

# A RESPONSE TO “THE OVERSIGHT OF CHILDREN WHO ARE EDUCATED AT HOME, OR WHO ARE MISSING FROM EDUCATION”

## SUMMARY

Shropshire Council’s report describes the Education Act 1996 as making “*clear, but conflicting*” distinctions between home-educated children and those missing education. This apparent conflict in the legislation could have been resolved by;

- taking into account all relevant key legal principles, legislation and guidance rather than the Education Act 1996 only,
- ensuring that assumptions about the extent of local authority duties were in line with the legislation,
- evaluating any evidence cited rather than assuming third party conclusions to be correct.

## 1. INTRODUCTION

Shropshire Council’s report “The oversight of children who are educated at home, or who are missing from education” describes the Education Act 1996 as making “*clear, but conflicting*” distinctions between the two groups. Conflict can result from the way legislation is structured. But perceived conflict can also result from **omissions** or **implicit assumptions** made about the law. **Omissions** are difficult to spot because by definition they involve absences. **Implicit assumptions** are often overlooked because by definition they are not made explicit. In the report, the view that the legislation is ‘conflicting’ appears to have arisen as a consequence of using only the Education Act 1996 as the basis for the legislative framework, and from untested assumptions made about the extent of local authority duties.

## 2. EDUCATION LEGISLATION AND SAFEGUARDING LEGISLATION

### Omissions

#### *Education*

The report recognises that electively home-educated children (EHE) and children who are missing education (CME) form two distinct groups. Paragraph 1.2 refers to two sections from one piece of relevant legislation:

- **s.7 Education Act 1996** which sets out the duty of parents in respect of a child’s education and is quoted in full.
- **s.426a Education Act 1996**, described as ensuring that “*local authorities are able to establish the identities of children in their area who are missing education and have the powers necessary to intervene*”.

What s.426a actually says is;

“*A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—*

*(a) are not registered pupils at a school, and*

*(b) are not receiving suitable education otherwise than at a school.*

The report does not refer to:

- **s.437(1) Education Act 1996** which gives local authorities a duty to intervene *“if it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education”*.

#### *Safeguarding*

In law, education and safeguarding are treated as distinct issues; a child might be well-educated but at risk of significant harm, or be completely safe but not be receiving a suitable education.

What appears to have prompted Shropshire Council’s report is Ofsted’s implementation of a new joint inspection for multiagency child protection arrangements including children missing education (para. 1.5). Despite the focus of the report being on child protection, it omits any reference to;

- **s.47 Children Act 1989** that gives a local authorities a duty to make enquiries *“if they have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm.”*

#### *Routine monitoring*

Section 3 of the report deals with EHE children. It notes that although *“local authorities do not have the right to ‘routinely’ monitor home education”* (para. 3.15), *“in Shropshire, visits to review the educational provision made for the child at home are arranged on at least an annual basis (more frequently when concerns are identified)”* (para. 3.16).

The routine monitoring of home-educated children is addressed by;

- ***Elective Home Education: Guidelines for Local Authorities*** (2007, DCSF) that explains in detail local authorities’ responsibilities in respect of EHE.

The report does not mention these government guidelines despite quoting from them verbatim in relation to what home-educating parents are not required to do (para. 3.2).

Also omitted is a reference to the guidance published in January 2015;

- ***Children Missing Education: Guidelines for local Authorities*** (2015, DfE).

#### **Implicit assumptions**

Some of the conflict referred to in the report appears to arise because of a lack of clarity regarding the extent of local authorities’ statutory duties. These include;

- home-educated children - a duty to intervene ‘if it appears’ the child is not receiving a suitable education,
- children missing education – a duty to make arrangements to establish (so far as it is possible to do so) the identities of such children,
- all children - a duty to make enquiries if there is reasonable cause to suspect the child is at risk of significant harm.

Local authorities are not required to inspect families to find out *whether or not* children are receiving a suitable education, or *whether or not* children are at risk of significant harm, any more than police forces are required to routinely investigate citizens to find out *whether or not* they have committed a crime. The underlying principle is that intervention in people's private lives is permitted only if there is some indication that the law has been broken.

Routine inspection of local residents would;

- make local residents accountable to the local authority rather than the other way round,
- increase the risk of false accusations,
- require scarce resources to be allocated to the inspection of the vast majority of families whose children are educated, safe and well.

### 3. NSPCC BRIEFING

The report expresses concern that "*there is a danger that these [home-educated] children can become invisible to the authorities*" (para. 3.5) and cites in support an NSPCC briefing "Home Education: Learning from Case Reviews" published in March 2014. The briefing is available now only in summary form on the NSPCC site<sup>1</sup>. The original is still accessible on the Home Education UK website<sup>2</sup>.

#### Claims

The briefing was based on seven Serious Case Reviews (SCRs) published between 2008 and 2013 involving home-educated children, constituting around 1% of all SCRs during the same period. The briefing made 13 claims about the children in question. A comparison of the claims with the evidence in the SCRs<sup>3</sup> shows that only one claim - that children could become isolated – could actually be substantiated, and that only partially.

#### Recommendations

The SCRs made a total of over 70 core recommendations. These cluster into five broad themes (percentages don't add up to 100 due to rounding):

- procedural issues (43%)
- healthcare (26%)
- elective home education (18%)
- behaviour of parents (6%)
- children with disabilities (4%)

*Procedural issues*      These include;

- ensuring staff have appropriate training
- making sure procedures are followed
- checking that agreed actions have been carried out
- improving communication between agencies.

But the only reference to procedural issues in the NSPCC briefing is in relation to professional awareness that there isn't a *safeguarding* element in legislation relating to

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<sup>1</sup> <https://www.nspcc.org.uk/preventing-abuse/child-protection-system/case-reviews/learning/home-education/>

<sup>2</sup> <http://www.home-education.org.uk/articles/nspcc-scr-review.pdf>

<sup>3</sup> My blog <https://logicalincrementalism.wordpress.com/2014/11/22/the-claims/>

home *education*, overlooking the fact that appropriate safeguarding legislation already exists.

*Healthcare* Health services were actively involved in all seven cases. Health issues are summarised in chronological order of SCR below;

- Family 1: Three children prescribed Ritalin for excessive periods of time without required regular reviews.
- Child 2: Medication dose too high for the child's age. Mother obtained medication from GP after consultant said it should be discontinued. [Note: The SCR cited in the NSPCC summary is not the one in the original briefing].
- Child 3: GP removed family from list without following proper protocol.
- Child 4: Mother a single parent with six children (several of whom had statements of special educational needs). In the year before Child 4 died, required to attend 130 appointments including medical ones. Criticised for failing to turn up to 26 of them.
- Child 5: Referred to a clinical psychologist.
- Child 6: Parents stopped engaging with authorities when they couldn't get a clear diagnosis for developmental problems.
- Family 7: Mother attempted to artificially inseminate eldest daughter, claiming that she'd been sexually assaulted and might be pregnant. GP failed to follow up case because he didn't believe their story.

It's possible that health services could have contributed to the harm suffered by some of the children, but that isn't a possibility explored in the NSPCC briefing.

*Elective home education (EHE)* Most of the recommendations directly related to EHE were about improving agencies' knowledge of the legislation, or about raising awareness that there isn't a safeguarding element in home education legislation, overlooking the fact that appropriate safeguarding legislation already exists.

*Behaviour of parents* The NSPCC briefing warns against parents who are "*extremely well-informed, articulate, hostile, aggressive and/or resistant to professional intervention*" citing, out of context, Birmingham LCSB's claim that these traits "*reinforced a power imbalance that undermined the rights, welfare and protection of home educated children*". In fact, the SCR in question blames the shift in focus away from the welfare of Child 4 and her siblings on the professionals' response to the parents' attitudes and behaviour. In omitting this criticism of professionals the NSPCC briefing manages to blame the *parents* for the *professionals'* shift in focus.

*Children with disabilities* Several of the children featured in the seven SCRs had disabilities and thus qualified as children in need. Others were children in need because they were at risk of significant harm. In all seven cases, parents had approached the authorities for help - in relation to developmental disorders, complex health problems, special educational needs, mental health, adoption or housing. In some cases, the SCRs recognise that the 'help' the families received made things worse, a fact that is largely overlooked by the NSPCC briefing and the Shropshire Council report. Both, for example, claim that Child S's death was due to '*substance poisoning caused by Fabricated or Induced Illness (FII)*' but omit any reference to the documented causes – the failure to respond effectively to suspected FII, amitriptyline poisoning following over-prescription, and the possibility of the child having Kleine-Levin syndrome.

The NSPCC briefing focuses on the *potential* risks to EHE children from home-education and parents and carers. In doing so it overlooks the wide range of *real*, documented risks from various sources highlighted in the Serious Case Reviews.

#### 4. BADMAN REVIEW

Paragraph 3.7 says of the 2009 Badman review's recommendations for a formal registration scheme and rights for local authority staff to access the home and interview children alone, "*to date there has been no move towards changing the legislation to include these measures.*" What it doesn't mention is why the legislation hasn't been changed.

Officials are permitted to enter private homes without consent only if there is reasonable cause to suspect that the law has been broken or is about to be broken. This is an important legal principle; it safeguards ordinary people against the misuse of power by government agencies. Interviewing children alone is fraught with well-documented pitfalls<sup>4</sup> that the Badman review failed to consider and that are not mentioned in the Shropshire Council report.

Paragraph 3.14 recommends that visits to home-educating families continue, but not because the visits have highlighted issues in relation to home education. Rather, they have brought to light issues such as "*pressure from schools because of behaviour including 'grey' exclusions, bullying, mental health issues, children acting as carers and unmet learning needs*". In other words, issues previously unidentified in children *attending school*. But there is no recommendation in the report for EWOs to have the right to enter schools or to interview schoolchildren alone.

#### 5. CHILDREN MISSING EDUCATION

Education is vitally important for individuals and for the community as a whole. Missing education puts a child's future prospects in jeopardy, and, as the report suggests, increases the risk of their being exploited. S.426a Education Act 1996 sets out local authorities' statutory duties in relation to children missing education as applying to a specific group of children who are;

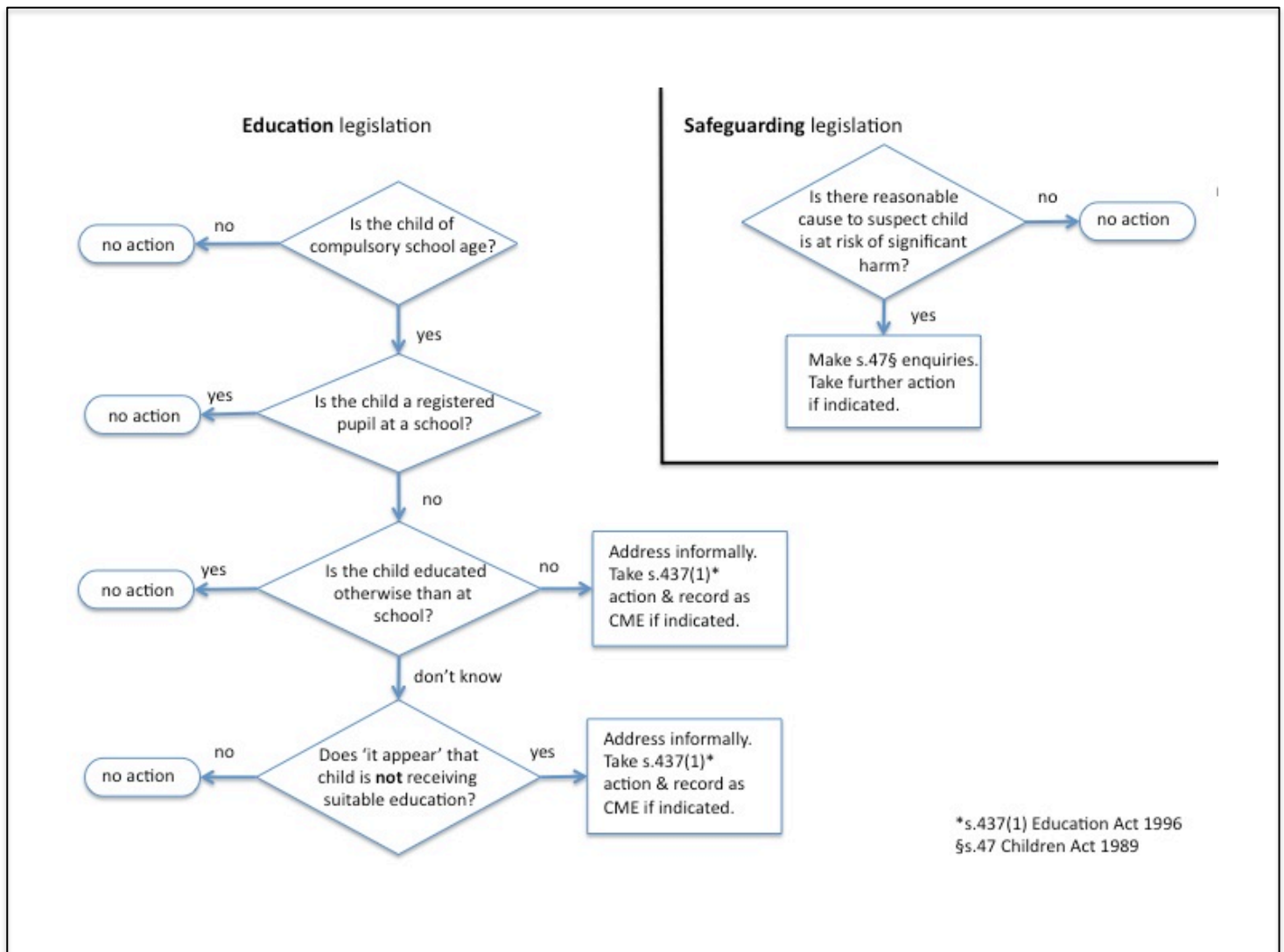
- of compulsory school age and
- not registered at a school and
- not receiving a suitable education otherwise.

Explicitly excluded from this group children who are being educated otherwise than at school. There is a risk that including both groups in the same report, not maintaining the legislative distinction between education and safeguarding, and inadvertently extending local authorities' statutory duties beyond their legal remit, reinforces the perception of the legislation being 'conflicting'. The flow chart below shows that the legislation is not in conflict if the relevant legislative principles are applied.

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<sup>4</sup> <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/FJC/Publications/Children+Giving+Evidence+Guidelines+-+Final+Version.pdf>

## Children missing education: a decision pathway



## 6. CONCLUSION

The perception that home-educated children are at significant risk of missing education and/or of experiencing harm at the hands of parents or carers was reinforced by the Badman review and NSPCC briefing. This view is not supported by the evidence, which shows the risk to be low, and that procedural and healthcare issues have played a major role in any harm that has been experienced. Concerns have also been expressed that the legislation relating to children educated at home lacks clarity and that local authorities' powers are not sufficient to allow them to carry out their statutory duties. These concerns appear to be due to a lack of clarity about the extent of local authorities' statutory duties, a failure to evaluate the relevant evidence and a failure to take into account all relevant legislation and legislative principles. The picture becomes much clearer if omissions are avoided and assumptions are made explicit.

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November 2015.