

Response ID ANON-TN9R-CPHJ-J

Submitted to **Children not in school**

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Introduction

1 What is your name?

Name:

Centre For Personalised Education

2 What is your email address?

Email:

770177wendy@gmail.com

3 Are you responding as an individual or on behalf of an organisation?

Organisation

4 If you are responding on behalf of an organisation, what is your organisation?

Organisation:

Centre for Personalised Education

5 Which of the following best describes the capacity in which you are responding to this consultation?

Representative of other organisation

6 Would you like us to keep your responses confidential?

No

Reason for confidentiality:

LA duty to maintain a register of children not in school

7 Do you agree that local authorities should be obliged to maintain a register of children who are not registered at specified schools (those listed at paragraph 2.2 of the consultation paper) or being educated under s.19 arrangements?

No

Maintaining a register - implementation details if opposed

20 Why do you not support the concept of a duty on each LA to maintain a register?

comments on duty - opposed:

1. Home educating parents find this suggestion insulting and discriminatory. No registers exist which are mandatory, save for those geared to dangerous issues (firearms licensing) or operating premises for gambling or sake of alcohol. If a parent wishes to run an education establishment then it is only right and proper that the establishment is registered, as it involves care of other people's children. Home educating parents are not providing any service to third parties, but are making a lawful choice as to how they parent their children.
2. The propensity of local authorities to abuse any powers given to them by the State, in respect of home educating parents, is significant. Whilst the DfE has given assurances that a register would not result in any further boundary pushing, the DfE has actively encouraged such 'boundary pushing' within its own home education guidance. CPE believes that LAs will operate any registration process as if it is a permissive exercise used to refuse 'permission' to families to home educate. This belief is based not only on our significant experience, but also on recent incidents of LAs responding to the new guidance by doing just that.
3. Academic research makes clear that speculative increases in regulation of families results in greater engagement of those who are already positively inclined toward the regulator, in this case the LA and a significant reduction in engagement by those who are less positively inclined toward the regulator. CPE has seen a highly significant increase in contact from home educating families, since the guidance was issued, who are concerned by the behaviour of the LA and are taking steps to remove themselves from oversight of the LA. Whilst the majority of these parents are caring and excellent educators, it is clear that any parent who was not doing a good job, would take steps to avoid registration, leading to any such process forcing being counter productive.
4. The proposals for data sharing within the registration proposal have already led to numerous families eschewing NHS services and whilst those who can afford private health care will continue to care for their children well, those who do not will prejudice their children's health in avoiding what they experience as intrusive interference over education.
5. UNCRC, Family test and assessments upon which the proposals are predicated, are clearly authored by an individual with a wholly negative stance toward home education. The assumption that forcing a child into school is in that child's best interests, shows an alarming ignorance of the consequent distress and mental health problems likely to be suffered by a wide range of children. No impact assessment is made of this clear risk.
6. Mandatory registration would be analogous to registering every family in the area who are of a certain religious belief, on the basis that doing so just might remove a risk of that family being involved in terrorism offences. This would of course run counter to the Equality Act 2010 and yet it is effectively what is

proposed for home educating families.

7. During Government consideration of the 'Badman' proposals to register home educated children, the Local Government Association calculated that such a register would cost £100 million to set up and a further £50 million annually to maintain, in a situation where numbers of home educated children were considerably smaller. This being in a climate of austerity, cuts to LA services and reduction of support for SEN children. The cost is simply not justifiable.

8. The majority of LAs have not issued any SAOs to home educating families over the last year, with most SAOs being restricted to those LAs which are known to flout the legislation and guidance. A mandatory register would put an unnecessary burden on those LAs doing a good job, whilst increasing the ultra vires behaviour of those LAs who do not do so. This, in a situation where the DfE actively encourages pushing 'the boundaries' and fails in every respect to act to protect parents from those over zealous LAs.

9. The relationship between the worst performing LAs and home educating families is extremely poor, a mandatory register would exacerbate that problem leading to increased disengagement.

10. In regions where registration has been made mandatory, research has found that it leads to no improvement of home education and no improvement in the already minimal child safeguarding statistics. In short, it is a waste of time and money.

21 Should such a register specify whether children are attending an educational setting (other than their own home) during school hours?

Add comments if you wish

No

other settings comments:

This question presupposes that a register will be legislated for and CPE believes that the home education consultation was little more than lip service to home educating families. This has caused resentment amongst those families who have lost trust in the DfE and in their LAs as a result. The consultation should not be merely lip services, but genuinely entered into with a view to considering submissions equitably.

1. The proposal conflates illegal and unregulated settings with home education. These settings are not home education, but subject to OFSTED control. Funding would be better used to support OFSTED.

2. Home education is a misnomer, as education for home educated children can include the use of private tutors, special events at museums, home education groups, libraries, collaborative working with friends and visits to educational places of interest. What this proposal essentially does is to subject the home educating family to 'tagging', as criminals are tagged, in order that their movements can be monitored. It surely goes without saying that this is unduly intrusive.

3. The cost and logistics of policing such a proposal would be untenable. Examining the last few cases where CPE trustees assisted parents with checking education reports, it appears that the average number of venues attended by each family is in the region of 10 -20 per week. If each of those venues were to form part of a registration process, it would result in insurmountable recording difficulties. This supposing that register is acceptable, which it is not.

4. A mandatory register would deter parents from using events, tutorials, libraries, collaborative learning and home education groups. This in turn would reduce the quality of the home education provided by those families, creating a Government led self-fulfilling prophesy.

22 Should the register be widened still further to also include children who are being educated under s.19 arrangements? Add comments

if you wish

No

s.19 comments:

CPE believes that this question is a leading one which is designed to indicate a determination to set up a mandatory register, rather than a genuine consultation on whether or not such a register is advisable. Further, as arrangements for children subject to the Education Act 1996 s19 are arrangements made by the LA, then those arrangements should be known in full by the providing authority and the inclusion in any mandatory register would be wasteful of time and cost.

Clearly, if the LA does not already have these details, then that LA should be found to be unfit for purpose.

23 Should the register include flexi-schooled children (ie those who are educated at home or elsewhere for some of the week during school hours but are also on the admission register of a state-funded or registered independent school)? Add comments if you wish

No

flexi-schooled text:

Flexischooled children are already on a school roll with oversight of the school. If a mandatory register was acceptable, which in the view of CPE it is not, flexischooled children would have no place on that register. It is the duty of the school to ensure that children on the school roll receive a suitable education and schools enter into contractual arrangements with flexischooling parents to support the proper fulfilment of that duty.

24 What information as a minimum do you think the register should contain about each child? Check as many as required

Name, Address, Date of birth

information comments:

This question is a leading question, based on an assumption of registration. If a register were legislated for, which it should not be, the GDPR is clear that data retained should be the minimum required for purpose. That would be name, address and age of child.

25 Do you think DfE should prescribe a national format for the register? Add comments if you wish

Yes

national format comments:

If such a register were acceptable, which it is not, it would be essential to develop the format in close consultation with home educating families. This should be on a National basis, in order to control the increasingly over zealous actions of rogue LAs.

26 Do you believe that local authorities should share information from their register with other local authorities and other agencies? Add comments if you wish

No

share information comments:

If such a register were acceptable, which it is not, it would be imperative that the data sharing was restricted, as it is now, to cases where it is apparent that it is required to prevent significant risk of harm to a child. This is the standard set out in the Children Act 1989 s47 and no lower standard should be used. It is of significant note that home educated children are at considerably lower safeguarding risk than are children under five years old and at no greater risk than children at school, who are aged 5 -16 years. This is despite considerably higher reporting rates for home educated children, who are consequently put under greater scrutiny than their schooled peers.

27 Do you think that a local authority should include any information about a child on its register which has been legally obtained from other agencies? Add comments if you wish

No

information from others comments:

If such a register were acceptable, which it is not, it should be restricted to the bare minimum of data as described in question 24. This does not prevent a parent from requesting that other information be noted, but that should be restricted to where parents give true consent.

28 Do you agree that a register held by a local authority should be open to inspection by other bodies as prescribed by the Secretary of State, in order to check whether the local authority is carrying out its obligations to maintain the register? Add comments if you wish

Yes

open to inspection comments:

If such a register were imposed in the face of overwhelming objection to the proposal from home educating families, it must be open to inspection by the DfE and OFSTED. This should be limited to establishing the existence of the register and ensuring that LAs are not abusing that register.

Given that the DfE consistently fails in its duty to act on behalf of home educating families subject to ultra vires behaviour from their LA, it is imperative that any mandatory register would come with clear financial penalties for breaches on the part of the LA.

29 Do you agree that local authorities should have to make annual returns of collated data from the register to DfE for statistical purposes? Add comments if you wish

No

annual returns comments:

See questions 26 and 28 above. If the DfE and OFSTED have access, statistical analysis is extraneous.

30 This question is for local authorities only. What does the local authority believe would be the approximate additional annual cost of maintaining a register for its area? This should so far as possible include any costs already incurred on voluntary registration, but exclude other costs incurred by the authority in relation to home education and children missing education. It would be helpful to set out the basis for the estimates

costs comments:

Please refer to CPE's earlier comments on cost implications.

31 Do you have any other comments on either the principle of registration or practical issues related to registration on the basis proposed?

other comments:

Registration would have a negative effect upon child safeguarding. The new home education guidance has already increased the number of home educating families eschewing NHS services for fear of unwarranted referral to children's services, simply on the basis that they home educate their children. There is significant evidence that this can and does occur regularly. GPs have already successfully prevented reporting of immigrants using the NHS, as that reporting was leading to immigrants avoiding the NHS until their conditions became more severe. Exactly the same will happen with home educating families.

Registration would lead to false positives as maladministration and ultra vires behaviour by LAs leads to inappropriate cases of children being subject to SAOs. Home educating families faced with a stark choice of protecting their child, or subsuming their child's interests in order to placate their LA, would avoid registration at all cost and rightly so.

Media announcements by Government, MPs and publication of the new guidance have already resulted in home educating families being stigmatised. Such publications present home educating families as at risk and needing reported as one reports a criminal offence. A mandatory register would put those families on a par with sex offenders, rather than the more benign view taken to those registered to use firearms, or to sell alcohol. This is wholly unacceptable in a nation which should provide protection from discrimination to its residents.

Duty on parents

32 Do you agree that parents should be under a legal duty to provide information to their local authority about a child who is within scope of the proposed registration requirement?

No

Duty on parents - implementation details if opposed

38 If a duty on parents was created what data should parents have to provide about their child? Check as many as required

Name, Date of birth, Address

data - comments:

If such a register were acceptable, which it is not, it would be necessary to restrict the data to the bare essentials of name, address and date of birth.

CPE believes that the new guidance has led to increasing tensions between families and LAs, together with withdrawal of home educating families from NHS service use and loss of trust in the DfE. If a duty to register was legislated for, it would exacerbate that situation.

39 Do you agree that there should be a consequence for parents for failing to register details of a child for the purposes of registration?

No

40 Whether or not your response to (3) was 'yes', do you think that the most effective consequence for non-compliance with the registration process is that it authorises the local authority to begin the school attendance order process by serving a s.437(1) notice on the parents, which begins the formal process of considering suitability of education and whether a child should attend school?

No

41 Whether or not you favour any consequences of non-compliance, what alternatives to initiation of the SAO process would you prefer as an effective way of securing compliance?

SAO alternatives:

1. If such a register were acceptable, which it is not, only the minimum of information should be registered: name, address and age of child. No LA can serve SAO proceedings without holding that information already, making enforcement via SAO a pointless exercise, as it would be prosecution to obtain data already held.
2. If the system were justified through good quality independent research, compliance rates would be considerably higher than in the proposed speculative proposals. There is no evidence to suggest that mandatory registration would either be necessary, nor constructive. In fact, that evidence which does exist, indicates that mandatory registration has no effect on children's education levels, or their well being.
3. SAO proceedings should only be considered where the LA has reason to believe that education is not suitable. If a mandatory register was enforced via SAO, it could lead to an incongruous situation where the LA could be fully aware that the education is suitable, or even excellent, but the parent refuses to register on principle. The LA would then be compelled to serve an SAO with no justification whatsoever. This would have the undoubted effect of causing significant distress to children, quite apart from wasting significant amounts of Court time, dealing with unnecessary prosecutions. In a climate where the criminal courts are creaking under already excessive workloads, with magistrate shortages common in many regions and with the cost of a court hearing far exceeding the costs that could be reclaimed, the whole idea is brought into disrepute.
4. If the proposal was extended to mandate that failure to register automatically resulted in education being deemed to be unsuitable, the situation becomes even more ludicrous, as children receiving excellent, or at least good educational provision at home, could be thrust into the nearest school with vacancies, most usually vacancies being in schools which are not doing a good job. The consequence of this would be that a child receiving a suitable education is then forced into a situation where the education is far from suitable.
5. The latest Government data on school standards (March 2019) finds that 25% of state funded senior schools are inadequate or requiring improvement (State-funded schools inspections and outcomes as at 31 December 2018), clearly indicating that 25% of state funded senior schools are not doing a good enough job of educating their pupils. This is in stark contrast to the tiny numbers of successful SAOs brought each year against home educating parents. The ADCS 2018 survey reported 515 SAOs issued to home educating in 105 LAs, which equates to a total of 745 if the figure is extrapolated. FOIs for 149 LAs in March 2019 found a total of 54,217 home educated children, consequently, only 0.01% of home educated children were considered by their LA to be receiving an unsuitable education. The rate of successful prosecution by those LAs was under 66%, where the only defence is to demonstrate to the Court that the education is suitable, brings the figure for home educated children not in receipt of a suitable education down to 0.009%, an insignificant proportion compared to 25% of state funded senior schools failing their pupils. No right thinking Nation would take its children from suitable education and place them into unsuitable education, on the basis of such an arbitrary proposal as mandatory registration.

42 Do you have any other comments about the concept of a legal duty on parents to supply information for the purposes of the proposed register?

parental duty comments:

Such a duty would serve to discourage engagement by parents with their LA, lead to avoidance of use of NHS services, lead to distrust of professionals, lead to resentment against the state and lead to children who were not being failed, being failed.

Any legislation should only be introduced if it is necessary, proportionate and reasonable. There is no evidence whatsoever that mandatory registration is necessary and none whatsoever to indicate creating a duty upon parents to register would be necessary. Where a significant proportion of those whom the

legislation would affect consider it to be unreasonable it is apparent that it is neither reasonable nor proportionate.

Duty on settings

43 Do you agree with the general approach that the proprietors of settings providing education in school hours - other than specified types of school - should be under a duty to supply information to local authorities about any child in scope of the proposed register?

No

Duty on settings - implementation details if opposed

49 Which settings do you think should be included in the scope of the duty?

Unregistered independent schools, Yeshivas and other full-time settings not requiring registration

settings to be included comments:

If such a register was acceptable, which it is not, the only settings which should be required to report home educating children using the setting would be unregistered independent schools, whether religious schools or not. Otherwise, home educating families would eschew the use of tutors, home education groups, swimming pools, zoos, museums, libraries, leisure centres, events and any 'setting' other than their home. This would have the effect of reducing the suitability of home education for significant numbers of children, which is counter to the purported benefits.

Those tutors and groups would also be likely to meet covertly, in order to avoid such duty, in a manner akin to those groups suffering religious persecution.

Home education groups are not under any circumstances 'education settings' which require monitoring, or legislating for. Such a duty would do significant harm to thousands of children.

50 Which information should proprietors of the settings in scope be required to supply on request to the local authority about a child in scope of the registration requirement? Check as many as required

Name of child, Address of child, Date of birth of child

information to be supplied comments:

The duty should be extremely limited, if a register were mandated, which it should not be. The 'scope' should be limited to unregulated schools and only the minimum data shared: name, age, address.

51 Do you agree that there should be a sanction on the proprietor for non-compliance with a duty to supply information about a child in scope of the registration requirement?

No

52 Regardless of your answer to the previous question, which type of sanction do you think would be most effective?

sanction comments:

If a register was mandated, which it should not be, the scope of reporting requirement should be in turn limited to unregistered schools. Enforcement should be by a Court order requiring release of data.

53 Do you have any other comments about the concept or details of a duty on the proprietors of settings to provide information about children who attend their setting and fall within scope of the registration requirement?

duty on settings comments:

CPE questions whether the intention of this proposed legislation is to destroy home education in England.

Data sharing would inevitably lead to families avoiding the settings, in turn leading to loss of social opportunity for children. LAs have made unwarranted claims that home educated children are 'hidden' and the proposed legislation, requiring as it does that only home educated children should be subject to data sharing in this manner, will move a great many families to become 'hidden'. The new guidance has already led to some families taking entrenched positions designed to avoid contact with professionals.

The inherent discrimination within this proposal is unacceptable. By way of example, if a home educated child attends an event at a zoo, the zoo would be required to report only that home educated child to the LA, stigmatising that child and treating them as second class citizens. No reputable Government should be legislating to do produce such stigmatisation.

Duty on local authorities to provide support for home education

54 Do you agree that there should be a statutory duty on local authorities to provide support on request to parents who educate children at home, of a type to be prescribed by the Secretary of State in regulations?

Yes

Support for parents - implementation details

55 If such a duty was to be created which of the following should it encompass? Check as many as required

Assistance with exam fees, Discounted admissions, Checks on private tutors

scope of duty comments:

If such a duty were to be created, it would be crucial that Government makes clear that it is only at the request of the parent and should not at any point be compulsory. LAs consistently breach legislation and guidance and would clearly increase that behaviour in the light of such a duty.

LAs should, in the event of such a duty being introduced, be clearly instructed that they have no right to compel parents to educate their children in any set way.

56 What are the potential difficulties, apart from availability of resources, in ensuring that such a duty is properly discharged by a local authority?

difficulties :

There is no oversight of LA behaviour toward home educating families and in practice, they are encouraged by the DfE to push 'the boundaries' against those parents. In light of that situation, it is manifestly obvious that 'support' would rapidly become compelled 'support' of a type that is not only unwelcome to parents, but also of a type that undermines and causes harm to their provision.

LAs are already making unwarranted demands on parents, for example, insisting that a child aged six years should be reading and writing. This could lead to 'support' being compelled as censure and that must be avoided.

57 Should the duty to provide support on request be limited to children whose details are included on the proposed register?

No

limit - comments:

There should be no restrictions on home educating parents accessing support, should they wish to do so.

58 Should other mechanisms be explored for enhancing access to public examinations for children educated at home, and if so, what?

Examination body operated centres, Duty on schools and colleges to allow private candidates

other mechanisms - comments:

The primary need is for examination centres to be compelled to accept home educated children. Currently, very few do.

59 (This question is for local authorities only). What expenditure does the authority already incur on support for home educated families, what types of support does this cover and approximately how many children are in scope of the support?

LA costs on support:

2017 cost of EHE staff was analysed and the analysis found that in the 139 LAs responding, the total cost of EHE staff provision of £9,693,322.50. This represents an average cost of provision of EHE staff per LA of £69,736.13.

It is interesting that you exclude those affected from this question.

60 Do you have any further comments on the issue of local authority support for home-educating families?

support - other comments:

Any such support must be without reciprocal requirement.

61 Do you consider that support for home-educating parents should be provided by the Department for Education?

Yes

62 Regardless of your answer to the preceding question, which forms of support do you think particularly suited to delivery on a national rather than local basis? Check as many as required

Other (add comment if wished)

types of national support comment:

The DfE needs to look at its performance in respect of home educating parents and hang its head in shame. The DfE should be policing LAs behaviour toward home educating families to protect those families from unwarranted interference ultra vires acts and bad behaviour on the part of LAs. It does not do so and that reneging of responsibility should be a source of embarrassment to the organisation.

Proper support against such behaviour, if provided by the DfE, would go a significant way to rebuilding trust not only in the DfE, but also in LAs, as families could be confident that their LA would treat them fairly.

LAs should be required to consult properly with home educating families to decide what support to offer. This in light of the fact that the DfE is fully aware that home educating families have effective, free and excellent support available from home educating parents Nationwide.

Home education officers should have experience of home education and be trained in the law and practice of home education. Most LAs require teaching

qualifications of their staff, which are inappropriate for supporting home educating families, not least because they so often come with negative views of home education.

Concluding questions

71 Do you have any comments on the conclusions set out in the published equalities log, UNCRC analysis and family test?

Equalities comments:

Gypsy and traveller families are frequently home educating families, yet are notable in the log only for their absence.

The log refers to the particular impact of a proposed register on children in families with 'varying faith or belief (or none)' and that raises inequality for those families.

The Equalities log also refers to lack of quantitative data to support the findings, using terms such as 'it is likely that'. This indicates a lack of sound basis for the policy, which is based on little more than preconceived and negatives views held by the author.

UNCRC: The DfE has little or respect for the rights and wishes of children and their parents, seeking to portray parents as prioritising their own wishes over and above those of their children, which is risible. Virtually all home educating families are considerably more likely to prioritise their children's wishes and feelings over and above their own, than are other families. If they were not, they would not be home educating. Home educated children are their parent children, not children of the State.

The log contains reference to a Child Rights Impact not being required, due to the small number of children involved in a situation where the proposal for legislation is based on hyperbole over growing levels of such home educated children. The irony is not lost on CPE.

Family Test Assessment:

This document is predicated upon the author's view that school is good and home education is bad. May children suffer at school and many children receive a considerably better education at home, yet school is seen as a panacea for all children. The DfE should be embarrassed by publishing such a biased document.

72 Do you have any other comments on the government's proposals for legislation relating to registration, and support for home education?

Other comments:

Prior to publication of the new home education guidance, LA staff throughout the Country, were stating that they had been advised by Government that the full extent of proposals would be accepted. Home educating families were not consulted prior to publication of the draft, whereas LAs were extensively consulted and involved in specifying requirements, which requirements were met. In short, it was a clear sham.

This consultation is a clear sham, designed to pay lip service to the concept of home educating families being consulted, whilst the phrasing without indicates a foregone conclusion that the proposals will be enacted. That the Government can act so disreputably toward a small sector of society is wholly unacceptable.

The proposal has no basis in quantitative analysis and relies solely on conjecture and pressure from some LAs. The DfE is alienating home educating families, causing them fear and distress, in order to give unwarranted powers to the very LAs which it failed to regulate.

Home educating families deserve support and respect, they do not deserve the onslaught of unwarranted and punitive acts that have been exacted against them by LAs and the DfE.