

## **Elective Home Education Guidance Consultation (January 2024)** **Response from Christian Concern and the Christian Legal Centre**

*This carefully considered response is from our legal and educational experts who work with many in the home education community. We have looked at your guidance in detail and submit this response for your consideration. We would be glad to meet with DfE representatives to further discuss any of the legal or educational questions arising from this draft guidance. Please contact us through our Head of Education [steve.beegoo@christianconcern.com](mailto:steve.beegoo@christianconcern.com).*

### ***Questions on the tone and overarching content of the EHE guidance for local authorities and parents, including consideration of people's protected characteristics***

*We have worked to ensure that the right of parents to home educate their children is reflected throughout the EHE guidance for local authorities and parents, and that the guidance encourages local authorities to respect this right. We would like to promote positive relations between parents and local authorities and believe that emphasising the positive nature of EHE throughout the guidance, where appropriate, will allow for an improved understanding between the two parties.*

*Furthermore, we want to ensure that all protected characteristics are fairly considered in the guidance to ensure no group is unfairly disadvantaged by the revised guidance. Under the Equality Act 2010, the public sector equality duty<sup>[1]</sup> requires public authorities to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The 'protected characteristics' for the purpose of this duty are:*

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership (although this is only 'relevant' in relation to eliminating unlawful discrimination, harassment and victimisation)
- Pregnancy and Maternity
- Race (including ethnicity, nationality and national origin)
- Religion or belief
- Sex
- Sexual orientation

*4. Does the guidance convey positively the Government's position of supporting the parent's right to elect to home educate?*

**Somewhat agree**

*5. Does the guidance convey the flexible nature of EHE and respect for different education methods and pedagogies?*

**Somewhat agree**

*6. Does the guidance consider relevant protected characteristics and ensure none are disadvantaged by the revised guidance?*

**Strongly disagree**

7. Do you have any comments regarding the tone or general content of the guidance, including consideration of protected characteristics or further information that illustrates your answers above?

If you wish to, please provide any comments, to further expand on or explain your responses to the questions in this section. If your answer is no, please leave this blank.

## ANSWER

Those who have the protected characteristic of religion, especially Christian families, are disadvantaged by the guidance. Local authority officers for EHE should not have the powers to make determinations about a 'suitable' education, where religious convictions are held by parents and may conflict with an officer's views. There is no definition of a 'suitable' education in English statute law. However, there are many protections in international law, which are not effectively considered in the guidance, regarding those with the protected characteristic of religion.

The guidance assumes Local Authority officers will successfully be able to determine suitability for each home educated child in regard to religious and moral matters. A significant example, but by no means the only example, is the traditional Christian viewpoint that sexual activity is only for a life-long heterosexual marriage, and all other sexual activity or desire should not be promoted or celebrated. Christian home educating parents, indeed those from other religious backgrounds as well, must be protected from ideologically driven Local Authority officers who may disagree with religious perspectives, and the guidance offers no protection from this. The guidance regarding Article 2 of Protocol 1 of the European Convention on Human Rights, has the statement, *'This means the wishes of parents are relevant, but it does not mean that parents are the sole arbiters of what constitutes a suitable education'* (p11 Draft departmental guidance for Local Authorities). This highlights the tendency in the guidance to rebalance towards the state Local Authority officers and away from the parents on matters of education. Protocol 1, Article 2 of the European Convention of Human Rights, as transposed into our domestic law through the Human Rights Act 1998, states: *"In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions"*. (Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5). *'Any functions which it assumes,'* includes any form of Local Authority regulation. This is also clear in Article 18(4) of the International Covenant on Civil and Political Rights (ICCPR). It is also a legal requirement that in making its policies, Local Authorities respect, and neither undermine nor interfere with, home educators' ability to bring up their children in accordance with their Christian beliefs through home education. The guidance does nothing to secure such protections and undermines them in its tone.

Additionally, the statutory obligation to respect parental rights in education is reiterated numerous times in binding treaty law. The Convention against Discrimination in Education, for example, holds in Article 5(1)(b) that it is essential that States *"respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions"* (UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960). There is a trajectory in the guidance towards remaining highly suspicious of home educating parents when the vast majority exercise their right positively with much skill and commitment. Should the Local Authority regulation increase as described in the guidance, there is a significant danger that *'minimum educational standards'* begin to include liberal secular beliefs which are in opposition to the religious and moral convictions of the parents, in any monitoring of home education provision.

As it stands, the only safe harbour for parents of deeply held religious faith from educating their children in a manner where LGBT education, or other moral education foreign to those religious beliefs, is not woven throughout the school curriculum is home education. RSE in general has proven to be very problematic, leading to new draft guidance on gender questioning children, a sexual education review, and several letters and guidance updates from the DfE for headteachers and governors about their obligations under RSE. Religion and belief play an important role

in a diverse society, and attempts to undermine religious plurality by creating an overarching morality that children must ascribe to through education destroys that.

The Local Authority guidance requires their home education officers to use subjective judgements in assessing the education and requires them to decide whether a new and poorly defined term 'educational neglect' could be considered a serious safeguarding issue. It must be specified that teaching traditional Christian perspectives on moral, sexual and ethical matters are not in view when Local Authority officers make decisions about whether an education is 'suitable' or not. In contrast to the statement on page 5 that the guidance, *'does not create new powers or duties,'* this guidance in its current form, *is* giving them authority to make decisions as to whether traditional religious teaching is 'suitable'. This begins to put any potential negative assessment on a par with suspicions of child abuse. This is inappropriate. Social services already have the powers to protect from real abuse and neglect. Opinions about suitable education from local authority officers should not be conflated with genuine and well-defined safeguarding concerns of emotional, physical, sexual abuse or neglect.

The European Court of Human Rights has repeatedly held that *"it is in the discharge of a natural duty towards their children - parents being primarily responsible for the "education and teaching" of their children - that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education."* (Kjeldsen, Busk Madsen and Pedersen v Denmark). The Court has also held that *"a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position"* (Chassagnou and Others v. France). The State, and by extension any Local Authority, being the organiser of any regulation or monitoring must therefore not abuse its dominant position to force educational practices and content onto parents and their children, interference which would infringe these rights.

There is no restraint regarding religious beliefs indicated in the guidance on Local Authority officers making moral and ethical determinations on what is or is not a 'suitable' education. In section 6, none of the case studies cover this area. This lack of guidance regarding those with protected characteristics and their beliefs and convictions opens up Local Authorities themselves to legal cases unless this clarity is included.

In defining what may appear to be 'suitable' in 3.9 of the Local Authority guidance, the statement is made that, *'a suitable education enables a child to participate fully in life in the UK by providing sufficient secular education'*. There is no explanation of what 'secular' teaching is or is not. These statements are targeting the guidance towards faith groups, and the Local Authority guidance partially defines this as to *'not foreclose the child's options later on in life to adopt some other mode of living'*. This guidance to Local Authority officers is from a secular view of individual autonomy and children's rights and disrespects the desire for families to pass on their ethical, religious, and sexual traditions. Many Christian educators want their children to adopt a mode of living which is Christian. Many Christian home educators seek to counteract secularism, and secular culture by framing all the learning in religious terms and all lessons from a biblical worldview perspective. The guidance shows no understanding of this perspective.

Significant confusion arises from statements on p42 section b: *'the department does not consider the provision of solely religious education as meeting the relevant components to be considered a suitable education'*. No 'relevant components' are being cited. Religious families often deem all education to be religious as there need be no sacred/secular divide in learning, and all of it can be understood and taught as 'religious'. The wording of the guidance will result in a fundamental mismatch of expectations between officers and religious parents. The assumptions on page 11 that *'being literate in English and numeracy'* are examples of secular education, is intellectually unsound, and Local Authority officers may choose for example, that any literacy or numeracy learnt in the context of religious texts or mathematical problem solving, is religious rather than secular, resulting in a negative determination.

There should be clarification that specific teaching about sexual practice, sexual orientation or gender reassignment should not be used as an excuse to deem religious home education an unsuitable, not efficient, nor a form of 'educational neglect' under section 7.

Some of those with the protected characteristic of religion will undoubtedly be open to discrimination and harassment from Local Authority officers under this new guidance. Local Authority staff have a record of over-reach. Home educators regularly express to us their disquiet as to the powers of the state being enforced in their homes

with regard to judging the moral teaching parents provide, teaching which is consistent with traditional Judaeo-Christian values and their personal religious convictions. Along with much anecdotal evidence, some notable and more easily referable examples of disruptive and unreasonable interference include:

1) Where the Local Authority and Social Care ombudsman agreed that the Local Authority had dealt with a home educator unjustly (<https://he-byte.uk/england/ombudsman-rules-la-dealt-unjustly-with-he-parent/>)

2) The case studies provided in Scotland by the Scottish Home Education Forum's report in 2020

<https://scothomeed.co.uk/wp-content/uploads/2020/10/201017-Taking-LAs-to-Task> (p 28 and following)

3) Those referenced by Cambridge Homeschool Online (<http://www.home-education.org.uk/legal-home-visits.htm>), where the author explains, *'Sadly it has become apparent to me from reading many accounts of home visits over 25 years, that some LAs use visits to justify decisions already made. Reports are sometimes singularly biased and clearly intended to bully parents into returning their children to school.'*

Home educators with the protected characteristic of religion, are therefore understandably concerned about the overreach into the private lives of their families. This overreach is already statistically significant and has had a negative impact on the integrity of family life in general. For example, the United Kingdom's Children and Family Court Advisory and Support Service (CAFCASS) has reported a nearly 150% increase in the number of new child-care cases between 2005 and 2016. To put that into perspective, the number of cases in just over a decade increased from 6,613 new cases per year, to 15,485 new cases. In 2017-2018 the number of new cases rose again to 90,423 (<https://www.cafcass.gov.uk/about-cafcass/>). The result is that children are being taken into care at an ever increasing rate, and one of the agreed reasons for this has become the over activated Local Authority staff, due to the lowering of thresholds for investigation. ([http://www.familylaw.co.uk/news\\_and\\_comment/15th-view-from-the-president-s-chambers-care-cases-the-looming-crisis#.WqFWLOjFKUI](http://www.familylaw.co.uk/news_and_comment/15th-view-from-the-president-s-chambers-care-cases-the-looming-crisis#.WqFWLOjFKUI)).

This guidance provides for a further lowering of the thresholds for investigating through the processes explained in the guidance for determining a 'suitable' education in private homes by Local Authority officers. The broader situation has led to experts, such as Dave Hill, President of the Association of Director's Children's Services (ADCS), calling the situation a national disgrace; and Sir James Munby, President of the Family Division, labelling it as a public crisis. Further government expansion of its potential supervision of families can only lead to a worsening of the current crisis. These tendencies for Local Authority overreach and the lowering of thresholds for investigation are of deep concern to home educators and are not considered properly in the guidance.

This problem of Local Authority overreach is also exacerbated by the proposal in this guidance for Ofsted to be overseeing and advising the Local Authority provision. Ofsted has never had any remit or training in the overseeing of home education. The Policy Exchange research *'The Watchman Revisited; Curriculum and Faith in Ofsted's New Inspection Framework'*, authored by Iain Mansfield and Tim Clark, demonstrated clear concerns. Ofsted inspectors have regularly demonstrated their lack of religious literacy as outlined in such reports. Additionally, their attempts to redefine their role as moral policemen is disturbing, as the evidence shows Ofsted inspectors regularly stand opposed to the religious beliefs of minority groups. It is unrealistic to expect that Local Authority officers will be well trained through the organisation which oversees them. Recommendations 6, 7 and 8 of *The Watchman Revisited*, all indicate that there is much understandable distrust of Ofsted and that inspectors have shown little understanding and much rigidity in their approaches towards those with religious convictions. As stated before, Ofsted themselves have little to no experience of home education, nor of those with diverse religious beliefs.

Given these issues it is not appropriate for Local Authority officers, monitored by Ofsted to even be deciding whether 'educational neglect' is occurring in private homes of those with the protected characteristic of religion. Article 26(3) of the Universal Declaration of Human Rights states that "[p]arents have a prior right to choose the kind of education that shall be given to their children." (UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)). The United Nations Convention on the Rights of the Child, in Article 14, also clearly explains that in the provision of education states must respect the right of parents to raise their children, commensurate with their evolving capacities, in accordance with the parents' religious convictions (*UN General Assembly, Convention on the Rights of the Child*, 20 November 1989, *United Nations, Treaty Series, vol. 1577, p. 3*). The Convention also requires, pursuant to Article 18, that parents, being the ones who love their children the most, have the primary role in

deciding on the education of their children. The role of a Local Authority is to assist parents in their task, and not to hinder by excessive regulation and potentially unlawful monitoring of the home. We therefore strongly disagree that this guidance considers the relevant protected characteristics effectively.

END

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### **Questions on the EHE guidance for parents**

*We propose to keep separate EHE guidance for parents as we believe this provides a more simplified and straightforward guidance document for parents, thus, promoting greater accessibility and transparency. We have worked to simplify the language describing concepts and processes relating to EHE in the parents' guidance, to provide further clarity and help avoid misunderstandings between local authorities and home educators. In the parents' guidance, we have also included references to relevant sections within the local authority guidance for those looking for additional information.*

8. *Is the EHE guidance for parents clear and easy to understand?*

**Strongly disagree**

9. *Would there be value if there was an additional short (one- or two-sided) document for parents summarising the key points for parents to be aware of should they wish to home educate?*

**Somewhat agree**

10. *Is the complaints process, as outlined in the guidance, clear?*

**Somewhat agree**

11. *Please provide further details of any sections within the guidance for parents that need to be simplified further or further information that illustrates your answers above?*

*Please specify sections within the guidance you would like further clarity. If you feel there are no sections that need further simplification, please leave blank.*

### **ANSWER**

It will be unclear for Christian parents what it means to provide a suitable 'secular' education to their children, when their aim will be to provide a non-secular Christian alternative to secular state education. Statements are vague and unclear, demonstrating the challenge of not proscribing what a 'suitable' education is, given there is no legal definition in English statute law. Article 8 and 9 ECHR are intimately tied together for many families. Family life and religious life are inseparable. The preservation of religious and cultural communities by way of religious education serves to further the aims of tolerance and pluralism. The High Court has upheld the principle that schools catering to the special religious or cultural tradition of minority groups do constitute suitable education:

*Where a school caters for the special traditions and characteristics of a minority sect within the community, it is suitable within Education Act 1944 s.71 and s.76 if it primarily equips children for a place in the community within which they live, rather than the way of life of the country as a whole, so long as it leaves the children an option to adopt some other way of life in the future if they wish to do so. R v Secretary of State for Education and Science ex p. Talmud Torah Machzikei Haddass School Trust, [1985] 1 WLUK 778 Times, April 12, 1985, [1985] C.L.Y. 1110*

Statements in 2.12 that, 'There should be an appropriate minimum standard that is aimed for,' and, 'education at home should not directly conflict with the fundamental British Values,' are without any balancing statements of protection for Christian parents regarding their legal rights to educate in accordance with their religious convictions. In the brief section regarding children in faith communities on p27 (8.19), the statement, 'an education which is entirely religious without any secular element is unlikely to be considered suitable', will be at least confusing and at the most alarming to Christian parents. Therefore this guidance is not fit for purpose.

The statutory obligation to respect parental rights in education is not highlighted clearly to parents. The Convention against Discrimination in Education, for example, holds in Article 5(1)(b) that it is essential that States “*respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions*” (UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960). There is a posture in the guidance towards suspicion of home educating parents when the vast majority exercise their right positively with much skill and commitment. Should the local authority regulation increase as described in the guidance, then parents will be left unclear regarding the significant danger that ‘*minimum educational standards*’ may include liberal secular beliefs from Local Authority officers, in opposition to the religious and moral convictions of the parents. Parents will be left unclear regarding whether any monitoring of home education provision will contravene their rights.

While EHE is not a right specifically conferred by the European Convention on Human Rights, it is tried and tested case-law that once a right becomes legislated, whether conferred by the Convention or not, that right thereafter comes under the supervisory authority of the Convention. See *e.g. Tysican v Poland*, application no. 5410/03, judgment of 20 March 2007, para. 116. This means that any interference with that right must be regulated within Convention standards and cannot allow for an unfettered discretion to be given to a public body, including individual agents of the LA: “*In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.*” *Metropolitan Church of Bessarabia v. Moldova*, 2001-XII Eur. Ct. H.R. 81, 111. Yet, given the subjective nature and sweeping powers to intervene afforded the local authority under the draft guidance, this is precisely what is being proposed: an unfettered discretion to determine suitable education.

The notion of respect for family life (Article 8) includes the parental rights to make decisions about the upbringing of their children. *Kjeldsen, Busk Madsen and Pedersen v Denmark*, Judgment, Merits, App No 5095/71 (A/23), [1976] ECHR 6, IHRL 15 (ECHR 1976), 7th December 1976, European Court of Human Rights [ECtHR], para 52. Freedom of thought, conscience and religion is in truth distinguishable from that exercised collectively by a child’s family only by degrees; particularly when a child is younger. This does not diminish the importance of the child’s Article 9 rights – those rights, seen through the lens of Article 8, must be protected as vigorously as the individual Article 9 rights of an adult.

In Section 5, the role of Ofsted will remain unclear to home educators. Ofsted, a body which has no experience of, or remit for, home education, is explained to be responsible for gathering evidence (5.14) in relation to the oversight of those who are not attending school. This gathering of evidence for the purpose of monitoring will surely lead to Ofsted providing advice regarding home educating parents, but this is not made clear in the guidance. Moreover, parents would be concerned if this was made clear. Ofsted has never had any previous remit in regard to advising on home education.

The Policy Exchange research ‘*The Watchman Revisited; Curriculum and Faith in Ofsted’s New Inspection Framework*’, demonstrated clear concerns regarding Ofsted. They have regularly demonstrated their lack of religious literacy, and would be functioning to oversee the Local Authority officers. Local authority officers cannot be expected to be as well trained as the organisation which oversees them. Recommendations 6, 7 and 8 of *The Watchman Revisited*, all indicated that there is much understandable distrust of Ofsted and that inspectors have shown little understanding and much rigidity in their approaches towards those with religious convictions. This will be even more the case with the variety of distinctive forms of Christian parenting and elective home education. As stated before, Ofsted themselves have little to no experience of home education.

Parents are being told in the guidance that home education officers will need to use subjective judgements, through ‘informal’ communications, in assessing the education. The parents are told that officers will decide whether a new and poorly defined term ‘educational neglect’ could be attributed to their education and therefore considered a serious safeguarding issue. It must be specified to parents that teaching traditional Christian perspectives on moral, sexual and ethical matters are not in view when Local Authority officers make decisions about whether an education is ‘suitable’ or not. The traditional Christian viewpoint is that sexual activity is only for a life-long heterosexual

marriage, and all other sexual activity or desire should not be promoted or celebrated. This is not a broadly secular view and will be contrary to the beliefs of some Local Authority officers. Home educating Christian parents, indeed those from other religious backgrounds as well, must be protected from ideologically driven secular Local Authority officers who may disagree with religious perspectives, and the guidance offers no protection to parents from this.

In contrast to the statement on page 5 that the guidance, '*does not create new powers or duties*,' this guidance in its current form, *is* giving them powers to make decisions as to whether traditional religious teaching is 'suitable'. This puts any negative assessment into the realms similar to that of suspicion of child abuse. This is inappropriate. Social services already have the powers to protect from real abuse and neglect. Opinions about suitable education from Local Authority officers should not be conflated with genuine and well-defined safeguarding issues of emotional, physical, sexual abuse or neglect, as stated in such documents as Keeping Children Safe In Education 2023.

There is no restraint encouraged in the guidance on Local Authority officers processes where they may make moral and ethical determinations on what is or is not a 'suitable' education. In section 6, none of the case studies cover this area. This lack of guidance regarding those with protected characteristics and their beliefs and convictions, puts Christian parents at risk, leaves them uncertain, and opens up Local Authorities themselves to potential legal cases from these parents. On balance parents should be clear that they should never be subject to a determination of 'educational neglect', for teaching the tenets of their faith, especially in regard to the secular state's promotion of sexual themes. We therefore strongly disagree that this guidance is clear for parents.

END

*12. It is vital that the parent guidance is consistent with the local authority guidance. If you believe there to be any inconsistencies between the two documents, then please detail these below.*

*Please provide details of any inconsistencies between the local authority and parents guidance. If you feel there are no inconsistencies, please leave blank.*

NO COMMENT

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*13. If you know of local authority EHE guidance which you believe to be good practice, please provide details so it can be considered for inclusion as an example of good practice in the guidance.*

*Please provide details of good practice in EHE. If you have no comments for this section, please leave blank.*

**ANSWER**

Good practice is to leave the parents to educate their children, unless safeguarding issues of a non-educational nature arise. There is no evidence that registers and such monitoring will achieve better outcomes.

END

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### **Questions on 'suitable education'**

*Parents have a duty under section 7 of the Education Act 1996 to ensure the provision of efficient, full-time, suitable education for their child of compulsory school age, either at school or otherwise (e.g. EHE). A suitable education is one that is suitable to a child's age, ability, aptitude and SEN. Under section 436A of the 1996 Act, local authorities are required to make arrangements to identify children who are not registered at a school and are not receiving suitable education. Section 437 of the 1996 Act sets out what a local authority needs to do should a child appear not to be receiving a suitable education; where it appears to a local authority that a child is not receiving a suitable education, they must commence the school attendance order process by issuing a preliminary notice.*

*Parents therefore must make sure their child receives a suitable education, and local authorities have duties to try to ensure that this is the case. Setting out what makes a suitable education is therefore a vital element of the EHE guidance. We do not seek formally to define 'suitable education' as we understand that each EHE case is unique and local authorities should consider individual circumstances when assessing suitability. However, we have made several*

*edits to the guidance to aid in the understanding of suitable education and how to ensure its provision. The following are some key revisions to the guidance on suitable education:*

- The guidance now separates out the processes for how local authorities decide whether a child appears to be receiving suitable education and what should be done when education appears unsuitable. It makes clearer that formal proceedings should only commence when a child appears not to be receiving suitable education.*
- At the informal enquiries stage, we encourage local authorities to let parents know what concerns they have about the home education. This is so that parents are aware of specific areas for improvement and enable appropriate action to be taken to resolve issues.*
- More emphasis is placed on the importance of considering the approach to literacy and numeracy, when making a judgement on suitability, to ensure progress is being made and that certain standards are being met, whilst noting allowances for a child's aptitude that may be above or below peers. This is because ensuring that a child is able to read and write, and that they are confident using maths, are vital components to them being able to lead an independent life in the United Kingdom.*
- Stronger acknowledgement of different EHE methods and pedagogies, and making clear that local authorities should not assume that education is unsuitable, where it does not follow conventional school practices. Parents have a right to educate their child as they see fit, providing it is suitable.*

*14. Does the guidance clearly set out the factors that should be considered when assessing whether education appears suitable?*

***Strongly disagree***

*15. Is it helpful to provide separate sections on (i) how local authorities decide whether a child appears to be receiving suitable education and (ii) what to do when it appears that suitable education is not being received?*

***Somewhat agree***

*16. Is the guidance clear on what is considered a proportionate level of engagement between local authorities and parents when establishing whether home education appears to be suitable as part of the informal process?*

***Somewhat agree***

*17. Do you have any comments regarding how suitable education is outlined in the guidance or further information that illustrates your answers above?*

*If you wish to, please provide any comments to further expand on or explain your answers to the questions in this section. If your answer is no, please leave this blank.*

**ANSWER**

Local Authority officers should not be being asked to determine whether a home educating family is providing a 'suitable' education. There is no definition of a 'suitable' education in English statute law. The principles given to Local Authority officers provide no protections for Christian parents, and leave open the possibility for Local Authority officers to determine that the home education is not 'secular' enough, without properly defining what 'secular' education is.

The guidance assumes Local Authority officers, will successfully be able to determine suitability for each home educated child in regard to religious and moral matters. A significant example, but by no means the only example, is with the traditional Christian viewpoint that sexual activity is only for a life-long heterosexual marriage, and all other sexual activity or desire should not be promoted or celebrated. Christian home educating parents, indeed those from other religious backgrounds as well, must be protected from ideologically driven Local Authority officers who may disagree with religious perspectives, and the guidance offers no protection from this.

The guidance regarding Article 2 of Protocol 1 of the European Convention on Human Rights, has the statement, '*This means the wishes of parents are relevant, but it does not mean that parents are the sole arbiters of what constitutes a suitable education*' (p11 Draft departmental guidance for Local Authorities). This highlights the intention to



rebalance decision making towards the state Local Authority officers and away from the parents on matters of suitable education. Protocol 1, Article 2 of the European Convention of Human Rights, as transposed into our domestic law through the Human Rights Act 1998, states: *“In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”*. (Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5). ‘Any functions which it assumes,’ includes any form of Local Authority regulation. This is also clear in Article 18(4) of the International Covenant on Civil and Political Rights (ICCPR). It is also a legal requirement that in making its policies, Local Authorities respect, and neither undermine nor interfere with, home educators’ ability to bring up their children in accordance with their Christian beliefs through home education. The suitability of education in regard to religious and moral matters, should not be determined by others than the parents. Only in situations of serious abuse or neglect should the state step in, and there are already social services mechanisms for this to take place.

The statutory obligation to respect parental rights in education is reiterated numerous times in binding treaty law. The Convention against Discrimination in Education, for example, holds in Article 5(1)(b) that it is essential that States *“respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions”* (UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960). Should the Local Authority determinations regarding suitability develop as described in the guidance, there is a significant danger that ‘*minimum educational standards*’ begin to include the teaching of liberal secular beliefs which are in opposition to the religious and moral convictions of many parents.

The Local Authority guidance requires home education officers to use subjective judgements in assessing the education and requires them to decide whether a new and poorly defined term ‘educational neglect’ could be a serious safeguarding issue and indicate lack of suitability. It must be specified in the sections on suitability, that teaching traditional religious perspectives on moral, sexual and ethical matters are not in view when Local Authority officers make decisions. In contrast to the statement on page 5 that the guidance, *‘does not create new powers or duties’*, this guidance in its current form, *is* indeed giving them powers to make decisions as to whether traditional religious teaching is ‘suitable’. This does put any negative assessment of the education into the same administrative processes as those considered to have abused children. This is inappropriate. Social services already have the powers to protect from real abuse and neglect. Opinions about suitable education from Local Authority officers should not be conflated with genuine and well-defined safeguarding issues of emotional, physical, sexual abuse or neglect.

There is no restraint indicated in the guidance on Local Authority officers making moral and ethical determinations on what is or is not a ‘suitable’ education. In section 6, none of the case studies cover this area. This lack of guidance regarding those with protected characteristics and their beliefs and convictions opens up Local Authorities themselves to legal cases.

The European Court of Human Rights has repeatedly held that *“it is in the discharge of a natural duty towards their children- parents being primarily responsible for the “education and teaching” of their children- that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.”* (*Kjeldsen, Busk Madsen and Pedersen v Denmark*). The Court has also held that *“a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position”* (*Chassagnou and Others v. France*). The State, and by extension any Local Authority, being the organiser of any regulation or monitoring must therefore not abuse its dominant position to force non-traditional teaching onto parents and their children, through the kind of suitability determinations proposed in the guidance.

In defining what may appear to be ‘suitable’ in 3.9 of the Local Authority guidance, the statement is made that, *‘a suitable education enables a child to participate fully in life in the UK by providing sufficient secular education’*. There is no explanation of what ‘secular’ teaching is or is not. These statements are targeting the guidance towards non-

secular faith groups, and the Local Authority guidance partially defines this as to *'not foreclose the child's options later on in life to adopt some other mode of living'*. This guidance to Local Authority officers is a secular view of individual autonomy and children's rights and implicitly contains a disrespectful attitude towards those families who have desire to pass on their ethical and religious traditions. A secular view, secularism, is not a neutral position. Many Christian home educators seek to counteract secularism, and secular culture by framing all the learning in religious terms and from a biblical worldview perspective.

Significant confusion arises from statements on p42 section b, *'the department does not consider the provision of solely religious education as meeting the relevant components to be considered a suitable education'*. No relevant components are elsewhere cited. Religious families often deem all education to be religious as there is no sacred/secular divide in learning, and all of it is 'religious'. The wording of the guidance will result in a fundamental mismatch of expectations between officers and religious parents. The assumptions on page 11 that *'being literate in English and numeracy'* are examples of secular education, is intellectually unsound, and Local Authority officers may choose for example, that any literacy or numeracy learnt in the context of religious texts or problems solving is religious rather than secular, resulting in a negative determination.

In addition, there should be clarification that specific teaching about sexual practice, sexual orientation or gender reassignment should not be used as an excuse to deem religious home education an unsuitable under section 7. It should be precluded from ever being considered as a form of 'educational neglect'.

Given these issues it is not appropriate for Local Authority officers, to be deciding whether 'educational neglect' is occurring in private homes of those with the protected characteristic of religion. Article 26(3) of the Universal Declaration of Human Rights states that *"[p]arents have a prior right to choose the kind of education that shall be given to their children."* (UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)). The United Nations Convention on the Rights of the Child, in Article 14, also clearly explains that in the provision of education states must respect the right of parents to raise their children, commensurate with their evolving capacities, in accordance with the parents' religious convictions (*UN General Assembly, Convention on the Rights of the Child*, 20 November 1989, *United Nations, Treaty Series*, vol. 1577, p. 3). The Convention also requires, pursuant to Article 18, that parents, being the ones who love their children the most, have the primary role in deciding on the education of their children. The role of a Local Authority is to assist parents in their task, and not to hinder by excessive regulation and potentially unlawful monitoring of the home in making 'suitability' decisions as outlined in the guidance.

END

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### ***Questions on Preliminary Notices and School Attendance Orders (SAOs)***

*We have made changes to the guidance that clarify the formal process of assessing and establishing suitability of the education provided, and how it is distinct from the informal process. We want both parents and local authorities to be clear on the system of engagements and enquiries relating to the SAOs process, including preliminary notices (section 437(1) of the Education Act 1996), to help avoid misunderstandings during the process. We hope that an improved understanding of these processes will ensure a more consistent approach by local authorities and allow parents to better engage through the systems in place.*

18. *Does the guidance make clear when and for what reason a preliminary notice must be issued?*

***Somewhat agree***

19. *Is the guidance clear why and at what stage a SAO must be issued?*

***Somewhat agree***

20. *Does the guidance clearly set out the process for SAO revocation?*

***Somewhat agree***

21. Do you have any comments regarding what the guidance says about preliminary notices and SAOs or further information that illustrates your answers above?

If you wish to, please provide any comments to further expand on or explain your responses to the questions in this section. If your answer is no, please leave blank.

NO COMMENT

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### **Questions on Special Educational Needs and Disabilities**

We want the updated EHE guidance to be a source of support for all EHE families, including those who have children with Special Educational Needs and Disabilities (SEND). Therefore, we have made changes to provide clearer and more accurate guidance on SEND with regard to EHE. This includes more focus on advice and support for parents and carers of children with SEND; clarification on processes and practices relating to Education, Health and Care (EHC) plans; and information about how EHE differs from other forms of Education Otherwise Than At School (EOTAS), such as that arranged by a local authority in accordance with an EHC plan. The guidance has also been updated to ensure more cohesion with the [SEND code of practice: 0 to 25 years](#).

22. Is the guidance clear on the difference between EHE and EOTAS that is arranged by a local authority in accordance with an EHC plan?

**Neither agree nor disagree**

23. Are you clear on how the law and guidance applies when a child with an EHC plan is or will be electively home educated?

**Neither agree nor disagree**

24. Do you have any comments regarding SEND in relation to EHE or further information that illustrates your answers above?

If you wish to, please provide any comments to further expand on or explain your responses to the questions in this section. If your answer is no, please leave blank.

NO COMMENT

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### **Questions on support for EHE parents**

The updated guidance for local authorities places more focus on potential support options for EHE parents. It continues to be the case that, in choosing to home educate, EHE parents assume full financial responsibility for their child's education. However, we recognise that providing full-time, efficient and suitable education at home is not an easy undertaking. We have, therefore, tried to provide guidance to local authorities on possible ways they may wish to consider offering support to parents of EHE children.

While the decision to offer support remains at the discretion of the local authority, the Department makes the following recommendations. Local authorities should:

- Have an EHE statement/policy that sets out the process to establish whether a child appears to be receiving suitable education, and subsequent steps if it appears not to be so parents are clear about the local process
- Have an EHE page on the LA website so that parents can easily access information and be signposted to specific support that may be available in their local authority area
- Maintain voluntary registration schemes so local authorities have the necessary information to undertake their responsibilities and so that support can more readily be made available to EHE families who wish to receive it

- *Contact parents at least annually to check the progress of EHE provision. There may be occasions where more frequent engagement is deemed necessary, and the guidance reiterates that contact can be brief when a local authority is confident that education is suitable and little has changed*
- *Seek to build positive relationships with their local EHE community, including by having clearer communication points for home educators*

25. *Does the guidance provide sufficient information on potential support that could be offered to home educators?*

**Strongly disagree**

26. *Do the recommendations for support encourage positive relations between parents and local authorities?*

**Strongly disagree**

27. *Do you have any comments regarding support for parents in the EHE guidance or further information that illustrates your answers above?*

*If you wish to, please provide any comments to further expand on or explain your responses to the questions in this section. If your answer is no, please leave blank.*

#### **ANSWER**

The guidance will not provide sufficient information unless the information required of Local Authorities on 'support' includes mention of the clear protections for families with traditional Christian beliefs regarding sexual morality and other ethical issues. The confusion regarding the use of the term 'secular' should be avoided by removing this term and stating clearly that traditional religious beliefs and teaching should not be part of determinations which would deem the home education unsuitable.

END

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#### **Questions on case studies**

*We have updated the EHE guidance for local authorities to include case studies on EHE topics that can sometimes cause misinterpretation and result in queries being raised to the Department. Through these case studies, we have tried to clarify a few factors within the process of EHE, including:*

- *What is considered sufficient information for parents to provide to local authorities, in order to help them determine whether a child appears to be receiving suitable education*
- *What is considered a proportionate level of engagement between parents and local authorities*
- *Helping local authorities consider the different approaches to EHE provision aside from 'school-at-home'*
- *Navigating the informal process of establishing whether a child appears to be receiving suitable education.*

28. *Have you found the inclusion of case studies in the EHE guidance for local authorities helpful?*

**Neither agree nor disagree**

29. *Are there other issues you would like to see us address through case studies or further information that illustrates your answer above?*

*Please provide details of case studies you would like to see included in the EHE guidance. If your answer is no, please leave blank.*

#### **ANSWER**

There is no restraint regarding judgements on religious beliefs indicated in the guidance, where Local Authority officers make moral and ethical determinations on what is or is not a 'suitable' education. In section 6, none of the case studies cover this area. This lack of guidance regarding those with protected characteristics and their beliefs and

convictions opens up Local Authorities themselves to legal cases unless this clarity is included, and a case study would be the best way to do so.

For example, take the scenario of where a Local Authority officer with sexually progressive secular opinions comes into contact with a Christian family who teaches the traditional biblical perspective on relationships. Currently the guidance does not preclude the 'secular' education required to make it 'suitable', from covering religious and sexual issues. It should be stated in a case study that teaching biblical sexual ethics should *not* be used as evidence that the education is 'educational neglect', or not 'suitable'.

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## **Questions on safeguarding**

*We have provided more information on elements of safeguarding in the EHE guidance, in line with updates to other departmental policy documents since the publication of the 2019 guidance. However, we want the guidance to be clear that EHE should not inherently be considered a safeguarding matter.*

*Our updated guidance includes:*

- Further information on what local authorities and parents need to consider when out-of-school settings, informal groups of home educators and unregistered independent schools are used as part of home educating arrangements, including how parents and local authorities can help assure themselves of the safety of these settings*
- Further guidance on work experience and employment, including safeguarding considerations and the legal limitations with regard to work experience when children are being home educated.*

*30. Do the changes made to the guidance give you an improved understanding of out-of-school settings, informal groups of home educators, and unregistered independent schools?*

***Somewhat agree***

*31. Does the guidance clearly set out the rules and expectations in regard to EHE children and work experience and child employment?*

***Somewhat agree***

*32. Do you have any further comments related to safeguarding in the EHE guidance or further information that illustrates your answers above?*

*If you wish to, please provide any comments to further expand on or explain your answers to the questions in this section. If your answer is no, please leave blank.*

## **ANSWER**

When no other safeguarding issues have been apparent, parents should not be scrutinised and assumed to be potentially abusing their children on the grounds of 'educational neglect' when there are determinations by Local Authority officers when considering whether education is suitable. Any interference with the privacy of the home and family life must serve a legitimate aim and be necessary in a democratic society. Where necessity is lacking, even if the aim of the measure is legitimate, Article 8 is violated.

There is a significant danger that Christians will be victimised where they believe and teach the traditional Christian viewpoint that sexual activity is only for a life-long heterosexual marriage, and all other sexual activity or desire should not be promoted or celebrated. Christian Home educating parents, indeed those from other religious backgrounds as well, must be protected from ideologically driven Local Authority officers who may disagree with religious perspectives, and may seek to use safeguarding procedures to put pressure on those families. It should be specified that by themselves, these beliefs are protected in law, and can never be considered as justification for 'educational neglect'.

The restrictions imposed on freedom to manifest all of the rights inherent in freedom of religion attract very strict scrutiny by the courts. ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749, para. 44.

The list of restrictions of freedom of religion, as contained in Articles 9 of the Convention, is exhaustive and they are to be construed narrowly, within a limited margin of appreciation allowed for the public authority and only convincing and compelling reasons can justify restrictions on that freedom. ECHR, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, Reports of Judgments and Decisions 1996-V, p. 1956, para. 53.

Central to all of this is the principle that government, including local government, has a duty to remain neutral and impartial towards the religious beliefs of individuals and faith communities, since what is at stake is the preservation of pluralism and the proper functioning of democracy, even when those views may be irksome or unfamiliar to authorities. ECHR, 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Reports 1998-I, p. 25, para. 57.

The ECHR has therefore consistently protected the right of religious beliefs, even those seen by some as unorthodox, in its parental rights jurisprudence. *See e.g.*: ECHR, *Hoffman v. Austria*, Judgment of 23 June 1993, application no. 12875/87; ECHR, *Palau-Martinez v. France*, Judgment of 16 December 2003, application no. 64927/01; and ECHR, *Vojnity v. Hungary*, Judgment of 12 February 2002, application no. 29617/07.

In summary, the proposals set forth in this consultation raise serious concerns under both Article 8 and 9 of the Convention.

END

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