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Guidance & Assurances – how far can we trust them?

by Neil Taylor

During consultations on the Pupil Registration Regulations it was repeatedly argued by the DfES that concerns we, as home educators, raised would be dealt with by the guidance to the regulations. Unfortunately home educators have experienced such assurances before and they were a brutal lesson in their uselessness and of the necessity for our rights to be safeguarded in legislation.

As the Crime and Disorder Bill progressed through parliament during 1998, home educators realised that new powers to stop and question all school age children in public during school hours would lead to problems for home educated children and their families. We feared that LEAs would misuse encounters with home educated children to 'register' them, for which there is no legal requirement. We also feared that home educated children and/or their parents would be disbelieved by officers conducting these patrols when they said they were home educated. We believed that the net result of truancy sweeps, conducted in ignorance of the very existence of home education, would be a de-facto day time curfew on home educated children, seriously curtailing their legitimate freedoms to be out and about in the world where much of their education takes place.

Despite the best efforts of home educators, our worst fears were realised. The following is an account of how assurances given to us by the minister were written into the Home Office guidance on the conduct of the new powers and how they were subsequently written out and the very abuses we feared replaced them as 'best practice'.

In denying home educators specific mention in the Act itself, the minister, in June 1998, chose instead to include them in the Home Office guidance:

The Lords committee by The Parliamentary Under-Secretary of State for the Home Department, Mr. Mike O'Brien. Quote from Hansard¹:

"Many children are properly and lawfully educated at home and the provision would not apply to them. A child who is not a pupil at a school cannot be absent without authority from it. There is no need, therefore, for an amendment. The power is to be used only with respect to children who are absent from school without authority."

He also stated:

"The Home Office and the Department for Education and Employment will, after consulting local education authorities and others, put forward guidance for the police and local authorities about the operation of the provisions. That will be an important safeguard."

In other words, there is no problem for home educators since the new power simply doesn't apply and the guidance would be our promised safeguard properly informing those on the ground.

Meanwhile, back in the real world...

A few years later, after this author's family were rudely and threateningly treated on two occasions by patrols, I made a complaint and discovered that officers are only ever verbally briefed for five or ten minutes before an action and that they never read guidance at all. There was also no mechanism by which safeguards in the guidance were passed on to those conducting the briefing. The guidance might as well not have been written.

As if this scandalous state of affairs were not bad enough, by November 2003, it was discovered, quite by accident, that in September 2002 the DfES had published a so called summary of the original Home Office (HO) guidance, containing a dead link to the HO guidance which, despite being brought to the attention of the DfES, remains 'dead'. At the time of writing this document can still be found, 3.5 years later². The assurance in the original HO guidance read:

"4.21 Local procedures should take account of possible contact with such home-educated children and it should be emphasised that they are not the target group for the new power. The power can only be exercised in relation to registered pupils of compulsory school age absent from school without authority; it does not apply to children who are lawfully educated at home. No further action should be taken where children indicate that they are home-educated – unless the constable has reason to doubt that this is the case."

This reference is absent from the DfES 'summary' and in its place are a couple of references merely mentioning the existence of home educators, but carefully avoiding any actual guidance as to their treatment:

"...police officers are aware of categories of children who may have a justifiable cause to be out and about during school hours, especially home-educated children and excluded pupils (see section 6 below); "

"Police Officers will need to be aware of valid reasons for registered pupils and other children and young people being out of school during school hours. These include... home educated children who may or may not be registered at the LEA..."

The guidance fails to guide the LEA at all, leaving it up to them to determine what to do about such encounters. But the guidance does in fact refer to another document, a report on the conduct of truancy patrols³; a document which is still valid 3.5 years later:

"A copy of the report on the Truancy sweeps carried out in 82 LEAs throughout May 2002 is available on the Department's website⁴. with examples of good practice."

Yet there are no specific references to home educated children whatsoever! Only references to children "not on a school roll" which obviously includes the home educated:

"If the young person was not on a school roll, EWOs would normally contact Admissions after the sweep to ensure that progress was being made on the individual's case. One authority carried a list of young people known to be excluded or off-roll during a truancy sweep. Any young person claiming not to be registered could be cross-referenced with this list. One LEA would follow up the young person with Social Services and check the Student Support Service's missing children list.

Another LEA also mentioned conducting home visits if necessary. The possibility of finding young people who had fallen out of the education system was seen as a positive spin off of the sweeps."

Which is about as far away from the minister's assurance as it is possible to get that home educated children are not pupils, therefore this power does not apply to them and "The power is to be used only with respect to children who are absent from school without authority."

Note also the assumption of guilt until proved innocent and by a means incapable of doing so: "Any young person claiming not to be registered"... is to be routinely disbelieved! an inversion of the minister's assurances, the constitutional presumption of innocence and the need for suspicion to be reasonable.

Additionally under: 'The approach' it added:

"If not on school roll – sweep personnel carried a list of pupils out of school, checked details against list/name and address taken, contacted or referred to Admissions, took young person home, followed up through Social Services, carried out a home visit if needed."

The assumption that the LEA will possess all names and addresses, or acquire those it does not have in these encounters is now explicit, whereas the fact that this will not be the case was clear in the original HO guidance.

Under: 'Other follow-up conducted with pupils':

"If a young person was vulnerable, hard to reach or not on any school roll, they were referred to Behaviour Social Support Service."

"If a child was not on roll this would be followed up by an EWO, admissions would be contacted, home visit made and family given advice, referred to SEWO and admissions."

By now the distinction that the home educated child is not a pupil within the meaning of the Act and not the subject of these powers at all, has ceased to exist. They are simply re-defined as "missing children" and indistinguishable from any child "fallen out of the education system". Needless to say home educators tend not to see their children in such a criminalised context of neglect or worse and bitterly resent the official blindness to our existence.

The length of the HO guidance, which seems to have slipped down the back of the filing cabinet, is 4,080 words, yet the report on the truancy sweeps is 13,627 words. So saving the busy officer (who doesn't read guidance anyway) reading time, would not seem to be the motive behind DfES publishing their own so called 'summary'. Apart from getting rid of the inconvenience of having to take home educators into account the motive for writing the guidance remains a mystery.

Eighty-two LEAs contributed 'best practice' to this report and not one of them it appears had anything to say about how they treated the home educated young people they encountered. It is scarcely believable that not one of those eighty-two LEAs ever encountered a home educated child during their truancy sweeps, while during this same period, news of these encounters was flooding in to home educators' online forums. In fact not a few home educators realised that their own encounters fell within the sample of LEAs in the report.

From us not being 'the target group' of these actions, encountering it is now a "positive spin off of the sweeps". In this way, a power originally stated to be for one purpose is extended into the very areas that we were assured would not take place.

That this was a deliberate move, is finally demonstrated beyond all reasonable doubt if we take a look at the current guidance and whether it has restored those important safeguards as requested.

In April 2006 the original HO guidance was obviously rooted out from behind the back of the filing cabinet (where it had fallen in September 2002) and finally put into the incinerator. Despite the 2002 version still being online the DfES revised their guidance at least twice and there is now a new version, dated September 2005 entitled "Truancy Sweep Effective Practice and Advice"⁵.

"The Act requires parents to ensure that all of their children of compulsory school-age are educated. They must ensure that the education meets each child's needs but they do not have to send their children to school. If they wish, parents can arrange for their children to be educated out of school, for example, at home."

"It is important that all of those involved in a truancy sweep, are aware of and understand the basic practicalities of the sweep before it takes place. These include... reasons why children may not be in school, especially those who are not registered, for example, children who are home educated;"

So far so good. At least we exist, albeit in a document which contains no actual guidance on how to treat home educators. Unfortunately it goes on to say:

"Children Not Registered At School

Not all children are registered at school but this does not mean that those doing the sweeps should ignore any issues that they encounter during the sweep. Nor does it mean that they should not be attending education that has been arranged for them. The reasons why a child might not be registered at a school include:

home education;"

the implication that they should be attending some form of education at the time they are stopped is inescapably intended in this carefully crafted statement. If there could be any doubt as to this intention, the next relevant statement removes it decisively and explains why this has to be:

"Children educated outside the school system:

Home educated children and others educated outside the school system are not the target group for truancy sweeps. Often, these children are educated outside traditional school hours and access other local services such as libraries and PE/sports facilities as part of their education. Therefore, home educated children are likely to encounter truancy sweeps.

It is not always necessary to confirm a child's status as home educated but there will be occasions when officers will need to do so. Although legally not required to, some families do register with their local authority as home educated and are given accreditation. This enables easy discussions between home educated children, their parents and those carrying out the sweep. Local authority officers can also telephone their colleagues to confirm children's status if they doubt a child's status."

The first paragraph, re-states that we are not the target group, while at the same time making it perfectly clear that if our children are not engaged in an education related activity such as attending the library, sports facilities or 'other services', the second paragraph provides the framework for pursuing doubt based on this spurious limitation.

It is also a clear inference that merely being in a shopping centre or place where a truancy sweep is being conducted is sufficient reason to give rise to suspicion as to status. So home educated children may not be the target group for these sweeps, but they have been cleverly manipulated into not being allowed out during school hours unless engaged in what the LEA would recognise as legitimate educational activity, a clear incitement to breach their human rights, making a

mockery of the minister's original clear assurances. The original words can still be found, or most of them, but their meaning has been subtly negated and obscured. Education Otherwise specifically requested the reinstatement of this paragraph⁶ and this inverted mangle would appear to be the hostile response. Even reference to the fact that home educators are not bound by school hours is in there, but is carefully obscured and the opposite meaning held forward.

The statement concludes with fresh intimidation to 'volunteer' for registration and carry ID in order to avoid the bad time those without it will inevitably receive. There is no available check as to status, so to imply that there is, is a clear incitement to disbelieve the child whose parents have not 'voluntarily' registered him/her with the LEA. The word for this is bullying and that's child abuse!

Home educators know from experience exactly what meaning hostile LEAs will take from these carefully crafted words and it is clear to us that so did their author. They are nothing less than a deliberate, calculated incitement to draw different meanings from them. The perpetrators of this piece of doublethink can defend their words by pointing out that it states that we are not the target group and that we are often educated outside school hours and that our interpretation was never intended while simultaneously inciting LEAs to harass home educators and their children legitimately out and about during school hours.

References

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6 www.education-otherwise.org/Legal/Consultations/English/truancy%20response%20march%202005.pdf