

## **Response to the Draft Northern Ireland Elective Home Education Policy**

### **About Family Education Trust**

Family Education Trust is a registered charity dedicated to promoting stable family life and the welfare of children.

Parents frequently contact the Trust for advice on the options available to them with regard to the education of their children, both within the school system and 'otherwise'.

Family Education Trust actively participated in the process leading up to the publication of the home education guidelines in England towards the end of 2007, and both met and corresponded with departmental officials at that time. The Trust played an active role in relation to Graham Badman's home education review in 2009. In addition to making a detailed submission, it also engaged with departmental officials and met with Mr Badman.

### **Summary**

We have a number of concerns about the draft elective home education policy:

- It does not accurately represent the statutory duty of the Education and Library Board
- It effectively turns home education into a special privilege that may be granted or withheld by the Board/ESA, rather than respecting it as a legal right and an option that may be freely chosen by parents
- It is intrusive and undermines the fundamental right to a private and family life
- It reverses the principle of innocent until proven guilty

### **The statutory duty of the Education and Library Boards**

The proposals contained in the draft policy rest on the false assumption that Boards have a statutory duty 'to ensure the children in their area are receiving efficient full-time education...and that parents fulfil their duty in this regard'.

In reality, the Boards have no such statutory duty. Rather, the duty to ensure that children are receiving efficient full-time education suitable to their age, ability and aptitude, and to any special educational needs they may have, rests with their

parents, and not with any government agency (The Education and Libraries (NI) Order 1986, Article 45).

The point at which the local authority has a duty to satisfy itself that a child is receiving a suitable education is reached '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 Education and Libraries (NI) Order 1986, Schedule 13).

In other words, in relation to the duty to satisfy itself that children are receiving a suitable education, the Board's role is *reactive*, not *proactive*. As with other areas of parental responsibility, parents can be trusted to fulfil their responsibilities in relation to the education of their children unless there is evidence to suggest otherwise, and at that point, the Board has a duty to intervene in accordance with Schedule 13.

Under the Education and Libraries (NI) Order 1986, it is parents, and not any agency of central or local government, who have the responsibility for ensuring that their children receive efficient full-time education suitable to their age, ability and aptitude and any special needs they may have. Parents may fulfil this responsibility, either by ensuring that their children attend school regularly, or by making alternative arrangements. This law has served both parents and children well for decades. It allows parents the freedom to determine how their children will be educated, while enabling Boards to investigate where it appears to them that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise.

The principle of not requiring any intervention on the part of the authorities except 'where it appears' to a local authority that parents are failing to fulfil their responsibilities is not a legal loophole as some have characterised it, but a provision that conforms to three key principles at the heart of UK and European law:

- the responsibility of parents for their children's education (The Education and Libraries (NI) Order 1986, Article 45),
- respect for parental wishes and parental religious and philosophical convictions (The Education and Libraries (NI) Order 1986, Article 44; European Convention on Human Rights, Article 2, Protocol 1), and
- the right to a private and family life (European Convention on Human Rights, Article 8).

To charge Boards with the task of approving and routinely assessing the suitability of the educational provision in all home educating families, regardless of whether any concerns have been expressed, would undermine the responsibility that parents bear for making decisions about their children's education. It would also involve an unnecessary drain on public resources.

## **Turning a legal right into a special privilege**

The suggestion in the draft policy that parents should be required to submit their proposed education programme to the Board/ESA for approval before the child is permitted to be removed from the school register has the effect of turning the legal right to home educate into a special privilege that may be granted or withheld by the authorities.

The draft policy proposes that parents considering elective home education should discuss the matter with the principal of the school, who will then notify the education welfare officer of the parents' decision and, 'where appropriate' (whatever that means), 'the wishes and feelings of the child'. Such provisions would place obstacles in the path of home educating parents which are not encountered by parents who elect to fulfil their Article 45 duty by registering their child in a school.

These proposals undermine the principle, enshrined in law, that parents should be free to determine the means by which they provide an efficient full-time education for their children. They effectively introduce a licensing scheme and give to the Board powers either to grant or withhold a licence to home educate. The further proposal that the Board/ESA will monitor home education provision 'on at least an annual basis' is tantamount to saying that the licence to home educate will be valid for no more than a year and must be renewed at intervals to be determined by the Board.

It is parents who bear the legal responsibility for the education of their children and they may discharge their duty either by ensuring the regular attendance of their children at school or 'otherwise'. If a parent decides to withdraw his or her child from school, that decision must be respected and the child should be deregistered on the date specified by the parent.

Education and Library Boards should recognise that education is one among many responsibilities that parents bear towards their children, along with feeding them, clothing them, caring for them, protecting them, seeing to their health needs etc. Parents should no more have to register with the state to educate their children than they should be required to apply for a licence to feed and clothe their children, and provide for their other needs.

The position of home educating parents is comparable to that of full-time parents of a pre-school-aged child. If parents choose to place their child in some form of child care or day nursery, they go through a registration process, but no form of registration or monitoring is required of those parents who choose to care for their own child at home. We see no compelling reason why that should change at the beginning of the term after a child reaches the age of five. Since it is parents who bear the legal responsibility to ensure their children receive efficient full-time education, home education should similarly be viewed as the default position, requiring no form of registration. Parents should not be required to register in order to perform any of the responsibilities they bear towards their children - whether it be feeding them, clothing them or educating them.

## **Intruding upon family privacy**

Home educating families typically do not draw a distinction between education and family life – the two are very much intertwined. It is for this reason that many are so uncomfortable about compulsory registration and monitoring. They would feel that their family life were being monitored and their children surveilled to a degree not experienced by children attending school.

The draft policy proposes that ‘the wishes and feelings of the child’ about home education should be taken into account ‘where appropriate’ before the Board grants approval to home education and thereafter ‘the child’s opinion will also be taken into consideration’ on at least an annual basis as part of the Board’s monitoring. The fact that children in school are not asked about their wishes and feelings and whether they may prefer to be home educated suggests that home educated children are being treated as a special case and the decision of home educating parents is being treated differently from that of other parents.

If the thinking of the draft policy were to be pursued to its logical conclusion, it would require granting the Board access to all children registered at school to ascertain their views about the education they were receiving. And why stop at education? The logic of such an extreme reading and misapplication of Article 12 of the United Nations Convention on the Rights of the Child would lead to agencies of the state assuming an advocacy role for children in every area of their lives, completely undermining the authority of their parents.

The proposals contained in the draft policy represent a serious breach of family privacy. No other group of parents is subject to routine visits to ensure that their children are being properly looked after or educated. Officers from the Board/ESA should not have any statutory right of entry to the home unless they have grounds for believing that some form of abuse or neglect is occurring.

The privacy of the family home has been at the foundation of British law for generations and is very important principle to preserve in a free society. As William Pitt the Elder expressed it almost 250 years ago: ‘The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail - its roof may shake – the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter.’ It is frankly an insult to home educating parents to violate the privacy of their homes in the way proposed.

If ‘home education’ is understood in more general terms as the impartation of knowledge and instruction to a child, then it takes place in every home in the land, to a greater or lesser degree. It is therefore unclear on what basis the government is proposing to single out for home visits children who are not at school for six hours a day, five days a week, 39 weeks a year.

## **Reversing the principle of innocent until proven guilty**

The proposal to grant to the Board/ESA a statutory right of access to the homes of home educated children is in effect reversing the presumption of innocence in British law and treating parents with suspicion until they have proven themselves innocent.

Advocates of routine monitoring sometimes reason that parents who have nothing to hide have nothing to fear and express surprise that conscientious home educating parents should have any objection to home visits. However, if such advocates were to be asked whether they would welcome an annual visit from local authority officials to their own homes, in order to inspect their kitchen facilities, monitor their dietary plans and assess their culinary skills, we suspect that they might consider such monitoring an unwarranted and disproportionate intrusion. The reason for their objection would not be because they had something to hide, but because they had something to protect – the privacy of their family lives.

It is important to uphold the legal tradition whereby citizens of a free country are presumed innocent until found guilty. In the absence of evidence to the contrary, it may therefore be assumed that parents are fulfilling their legal responsibilities with regard to the care and education of their children.

## **Conclusion**

The current legal framework for home education in Northern Ireland is consistent with British legal traditions and with international human rights instruments, and pays due regard to parental responsibilities and family privacy.

The present framework possesses the following strengths and benefits:

- it permits flexibility – where support is needed and requested it can be given;
- where parents are fulfilling their responsibilities and do not require support or intervention, the Board has no obligation towards them;
- scarce resources are not wasted on monitoring families who neither need nor desire the involvement of the Board; and
- the Board's resources are freed up to address situations 'where it appears' that parents are failing to perform their statutory duty.

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Family Education Trust  
Jubilee House  
19-21 High Street  
Whitton  
Twickenham  
TW2 7LB

*[www.familyeducationtrust.org.uk](http://www.familyeducationtrust.org.uk)*