to supply a "programme"

Notes from the Focus Group meetings suggest that the boards are erroneously interpreting **Article 44 of the Education and Libraries Order 1986**** to mean that while parents do have a certain amount of freedom to choose how their children are educated, the board has a duty to check whether children are in fact receiving efficient instruction.

This is looking at **Article 44** from completely the wrong angle, since it is actually about protecting the state from parents' demands, rather than imposing a duty on the state to interfere with what parents are doing.

In fact, **Article 44**^{xl} is equivalent to **section 9 of the Education Act 1996 in England**^{xli}, which as education lawyer David Wolfe points out doesn't force the local authority to give parents what they want, merely requires them to have regard to the general principle of "accordance with parents' wishes xlii".

In England, the Minister made reference to the **Belgian Linguistics**^{xliii} case 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.^{xliv}

The draft policy says "the designated officers for child protection in the CPSSS will be contacted on

the same day that any concerns are noted" [about "existing and/or potential safeguarding issues"].

However, there is no information any thresholds for "concern" and there is a substantial risk that the lines between "education" and "welfare" and "potential safeguarding issues" will become hopelessly blurred since the draft policy goes on to talk about "minimum standards" which includes reference to nebulous areas such as the child's "social needs".

Families in Northern Ireland are justifiably concerned that they will be pursued through legal channels to get the children back into school on grounds other than education.

Furthermore, the reference to CPSSS is not explained, but appears to be the **Child Protection Support Service for Schools which is supervised by the Chief Education Welfare Officer.****Iv

The draft policy makes no reference to the **Safeguarding Board Act 2011**^{xlvi}. "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".

Section 12 Safeguarding Board Act (Northern Ireland) 2011**ii is equivalent to section 175 **Education Act 2002****Iviii in England. The Government Home Education Guidelines for Local Authorities in England say that "Section 175(1) does not extend local authorities' functions. It does not, for example, give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education."**

The relevance of the **Children Order 1995**¹ to home education is not explained. I am guessing it refers to **Education Supervision Orders** but the policy has no information on the ESO process.

The **Children Order 1995**^{li} provides a legal definition "parental responsibility", and includes details of court orders applied for by social services for children in need of services and children at risk of significant harm, comparable to the **Children Act 1989 for England and Wales**.^{lii}

In addition, **Schedule 4 of the Children Order**^{liii} gives details about **education supervision orders,** which are applied for by the Education and Library Boards, rather than social services. ESOs over-ride the usual primacy of education in accordance with parental wishes and also replace any school attendance orders served under schedule 13. The original 1989 Children Act^{liv} was notable for home educators in that it removed education from the list of grounds upon which care orders might be made, and introduced supervision orders for education, whereas under the previous Act from 1969^{lv} a child could be taken into care on education grounds.

Turning now to the United Nations Convention on the Rights of the Child, the **UNCRC** offers no justification whatsoever for the board's monitoring home

education or interviewing home educated children. At all stages the convention affirms the primacy of parents in children's lives. lvi

The context for the child's right to express his/her views is in "judicial and administrative proceedings affecting the child." The UNCRC is of course not suggesting that the state should bypass the parent in order to speak directly to the child in day-to-day family life.

It should be remembered that the "minimum standards" referred to in **Article 29** are applied specifically to "educational institutions" and not to arrangements made by parents at home. ^{lviii}

The Preamble to the UNCRC states that the family is the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children and recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." It

Article 5^{lx} says that states parties shall respect the responsibilities, rights and duties of parents to provide, in a manner consistent with the evolving capabilities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 12 says that 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 being given due weight in accordance with the age and maturity of the child. **Article 12** goes on to say that for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.^{lxi}

Article 14(2) says that "states Parties shall respect the rights and duties of the parents ... to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child is a manner consistent with the evolving capacities of the child "bit is a manner consistent with the evolving capacities of the child" the child is a manner consistent with the evolving capacities of the child is a manner consistent with the evolving capacities of the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the evolving capacities of the child" the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child "bit is a manner consistent with the child" the child "bit is a manner consistent with the child "bit i

Article 18 says that states parties shall use their best efforts to ensure recognition that both parents have responsibilities for the upbringing and development of the child. Parents ... have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern^{lxiii}.

Article 23 says that assistance should be provided free of charge whenever possible to disabled children. lxiv Boards could promote fulfilment of **Article 23** by ensuring that children who are home educated and who have disabilities or special educational needs are not denied access to services or therapies simply because they do not attend school.

Article 28 says that states parties recognise the right of the child to education. The onus is placed on the state to provide educational opportunities, with a particular emphasis on diversity at secondary level^{lxv}. An easy way for the board to fulfil this aim would be to make vocational courses accessible to home educated young people free of charge, especially bearing in mind that the

Education Funding Agency in England will now pay for courses at college where a home educated young person is between the ages of 14 and 16^{lxvi}.

Critique of the Process set out in Draft Policy for Children with Statement of SEN

The draft policy contains a series of errors with regard to home education and special 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.

Firstly, an Annual Review is not required by law before a child becomes home educated, although the board may wish to bring forward the Review.

Secondly, 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.

Thirdly, it is not necessary for home education to be "named" in the statement, unless the Board has agreed to pay for the provision.

Fourthly, the draft policy signposts to the **1974 Regulations** and the **2010 circular**^{lxvii} but neither of these documents make any reference to SEN statements.

Fifthly, the relevant legislation is Article 10 of the 1996 Education Order^{lxviii} and Parts IV and VI of the SEN Code of Practice.^{lxix}

Conclusion

The duty to ensure that the child receives education is clearly placed on the parent, **not** on the board.

Should the board seek to go beyond its remit by taking over responsibility for the child's education, a corresponding legal liability would come into play, which I can only imagine is not what the board intends. The draft policy gives extremely bad legal advice to schools, implying that it is in some way up to the school to decide when a child's name can be deleted from the school register.

The word "appears" in Schedule 13 means that the board is only required to take action after a problem has come to light. It is only after this stage that the parent is required to "satisfy" the board that a suitable education is being provided. At the outset, the board should **not** be asking parents for evidence. There is no requirement in law for parents to supply a "programme"

The policy seeks to create the impression that boards will be very busy helping home educated children but on closer scrutiny the activity seems restricted to holding on to the parents' programme for a couple of weeks before revealing whether or not it has been accepted, and sending someone out from "welfare" once a year with a list of hoops the family has to jump through in order to be allowed to continue home educating.

Families in Northern Ireland are justifiably concerned that they will be pursued through legal channels to get the children back into school on grounds other than education.

There is a substantial risk that the lines between "education" and "welfare" and "potential safeguarding issues" will become hopelessly blurred since the draft policy goes on to talk about "minimum standards" which includes reference to nebulous areas such as the child's "social needs".

The law does not provide for a free-standing "right to education" for the simple reason that this would extend rights to minority forms of schooling which the state would then be obliged to fund.

The United Nations Convention on the Rights of the Child offers no justification whatsoever for the board's monitoring home education or interviewing home educated children. At all stages the convention affirms the primacy of parents in children's lives.

It would be easier to start from scratch than attempt to salvage this particular policy, and as a starting point the board could consider the guidelines in England, and possibly talk to local authorities in England which are regarded as a model of good practice such as **Lancashire**^{lxx}.

Any future consultation must enable home educated **children and young people** to participate at whatever level they feel comfortable, including - but not limited to - providing **Easy Read or Young Person's version** of any consultation documents at the outset, and also respecting children and young people's wishes as to whether they prefer their own separate consultation meetings or would rather join in group discussions at a family level.

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