

## Consultation Questions

If you require additional space for your answer please include this where necessary.

### Section 1 - Introduction

**1. The purpose of this guidance is to set out the relevant law, to provide advice on the roles and responsibilities for local authorities and families in relation to home education; and to encourage the development of trust, mutual respect and positive relationships.**

**Is this purpose sufficiently clear in the introduction?**

- ☐ Yes  
☐ No  
☒ Don't know

Comments:

Having responded in detail to the Review of Home Education Guidance discussion paper<sup>1</sup> in 2019 and maintained ongoing dialogue with the Scottish Government's home education team (and its ever-changing personnel) over several years, it is deeply disappointing that our members' concerns and research evidence have not been engaged with, or even referenced, in this consultation. The promised analysis of responses to the discussion paper has either not happened or not been shared with stakeholders, which is disrespectful to those who spent many hours engaging in good faith, especially those who work in a voluntary capacity. This submission should therefore be considered along with our response to the 2019 discussion paper.<sup>2</sup>

Although broadly reflecting the content and format of the current guidance, the tenor remains patronising and fails to acknowledge the increase in home education community support and organisation, advocacy and research findings that should have informed this long overdue review. Home education is not homeschooling and we believe this should be clearly stated from the outset, with a focus on the use of correct terminology that removes ambiguity in order to address the power imbalance in families' relationships with local authorities (LAs).

The right to an education (1.1) should not be conflated with compulsory schooling and it should be acknowledged that the duty to educate and choice of means of education belong with parents who are responsible for determining best interests. While we would all agree that listening to children is a good thing, when it comes to education there is no right to refuse for school pupils whose parents make that choice. Applying a double standard risks casting home education as inferior and is discriminatory. Rather than describe the option of home education as 'legitimate' (1.2), it should be referred to as of 'equal status'.

Ongoing engagement with the Scottish Home Education Forum (SHEF) and Home Education Scotland (HES) over the past several years has been largely positive, but pro-school prejudice runs through every government policy and home education is not being accorded its rightful equal status in law, especially when it comes to dealing with

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<sup>1</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/04/012.00-Home-education-guidance-review-exercise-discussion-paper-July-final-8.docx>

<sup>2</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/04/190830-FINAL-HOME-DISCUSSION-RESPONSE-PDF.pdf>

professionals<sup>3</sup> who are uneducated on the legality and practice of home education, and when accessing so-called 'universal' benefits that are limited to schooling families.

Changes in education policy (1.6, 1.7) must be compatible with and not exceed what is permitted in law, in particular overarching human rights and data protection law. Relevant sections of the Education (Scotland) Act 1980 set the parameters of compulsory education age, affirm parental choice and the parental duty to educate, and set out interventions in the event of failure. We are assured there are no plans to change the primary legislation.

Given the disproportionate and increasing number of home educated children with additional support needs and disabilities<sup>4</sup>, many of whom have been withdrawn from school as a result of their needs being unmet or their safety being compromised in school, there remains a gulf between ministerial rhetoric and reality, and home educating families are at the back of the queue for support, if they are even allowed to join it.

The pandemic (1.9) demonstrated how badly home education has been misunderstood and misrepresented as parents flocked to home education communities for support in doing 'school at home'. Most did not grasp the difference between schooling and education and wanted a ready-made remote replacement. This caused disruption to our (volunteer) community whose members were equally impacted by the restrictions since their activities were severely curtailed for many months and emergency measures failed to take their needs into account (especially those taking exams). Nonetheless, we found more families embracing the steep learning curve and opting to stay in home education post-lockdown<sup>5</sup>, although their decisions were not met with universal acceptance by schools and LAs. Lessons should be learned from these transitions and revised guidance brings an opportunity to celebrate the flexibility and diversity of education outwith school.

Section 2, which sets out relevant law, could be better drafted to tighten up on terminology and serve to address the power imbalance that disadvantages home educating families, especially those withdrawing children from school who are often wrongly led to believe they need to ask permission to exercise a parental right and fulfil their parental duty of care.

In considering the reach of UNCRC (2.4, 2.5), it is worth noting in the guidance that the UK Supreme Court has held that Article 3 of the UNCRC cannot extend the state's powers to interfere with the negative rights in Article 8 ECHR, and that parents are arbiters of their children's best interests.<sup>6</sup> Legal and administrative measures should be put in place for parents to access the support they require, not to force unwanted interference by state officials claiming superior (or even equal) status in determining best interests. This was the subject of a presentation by our co-ordinator at the International GHEX Virtual Summit in November 2020.<sup>7</sup>

Revised guidance should include reference to *The Christian Institute & Ors v The Lord Advocate* (Scotland) [2016] UKSC 51<sup>8</sup>, popularly known as the 'named person' judgment. We expanded on this in our response to the 2019 discussion paper.

*"All Scottish legislation and policy, including the home education guidance and local policies must of course accord with (and/or be 'read down' to comply with) the Supreme Court's (now definitive) interpretation of the law in relation to nonconsensual data processing below the significant harm threshold. If there are no*

<sup>3</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/05/190623-Home-educators-experience-of-health-visiting-in-Scotland.pdf>

<sup>4</sup> <https://scothomeed.co.uk/reasons-for-school-age-children-being-in-home-education>

<sup>5</sup> <https://scothomeed.co.uk/more-parents-opt-for-home-education-post-lockdown>

<sup>6</sup> <https://www.bailii.org/uk/cases/UKSC/2016/51.html#para89>

<sup>7</sup> <https://scothomeed.co.uk/scottish-home-ed-forum-zooms-into-ghex-virtual-summit-2020>

<sup>8</sup> <http://www.bailii.org/uk/cases/UKSC/2016/51.html>

*existing child protection concerns, it is unlawful to trawl records, most especially special category data such as health or police records, without the knowledge or consent of data subjects. We have evidence of LAs and other agencies conducting such illegal fishing expeditions in order to seek to prevent parents from making lawful decisions and exercising equally lawful educational choices. The 2016 ruling has far-reaching implications and is not confined to the named person scheme, but to all non-consensual data processing below the legal necessity threshold of risk, i.e. 'significant harm', not a subjectively interpreted, nebulous notion of 'wellbeing'." (page 7)*

If home educated children and their families are being treated less favourably than schooling counterparts insofar as unreasonable demands are being made of them due to their equally valid educational status, LAs risk breaching non-discrimination principles and failing to fulfil their public sector equality duty (PSED).

We have detected a typo in 'best intentions' of the child in para 2.4.

In discussing the Children (Scotland) Act 1995 (2.6), we would reiterate that the circle cannot be squared when individual schooled children's views are effectively dismissed if inconvenient, yet views are demanded from home educated children, and expected to be acted upon, by state sponsored strangers who are not responsible for their education or welfare. The Children (Scotland) Act explicitly does not mandate such overreach and the UK Supreme Court has confirmed it.

In 2.10, more emphasis should be placed on LAs' duties to action parental requests without delay and not to allow pro-school prejudices to cloud professional judgements. The importance of accurate and accessible information cannot be overstated.

Recommendation 5 from our 2020 Home Truths<sup>9</sup> report (which somewhat inexplicably was not referenced in this consultation despite being the most comprehensive piece of research on home education in Scotland):

*5. "The guidance should re-state the requirement for local authorities to publish information about home education as an equal choice, with correct terminology, details of the relevant council contact and direct links to local policy and national guidance, all of which should be immediately accessible on their websites and otherwise available to parents."*

In relation to the parental duty to provide education, LAs routinely claim a non-existent right to monitor home education in the absence of evidence of parental failure. This would be akin to the police monitoring the lives of law-abiding citizens by conducting searches of households for stolen goods 'just in case' or, as we have previously reported, health visitors claiming a non-existent right of entry to private homes. This must be strongly condemned.

We would also like to see the definition of 'reasonable excuse' extended in the guidance for circumstances where children are struggling to attend school and for consent to withdrawal to be presumed where it has not been processed within a reasonable timescale.

Recommendations 3 and 4 from our Home Truths report:

*3. "Since the discriminatory consent anomaly remains open to ongoing abuse, and in the absence of planned changes to primary legislation, the Scottish Government*

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<sup>9</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/08/200821-HOME-TRUTHS-FULL-RESEARCH-REPORT-updated.pdf>

*should reduce the recommended timescale in the guidance from six weeks to a maximum of one or two weeks, with a presumption of consent where local authorities fail to comply.”*

*4. “The guidance should expressly state that the parental provision of home education constitutes ‘reasonable excuse’ where children are struggling or unable to attend school due to stress-related illness or ASNs during the waiting period for consent, with absences marked as authorised.”*

When it comes to equalities (2.14) home educating families remain at the bottom of the pile in terms of service provision which became even more apparent during the pandemic when schools were prioritised and home educators’ communications and withdrawal instructions were ignored.

It should be understood that the co-creation and collaboration model recommended in the ASL Review is not universally welcomed and often seen as a power-over exercise in box-ticking to achieve a predetermined outcome that leaves the hierarchy intact.

From Home Truths:

*“Although children with disabilities, chronic conditions and other ASNs, notably autism and severe anxiety, are known to be highly represented in the home education community, some councils also appeared to operate an exclusionary gatekeeping system for services, such as educational psychology, by insisting on access through schools, with few proactively offering no-strings support for home educated children whose parents requested it.” (page 7)*

*“The increase in home education is still being driven mainly by families whose children have disabilities, chronic conditions and other ASNs, notably autism and severe anxiety, but some councils have sought to exclude home educated children from services to which they are entitled and directed all their efforts towards returning them to school rather than supporting alternative provision.” (page 10)*

Recommendation 14 from Home Truths:

*14. “Although beyond the scope of the home education guidance, the government should, in the light of growing numbers of children being withdrawn from school, give early consideration to amending pertinent legislation and guidance so that home educated children and young people with complex ASNs become eligible for co-ordinated support plans (CSPs) on parental application.”*

In 2.16, more detail needs to be provided regarding the relative influence of estranged partners with parental responsibility since it is the parent with day-to-day care of the child who is responsible for ensuring the provision of suitable and efficient education on a day-to-day basis. We have already raised serious concerns about violent and abusive former partners seeking to exploit decisions to home educate as a means of exercising control, in some cases abetted by head teachers who have shared information without consent or other lawful basis. We are aware of several cases in which traumatised children are fearful of attending school.

Recommendation 7 from Home Truths:

*7. “The guidance should address the issue of former partners ‘weaponising’ home education in order to re-exert coercive control over parents with whom children ordinarily reside, especially where they have already experienced trauma.”*

**2. The law does not foresee flexi-schooling, or make provision for it. Flexi-schooling is not the same as home education. Is this made sufficiently clear in paragraph 1.4?**

**Please provide any comments on flexi-schooling that you may have.**

It is welcome to see flexi-schooling differentiated from home education since it is not an exclusively parental provision. We are aware it has been practised successfully at both primary and secondary stages but requires high degree of commitment and teacher / parent co-operation. There are dangers of blurring boundaries with reduced / part-time timetabling and the possibility of coerced off-rolling, especially for children with additional support needs and challenging behaviour. Flexi-schooling would merit separate discussion with relevant stakeholders but should not be conflated with family-facilitated elective home education.

Recommendation 9 from Home Truths:

*9. "In view of increasing interest and positive experience in some areas, the guidance should expand on how flexi schooling could be made more accessible, and how practicalities might be agreed between parents, schools and councils. However, its status should be recognised as distinct from home education for which parents assume full, not shared, responsibility."*

## **Section 2 – Relevant law**

**3. How can local authorities hear the individual and collective voices of home educated learners?**

This is a loaded question – please refer to our introductory comments for context.

The provision of compulsory education is a parental responsibility and entails a choice between state schooling and 'other means', including home education. These choices have equal status in law and, rightly or wrongly, children who have attained compulsory age have no right to refuse the education chosen on their behalf, or indeed veto other decisions made in their best interests by those with primary responsibility for their welfare, in most cases their parents.

However, a double standard continues to be applied, whereby pupils who express dissatisfaction with their schooling (some to the point of self-harm and serious mental health problems) are forced to remain in a damaging environment, while local authorities (LAs) and/or teachers expect to routinely canvas the views of home educated children (or those being withdrawn from school), often to obstruct parental choice. In fact, they are not entitled to force or coerce children to express their views by misrepresenting Article 12 UNCRC which provides children with the choice to decline.

It should be noted that individual and collective voices do not necessarily represent the diversity of those who are in home education. While invitations to participate in focus groups and reviews are welcome in order to share perspectives, it is always unwise to assume homogeneity.

**Give examples of good practice.**

Examples given in Home Truths mainly illustrated poor practice, although some individual officers have accepted our recommendation of asking if the child wishes, or has the capacity to, offer a view on their education (whether in school or home based) and accepting that some do not. Most LAs claim routinely, and wrongly, that children *must* do so in relation to home education and in some cases have interviewed them in classrooms without parental consent and/or withheld consent for withdrawal unless the child co-operates with the demand.

Given the decision to home educate will already have been made, good practice by LAs would involve welcoming children's views if (and only if) they wished to express them. It should be remembered that a significant number of children being withdrawn will have had very poor experiences in schools and that feedback on school experiences will be just as illuminating as their thoughts on moving into home education. At all times this must be voluntary.

As above, opportunities to participate in focus groups and reviews are welcome in order to share perspectives, but homogeneity cannot be assumed and lack of interest in participation is perfectly acceptable. Not everyone subscribes to the government's template citizen desired outcome.

Recommendation 11 from Home Truths:

*11. "The guidance should be amended to prevent councils from misleading parents in order to gain entry to the family home, coerce meetings or impose unreasonable conditions, with suitable sanctions for misconduct. Interviewing of children without parental consent should also be proscribed, and children's Article 12 rights to decline to express views or meet with unknown officials must be made explicit."*

### **Section 3 – Withdrawing a child from school**

#### **4. Please share examples of collaboration and involvement in the delivery of support and guidance for home educating families.**

The best source of support and guidance for home educating families comes from the community itself and to this end, we have a national peer support network with more than 5500 members that offers accurate independent information and advocacy as well as signposting to local groups and resources.

When it comes to LAs, we have few examples of worthwhile support or advice due to the lack of understanding that home education is not home schooling or schooling at home. Most officers have the home education remit tagged onto another unrelated job title and have had no training or experience in education outwith school.

Recommendation 2 from Home Truths:

*2. "The guidance should mandate dedicated training, with input from home educators, for all staff who deal with home education enquiries, withdrawal requests and updates."*

Attempts over many years to engage LAs have been unsuccessful, or else some progress has been made with individual officers only for them to retire or move on. More recently we were invited to contribute to the Association of Learning Support Officers group, which was

apparently positively received, but it requires commitment and energy on all sides to maintain such relationships. When home educators are volunteering their time, it further skews the balance.

Moreover, many LA and school staff openly disapprove of home education and our members have shared many examples of efforts to obstruct their choice to home educate. This needs to be addressed in mandatory training, something that has been promised but never actioned.

Recommendations 1 and 2 from Home Truths:

*1. “The Scottish Government should consider convening a working group, inclusive of local authorities and home educators, and preferably chaired by a specialist education lawyer, to formulate a model home education policy and information for parents that are fully reflective of national guidance for adoption across all council areas. Proposed local policy changes should always be preceded by equality and rights impact assessments and formal stakeholder consultations.”*

*2. “The guidance should mandate dedicated training, with input from home educators, for all staff who deal with home education enquiries, withdrawal requests and updates.”*

## **5. Do you have any comments on sections, 3.1 – 3.11?**

The wording in 3.3 and 3.4 implies that parents may not have thought through their decision and need guidance from the LA, even where their children’s needs have not been met in school. Although the law mandates that the LA provide children and young people with the support they need to stay in school, most parents have already been through the complaints system ad nauseam and their decision should be respected.

There is no excuse for LA- or school-instigated ‘off-rolling’ to avoid providing necessary support, or for blaming children and parents for the lack of such support. The power imbalance has meant that many more parents have opted for home education to ensure their children are educated in a safe environment.

Signposting for support (3.6) should extend to established groups with expertise in home education, not just state funded services like Enquire and Reach who do not have direct links to, or engagement with, the community.

Recommendation 16 from Home Truths:

*16. “The Scottish Government should re-affirm its support for home education as an equal lawful choice and commit to meaningful consultation and engagement with home education organisations, including the Scottish Home Education Forum and Home Education Scotland, in order to work towards eliminating prejudice and home-eduphobia.”*

Para 3.9 mentions ‘potential advantages’ in notifying LAs of home educating status which is not required in law. It goes on to describe this as including ‘contact details on the authority’s website’ which should already be accessible to all parents. We see no benefits to families in notifying LAs, whose data protection and security practices have also been found wanting in

our Taking LAs to Task report.<sup>10</sup> The lack of respect for home education as an equal status option and blatant home-eduphobia encountered by families routinely needs to be addressed before we believe policies will be developed in an inclusive manner. We disagree fundamentally with the statement that ‘Positive partnership between home educators and local authorities is helpful in regard to ensuring the interests of a child are met fully’ since these interests are determined and fulfilled by parents to whom support should be made available on request.

Para 3.10 returns to the thorny issue of de facto coercion of a child’s views, contrary to Article 12 UNCRC and the application of a discriminatory double standard whereby school children are not asked about their parent’s preferred means of education. It should be made clear that views can be invited but not compelled, and unwillingness or inability to provide them does not constitute grounds for withholding or delaying consent for withdrawal from school.

From the CYPCS website<sup>11</sup>:

*“Article 12 doesn’t mean children and young people have to express an opinion if they don’t want to. They can refuse to give their opinion for any reason, and Article 12 shouldn’t be used to pressure them into giving it.”*

While LAs need to make an informed decision regarding consent, there is no excuse for heel-dragging and deliberate obstruction, and much of this section is patronising in tone. The wide inconsistencies in timescales across LAs that we have reported on is unacceptable for what is a simple desk-based process of considering the parents’ outline of proposed provision and establishing that there are no already-known grounds for refusal. When consent is withheld, LAs should be obliged to provide detailed grounds, not vague comments on the need to adopt a school-centric approach that may not match a family’s philosophy.

Recommendations 3, 4 and 6 from Home Truths:

3. *“Since the discriminatory consent anomaly remains open to ongoing abuse, and in the absence of planned changes to primary legislation, the Scottish Government should reduce the recommended timescale in the guidance from six weeks to a maximum of one or two weeks, with a presumption of consent where local authorities fail to comply.”*

4. *“The guidance should expressly state that the parental provision of home education constitutes ‘reasonable excuse’ where children are struggling or unable to attend school due to stress-related illness or ASNs during the waiting period for consent, with absences marked as authorised.”*

6. *“The guidance should close the identified loopholes that enable the delaying of consent, and clarify grey areas, including the management of cross-council withdrawals, the impact on timescales of holidays and staff absence, and the legal parameters of compulsory education age.”*

Recommendations 11 and 12:

11. *“The guidance should require councils to promptly provide reasons for unavoidable delays in processing consent, regardless of the time of year or staffing issues. Moreover, any refusal of consent should include detailed reasons,*

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<sup>10</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/10/201017-Taking-LAs-to-Task.pdf>

<sup>11</sup> <https://www.cypcs.org.uk/rights/uncrc/articles/article-12/>



*accompanied by evidence of inadequacy of proposed parental provision or risk of significant harm to the child.”*

*12. “The guidance should require councils to hear appeals by parents and provide details of all available complaint mechanisms, including internal processes, the Scottish Public Services Ombudsman (SPSO), ICO, section 70 complaints and ASN Tribunal applications. Councils should also be required to record complaints from home educating parents and home educated young people about breaches of law and guidance, including allegations of discriminatory treatment in relation to protected characteristics.”*

From 3.15, we note the use of language that maintains an unacceptable power imbalance. For example, ‘application’ should be replaced with withdrawal instruction or request. Similarly, we have noticed some slippage into ‘consent to home educate’ rather than consent for withdrawal, and the difference needs to be made explicit, including insistence on correct terminology from primary legislation (e.g. consent is not the same as permission). As previously raised, urging a reasonable approach to attendance during the process could be strengthened by incorporating ‘reasonable excuse’ into the guidance to cover the withdrawal period. GPs do not generally provide medical certification to school pupils as they believe it is up to parents to determine a child’s fitness to attend.

Para 3.19 is in need of tightening up as LAs are cavalier about what constitutes ‘existing records’ and we are aware of numerous incidences of inappropriate data processing and /or the concoction of concerns after a parent has initiated the withdrawal process. Great care needs to be taken to protect sensitive information from unwarranted disclosure, in particular to schools and health services, and it should be made explicit that coerced consent for the sharing of information does not constitute valid GDPR-compliant consent. Moreover, the lawful basis for processing without consent must be notified to each data subject in advance and must be explicit. Simply citing ‘public task’ is insufficient.

Explanatory excerpt from our response to the 2019 discussion paper:

*“Consent to withdraw a child from a council school cannot be, and has never been, conditional upon the excessive processing of families’ personal data, since the duty to educate belongs to the parent and not the state and no lawful basis exists to permit what are effectively ‘background checks’ on parents who decide to fulfil their direct legal duty by other (equal) means than council schooling.*

*“Unfortunately, many LAs have misconstrued, deliberately or otherwise, their negative duty in respect of home education as a (non-existent) power that would infringe families’ rights by reading “existing evidence, either in an authority’s own records or from other services or agencies, indicating that there may be good reason to refuse consent” as a licence to proactively conduct data fishing expeditions, thereby contravening the ECHR/HRA, several UNCRC Articles, the GDPR/DPA, the CJEU Bara judgment and the Supreme Court named person ruling that affirmed the primacy of parents as arbiters of children’s best interests below the established non-consensual intervention threshold.*

*“The revised guidance must ensure that LAs are aware they have no powers to solicit information from, or share it with, other services in the absence of either GDPR-compliant consent (which is invalid if coerced) or evidence of a child protection concern that will already be known to them via child protection registration, the existence of compulsory orders and/or live child protection or criminal investigations. It is important to stress that the relevant threshold is not ‘wellbeing’ and information*

*may not be processed on that basis in order to fulfil parental requests for children to be withdrawn from school.*

*“Actioning removal from the roll should centre on the proposed educational provision submitted by the parent and the absence of any known and substantiated grounds for refusal or delay. “Exceptional circumstances” cannot lawfully be construed to include parental refusal to cede privacy or human rights protections and this must be made explicit in the guidance if we are to avoid unjustified delays and refusal by some LAs to act reasonably and in good faith.” (Page 10-11)*

Recommendation 10 from Home Truths:

*10. “Since the provision of education is a parental function and parents are the legally recognised arbiters of their children’s best interests, the guidance must expressly prohibit councils from routinely gathering and sharing families’ personal data for the purpose of processing withdrawal requests. It should similarly prohibit councils from making withdrawal consent conditional upon parents and young people ceding their Article 8 and data protection rights, and the legal intervention threshold should be re-stated as ‘risk of significant harm’.”*

Data processing by LAs (3.21-3.26) has been researched and reported in our Taking LAs To Task report<sup>12</sup> in which we set out the lawful bases in relation to recording and sharing home educating parents and home educated children’s information and found major inconsistencies in applying data protection principles. We are not confident that LA officers are suitably trained in protecting and securing personal and special category data, and SARs / requests for SEEMiS records are not always fulfilled within the statutory timescale to enable parents and young people themselves to ‘check the working’ of LAs.

This is a highly complex area and data minimisation should be the norm. We recommend that the government takes note of our findings and those of Defend Digital Me<sup>13</sup>, in particular The State of Data 2020<sup>14</sup> report, which although focused on England, is relevant to Scotland since data protection is a UK-reserved matter.

On timescales, para 3.27 refers to ‘application’ for consent which implies a requirement for permission to exercise a legal right. Six weeks is more than adequate to process a parental request, although we have found delays to be commonplace due to staff holidays, illness and other absence including unfilled posts.

We observed<sup>15</sup> in Home Truths that

*“...parents reported the process had frequently been dragged out beyond the six weeks recommended in the guidance and children had been ‘held hostage’ where parents refused to accede to unreasonable demands, including home visits, access to children, curricular expectations and data sharing.” (page 48)*

Para 3.30 covers appeals mechanisms which are unsatisfactory, albeit often successful when complainants stay the long course to reach the SPSO. We believe that the power imbalance is being maintained by failing to embed an effective appeals procedure in the guidance.

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<sup>12</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/10/201017-Taking-LAs-to-Task.pdf>

<sup>13</sup> <https://defenddigitalme.org/research/>

<sup>14</sup> <https://defenddigitalme.org/research/the-state-of-data-2020/report/>

<sup>15</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/08/200821-HOME-TRUTHS-FULL-RESEARCH-REPORT-updated.pdf>

Recommendation 13 from Home Truths:

*13. "The guidance should require councils to hear appeals by parents and provide details of all available complaint mechanisms, including internal processes, the Scottish Public Services Ombudsman (SPSO), ICO, section 70 complaints and ASN Tribunal applications. Councils should also be required to record complaints from home educating parents and home educated young people about breaches of law and guidance, including allegations of discriminatory treatment in relation to protected characteristics."*

We have already raised concerns about the flowcharts which we consider to be confusing, insulting to families and not fully reflective of the law. Having previously laboured the point, home education is a parental decision and the consent for withdrawal from school should be processed on receipt of a cogent outline of provision and confirmation that there are no current child protection issues. There is no reason a parent's word is not sufficient for the latter purpose and the parent decides what is 'advisable' in their child's best interests. Children have no power of veto on their parents' choice to send them to school and the same applies to home education. This flowchart needs to go!

The flowchart for parents is slightly less confusing but implies that LAs need to 'accept' the decision rather than act on parental instructions according to the law. Parents do not have to wait for LA authorisation or permission to begin home education and many will already be doing so due to intractable problems at school.

As an aside, these flowcharts illustrate the nonsensical and discriminatory nature of the consent anomaly, which only applies to state schooled pupils of compulsory age and can be easily circumvented by those with the means to move to a different area or enrol temporarily at an independent school. Creating a hostage situation for some children suggests desperation on the part of those LAs who seek to delay or obstruct the process.

Recommendations 3, 4, 6 and 12 from Home Truths:

*3. "Since the discriminatory consent anomaly remains open to ongoing abuse, and in the absence of planned changes to primary legislation, the Scottish Government should reduce the recommended timescale in the guidance from six weeks to a maximum of one or two weeks, with a presumption of consent where local authorities fail to comply."*

*4. "The guidance should expressly state that the parental provision of home education constitutes 'reasonable excuse' where children are struggling or unable to attend school due to stress-related illness or ASNs during the waiting period for consent, with absences marked as authorised."*

*6. "The guidance should close the identified loopholes that enable the delaying of consent, and clarify grey areas, including the management of cross-council withdrawals, the impact on timescales of holidays and staff absence, and the legal parameters of compulsory education age."*

*12. "The guidance should require councils to promptly provide reasons for unavoidable delays in processing consent, regardless of the time of year or staffing issues. Moreover, any refusal of consent should include detailed reasons, accompanied by evidence of inadequacy of proposed parental provision or risk of significant harm to the child."*

**6. Is it helpful for a local authority to provide a structure for parents to use to provide information on their education plans. For instance, broad questions or a template to support parents to think through their planned provision?**

- ☐ Yes  
☒ No  
☐ Don't know

We have experienced at first hand over many years some ill-conceived LA structured questionnaires and 'compulsory' forms which invariably focus on a school model of education, whereas 'suitable and efficient' education can be much more broadly interpreted.

**Please give details, and any examples of good practice.**

Good practice recognises that parents have scope to frame their provision around the needs and interests of their children with room for flexibility along the way, and we have seen this work in practice where LAs have been open to less conventional educational approaches, often designed for children with disabilities and other ASNs who benefit from outdoor learning or children with specific abilities and talents who want to focus on particular academic areas or activities such as dance or sport.

The suggested characteristics in the current guidance have worked well to enable parents to formulate their provision and we have provided further guidance on our website.<sup>16</sup>

We do not consider it desirable to provide or encourage the use of templates, as noted in Home Truths.

*"While the suggested characteristics in the guidance have proved helpful for parents framing provision and councils ticking 'consent' boxes, there is no template provision just as there is no template child, and home education, unlike schooling, is highly personalised." (page 42)*

**7. Does 6 weeks provide sufficient time for a local authority to issue a decision regarding consent to withdraw a child from school?**

- ☒ Yes ☐ No ☐ Don't know

**Please give further details.**

Six weeks is too long and implies poor time management on the part of LAs. As we have raised separately, this question is not neutrally framed and lends weight to the premise that six weeks is a reasonable timescale to process withdrawal instructions by parents. Our Home Truths report covers in detail the reasons for our recommendation to reduce the timescale to one or two weeks unless exceptional circumstances apply, noting:

*"A significant improvement could still be achieved by reducing the timescale via revised guidance from six weeks to one or two weeks, since processing consent is a simple administrative exercise and there are very few circumstances in which it can legitimately be withheld." (page 33)*

*"Grounds for refusal are strictly limited since the provision of education is a parental responsibility, but parents have reported that the process had frequently been*

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<sup>16</sup> <https://scothomeed.co.uk/resources/home-education-provision>

*dragged out beyond the six weeks recommended in the guidance and children had been 'held hostage' where parents refused to accede to unreasonable demands, including home visits, access to children, curricular expectations and data sharing. As one pointed out, "It's like having to ask permission from the butcher's federation to choose a vegan diet, then have them approve your menus on the basis of carnivores' preferred criteria".* (page 48)

Recommendation 3 from Home Truths:

*3. "If primary legislation is to remain unchanged, thus leaving the discriminatory consent anomaly in place and open to ongoing abuse, the government should reduce the recommended timescale in the guidance from six weeks to a maximum of one or two weeks, with a presumption of consent where local authorities fail to comply."*

Furthermore, there needs to be a robust complaints and appeals process to discourage poor practice and expose arbitrary and discriminatory decision-making.

From Home Truths:

*"Lack of legal representation and independent advocacy had impacted most adversely on children with ASNs and especially those in rural and island areas. Absence of legal aid and the inability to engage expert witnesses on home education to counter multi-agency school-centric professional bias had further exacerbated the inequality of arms."*

*"A postcode and postholder lottery was especially evident when it came to consent for withdrawal from school, with timescales ranging from "immediately" to "more than a year". A few requests had been refused for declining home visits and access to children, or on other spurious grounds, including undefined "wellbeing concerns" and, perhaps most bizarrely, the council's alleged duty to ensure education as a "corporate parent".*

*"Several parents reported serious data protection infringements, mainly due to the retention and application of unlawful GIRFEC guidance, and malicious referrals to social work were also said to be a problem for a small minority. Although most had come to nothing, families had suffered extreme stress and had their home education plans delayed as a result, but a small number had become embroiled in the child protection system. Several had been doggedly pursuing complex complaints, sometimes over years, in the belief they had been victimised due to exercising their rights and/or complaining." (pages 7-8)*

Recommendation 13 from Home Truths:

*13. "The guidance should require councils to hear appeals by parents and provide details of all available complaint mechanisms, including internal processes, the Scottish Public Services Ombudsman (SPSO), ICO, section 70 complaints and ASN Tribunal applications. Councils should also be required to record complaints from home educating parents and home educated young people about breaches of law and guidance, including allegations of discriminatory treatment in relation to protected characteristics."*

#### **Section 4 – Contact between home educating families and local authorities**

**8. Do you consider in-person contact between the local authority and home educating family to be important?**

☐ Yes ☒ No ☐ Don't know

There is no need for in-person contact if parents prefer to provide initial outlines and subsequent updates of provision in writing. Indeed, it is our recommendation that they do so in order to ensure a written record of all communication for the protection of all parties. LAs must be reminded that they have no right of entry to family homes or access to children in order to process withdrawal or update requests.

The relationship between parents and LAs is one of power imbalance, they are not colleagues, the relationship cannot be enforced and many LAs, being invested in the schooling system, are overtly opposed to home education in principle. We maintain that it is the information provided that counts, and that the means of its provision is up to parents. Children should never be coerced into 'performing' for LAs or subjected to questioning by strangers, especially not in their safe home spaces.

Para 4.6 refers to information 'from whatever source' being a trigger to gather information about alleged 'concerns', often vague in nature and sometimes instigated by schools who oppose parental decisions, but this fails to recognise evidential requirements. It should be understood that malicious referrals are more likely to be made about home educators due to lack of public awareness and understanding of the law. This has been routinely exploited by LAs to claim personal data can be processed in the absence of the relevant threshold having been reached. Parents are entitled to block such processing but those who do so have been warned consent for withdrawal will be refused (i.e. invalid, coerced consent). This needs to be addressed before any progress can be made in building trust.

From our response to the 2019 discussion paper:

*"In order to avoid unnecessary distress to families, concerns raised solely on the basis of children not being in school, whether by individuals or other 'services', should not be pursued unless they are accompanied by credible evidence of parental neglect. Contact with the family should first be made in writing to seek to establish whether or not education-related concerns may be justified. If so, the correct procedure would be to issue a SAO and/or make a referral to the reporter." (page 14)*

Para 4.7 asserts it is 'desirable for a local authority to have the opportunity to meet with the child in that learning environment in order to better understand the child's views, feelings and experience of home learning in context (in reference to Paragraph 2.4 on UNCRC Article 12)", but this is not necessarily desirable for the child and family and, as we have already stated, the child is not obliged to share his or her views on home education.

Paras 4.8 and 4.9 continue along the presumptive direct contact line and school-centric reference to 'learning environment' (singular as in home) when most children are educated in multiple environments, often outside the home.

These have always been a problematically worded sections that fail to establish and uphold families' boundaries and privacy thresholds and have been wilfully exploited to intimidate and coerce parents and children into complying with unreasonable demands. Inviting strangers into family homes to discuss law-abiding lifestyles is far from rights-respecting practice and we would recommend rewriting them in full (with the assistance of a sensitivity reader) to make the voluntary nature of contact explicit. It should be noted that, no matter

what policies or guidance states, they can never trump overarching legislation and must be applied in a manner that ensures compatibility.

Recommendation 15 from Home Truths:

*15. "The Scottish Government should commit to a comprehensive policy audit to ensure that the 'orders' being followed by services do not breach overarching human rights and data protection legislation, and that home educators can expect delinquent provisions to be disregarded."*

When it comes to school attendance orders, our research found that very few had been sought and even fewer granted over the past few years, although several members reported being threatened with SAOs unless they complied with LA demands. We are also aware that some parents have successfully argued that they have a 'reasonable excuse' for failure to secure attendance and this could usefully be referred to in the guidance.

As we reported in Home Truths:

*"Very few school attendance orders (SAOs) were recorded by local authorities, but three were issued by East Lothian, one by Aberdeen City and at least one (inferred from the invoked exemption) by East Dunbartonshire. No information was provided regarding appeals or revocations. Falkirk Council said: "School attendance orders are not used in Scotland", while Edinburgh commented: "We have no statutory role with the parents of children who are given permission by the authority to home educate and therefore we have no Attendance Orders placed on the parent/s of home educated children". Shetland reported "one advisory, children left LA" and South Lanarkshire said it "does not issue attendance orders". Perth & Kinross stated: "This information is obtainable by contacting the Scottish Children's Reporter Administration direct as all Attendance Orders are decided upon within the Children's Hearings System". (page 22)*

Recommendation 11 from Home Truths:

*11. "The guidance should be amended to prevent councils from misleading parents in order to gain entry to the family home, coerce meetings or impose unreasonable conditions, with suitable sanctions for misconduct. Interviewing of children without parental consent should also be proscribed, and children's Article 12 rights to decline to express views or meet with unknown officials must be made explicit."*

**Please give examples of the types of contact that have worked well and in the best interests of the child.**

This is another question that presumes contact to be in the best interests of a child when that is for a parent to determine and the LA to respect unless there is clear evidence of parental failure, in which case the relevant steps are set out in primary legislation.

The most positive relationships between LAs and home educating families have been built gradually and respectfully over time where the LA has sought to engage on equal terms and has responded constructively to suggestions to improve aspects of policy and practice. We would commend South Ayrshire and Angus for their responsiveness to home educators concerns and for making themselves available for discussions. As previously mentioned, ASLO professionals' group has welcomed our input in order to promote better understanding of home education.

Our Home Truths research noted:

*“... it was clear from parents’ reports on their councils’ approaches that the postcode and postholder lottery will not be eliminated by guidance alone, and that home educators must be fully involved and engaged in identifying and implementing solutions if the culture of home-eduphobia is to be successfully tackled and trusting relationships with families rebuilt.” (page 9)*

*“Differing interpretations of legislation and guidance and a lack of dedicated training had led to inconsistencies between local authority policies and widely divergent practice. A common application of national guidance was needed in order to address the postcode and postholder lottery that our research had identified.” (page 41)*

*“...our investigation found not only vast disparities in local authority policies, but also widely differing approaches by assigned officers, sometimes even within the same authority, resulting in both a postcode and postholder lottery for home educating families. Even where good practice was established, it could be fleeting due to personnel changes, whereas poor practice was more likely to remain embedded in organisational culture.” (page 47)*

Recommendation 1 in our Home Truths report suggests a national forum to promote positive dialogue and iron out any misunderstandings:

*1. “In view of the inconsistencies we have found, the Scottish Government should consider convening a working group, inclusive of local authorities and home educators, and preferably chaired by a specialist education lawyer, to formulate a model home education policy and information for parents that are fully reflective of national guidance for adoption across all council areas. Any proposed local policy changes should be preceded by mandatory equality and rights impact assessments and formal stakeholder consultations.”*

## **Section 5 – Good practice for local authorities**

### **9. How can local authorities best keep general data on the numbers of home educated children and young people within their area?**

There is no need to keep general data on numbers of children who are home educated and it might prove exceptionally difficult to maintain accurate records, which is a requirement of GDPR, when circumstances can change frequently (e.g. moving areas, attaining leaving age, joint parenting arrangements, long term temporary residence abroad, enrolment in private or public schools) and there is no legal requirement for home educators to be ‘licensed’.

It is sufficient for LAs to record names, addresses and ages of those children of school age who are known to be home educated for the purpose of LA contact with their parents on an annual basis. It is also worth noting that CME guidance does not apply to children who are known to be in home education and this should be made explicit in guidance to prevent parents being harassed to disclose forwarding addresses.

As we noted in our response to the 2019 discussion paper

*“...parents are under no legal obligation to provide a forwarding address or destination educational setting to a child’s previous school, and [that] CME policy does not apply to children who are (or are about to become) home educated, since*



*they are, by definition, not 'missing' from education simply because they are not on the roll of a council school.” (page 9)*

When it comes to best practice (Section 5), we have already highlighted that LAs are mostly failing to provide clear information and named contacts (with requisite experience) for families, who are subject to a postcode and postholder lottery. Asking for information in alternative formats is also likely to result in parents from minority groups being targeted by untrained individuals who are opposed in principle to home education. Our research has highlighted discriminatory treatment as a major problem.

Lack of support in schools for children with disabilities and ASNs has been a major driver to home education and support for children in home education is scandalously lacking, although there are exceptions in the form of professionals who go the extra mile to overcome barriers to access – one exceptional educational psychologist in East Dunbartonshire merits a special mention.

More often, parents are told, wrongly, that they will be on their own (5.7) and will be denied access to services that are only available via schools such as SALT, physiotherapy and educational psychology. To add insult to injury, parents who have paid for private diagnoses after giving up on waiting for CAMHS referrals have reported that these are not deemed acceptable evidence for the provision of additional support or reasonable adjustments.

Recommendation 14 from Home Truths:

*14. “Although beyond the scope of the home education guidance, the government should, in the light of growing numbers of children being withdrawn from school, give early consideration to amending pertinent legislation and guidance so that home educated children and young people with complex ASNs become eligible for co-ordinated support plans (CSPs) on parental application.”*

We can confidently state that the ‘review’ process outlined in para 5.9 rarely, if ever, happens! We understand the pressures on LA resources, but it is another example of home education being relegated to the back of the queue. An exception in the case of Dumfries & Galloway was down to local home educators being proactive in calling for changes and the outcome was positive, with home educated young people contributing to the council’s new home education resources website page.

As we reported in our Home Truths case study:

*“The council was keen to build on the positive foundations laid during recent engagement with home educators and tentatively supported some of their suggestions, including a proposed reduction in the turnaround time for consent, and welcomed opportunities for participation in ‘conversations’ with home educators at national and local level.” (page 9)*

#### **10. What is your opinion of a national approach to information management, for example, a national register?**

The subject of a national register of home educated children and young people is one that has been discussed by a previous Scottish Parliament Education Committee ([Petition to Parliament PE01730](#)) and an England-wide register forms part of the recommendations of the Westminster Select Committee on Education report, [Strengthening home education](#), published July 2021.

**There may be advantages and disadvantages to a national register. A register may be seen to be advantageous as a means to better understand the number, demographics and spread of home educated children and young people in Scotland, and to better reflect their needs in wider policy making. However, it may be seen as disadvantageous to require local authorities and home educating parents to maintain an accurate register of children and young people.**

We would oppose any such proposal which would destroy the already tenuous relationships between government, LAs and home educators and incur great expense as well as unacceptable risk to children and families' personal and sensitive data.

With reference to the parliamentary petition cited, which was lodged by a disgruntled former partner and garnered only 11 signatures, we submitted a fulsome critique of the proposal to the Public Petitions Committee.<sup>17</sup> It was subsequently closed.

Meanwhile, our joint parliamentary petition with Tymes Trust<sup>18</sup> on the human rights impact of GIRFEC policy, which was not mentioned in the draft document, remains under consideration. It warns of the dangers of unlawful information gathering and sharing, including the specific risks to parents and children who have experienced domestic violence, abuse and coercive control. We are privy to several examples of 'professional perpetrators' who would have access to a shared database and others who have sought to manipulate head teachers to obtain information to track down ex-partners and children.

The proposals for compulsory registration in England are being strongly resisted by home educators and other human rights and privacy organisations. Education law and the schooling system in England are different from ours and allow for 'deregistration' upon written notification to the school. This has facilitated the dubious practice of coerced 'off-rolling', especially of children with special needs, disabilities and challenging behaviour, in order for schools to avoid providing resources for additional support. It is not the fault of home educating families who should not be persecuted for malpractice by schools and LAs. The problem has undoubtedly become acute in England but is largely contained in Scotland due to more robust checks and balances in the legislative framework. We would recommend detailed perusal of the research undertaken by Defend Digital Me<sup>19</sup> and briefings by the Counting Children<sup>20</sup> coalition before giving any serious consideration to emulating such controversial proposals in England which are highly likely to be judicially reviewed.

In relation to GIRFEC (5.10), we would point out that it is an outcomes-based ideology that is antithetical to our rights-based founding philosophy and has no statutory basis. Indeed, the UK Supreme Court has provided a definitive interpretation of the limitations to interference with Article 8 ECHR, reaffirmed parents as protectors of their children's rights and arbiters of their best interests, and upheld the established threshold for non-consensual intervention.

GIRFEC needs to be based on consent, not coercion, and families are free to reject state-dictated outcome-based approach in favour of a self-determined rights-based approach to education. Families will inevitably self-exclude from services if they cannot trust them to maintain confidentiality and security of personal data. GIRFEC information sharing guidance will have to comply with the Supreme Court's ruling<sup>21</sup> that precludes arbitrary interference

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<sup>17</sup> [https://archive2021.parliament.scot/S5\\_PublicPetitionsCommittee/Submissions%202020/PE1730\\_F.pdf](https://archive2021.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202020/PE1730_F.pdf)

<sup>18</sup> <https://scothomeed.co.uk/girfec-petition-revisited-for-two-minutes>

<sup>19</sup> <https://defenddigitalme.org/research/>

<sup>20</sup> <http://countingchildren.uk/counting-children/>

<sup>21</sup> <https://www.bailii.org/uk/cases/UKSC/2016/51.html>

and the imposition of state diktat, and upholds the primacy of parents in determining best interests.

Citing Article 18(1) UNCRC:

*“Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” (Emphasis supplied) (para 72),*

the court held:

*“Individual differences are the product of the interplay between the individual person and his upbringing and environment. Different upbringings produce different people. The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers’ view of the world. Within limits, families must be left to bring up their children in their own way.” (para 73)*

As outlined in our Taking LAs to Task report<sup>22</sup>, advance notification is required for data processing, as well as the lawful basis that underpins its necessity if not consensual.

*“The 2015 Bara ruling by the Court of Justice of the European Union (CJEU) established the principle that prior notification is required for the transfer of personal data between public administrative bodies in order to ensure foreseeability and accessibility for data subjects.” (page 16)*

Data subjects are entitled to know how and why their information is being processed and to check the ‘working’ for each incidence via subject access request. LAs are not permitted to share information across departments in the absence of consent or legally defined necessity as they are deemed separate entities for data protection purposes. This should be made clear in the guidance.

Section 6 of the draft contains a number of problematic presumptions, mainly that CfE is the pre-eminent and preferred curricular approach and that state dictated ‘capacities’ for citizens are universally agreed. There are rightly no template citizens and ideologically driven, school-centric policies have already alienated many parents.

Despite being well-intentioned at conception, CfE (with its close alignment to GIRFEC ideology) is considered an unmitigated disaster by many parents and teachers. Reportedly based around autonomous educational principles, scaling up could never be achieved for mass provision and it bears no resemblance to autonomous home education as practised by most families. References to curriculum areas betray pro-school prejudices that do not reflect the philosophies and priorities of many home educators.

Section 7 usefully sets out information for families about available support. It was a source of frustration that eligibility for EMA, as one of the most inclusive offerings, had to be reinstated after home educating families were excluded due to a website update – another example of school-centric policy that by default excludes young people educated outwith the system. Exclusion from the Scottish Child Payment and FSM linked benefits have long been a bone of contention, having been mis-sold as ‘universal’. Period products should easily be made available on an equal basis on request, yet the guidance uses inaccurate terminology (‘home schooled’) to describe the subset of female home educated young people who need them.

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<sup>22</sup> <https://scothomeed.co.uk/wp-content/uploads/2020/10/201017-Taking-LAs-to-Task.pdf>

As we pointed out in our response to the 2019 discussion paper<sup>23</sup>

*“There is no good reason to discriminate against home educated children, who should be able to access council-run facilities and events on an equal basis to school pupils. They are too often an after-thought, if considered at all, as is the case with most policies which are essentially home education blind or directly discriminatory. Home educating families should not be patronised and relegated to the ‘seldom heard’ category when their children have been systematically excluded from services allegedly available to all.” (page 17)*

## **11. What factors can facilitate home educated learners to access qualifications? What barriers or solutions may there be to accessing qualifications?**

**Please give details of factors that can facilitate access to qualifications.**

**Please give details of barriers or solutions to accessing qualifications.**

It is currently very difficult, if not impossible, for home educated candidates to access national Scottish qualifications and most have opted for English or American equivalents. FE Colleges and OU offer alternatives, but access to the former has become more patchy in recent years.

Our community has its own dedicated exams peer support network to share information on all aspects of gaining qualifications that needs to keep abreast of current and evolving rules and regulations. Opportunities have closed off due to rule changes over the years as policy-makers invariably fail to acknowledge the existence of non-schooled candidates.

We would therefore urge the government to ensure all education sectors are encouraged to consider the needs of home educated learners in their admissions policies (as part of the PSED) rather than place obstacles such as school ‘approval’ in the way. Part-time and distance learning via FE colleges used to be popular options for home educating families and should be reinstated to facilitate choice without delay, excessive cost or unnecessary hoop-jumping.

It has long been argued that home educated candidates should have access to exam centres in state schools rather than have to negotiate with independent schools and other centres which will accept them at variable cost, often necessitating the inconvenience of long-distance travel. Wallace College was a popular choice but has now closed and some young people are travelling to England to sit exams which is far from ideal, especially for those on limited incomes.

The pandemic meant that independent candidates, including many home educated young people, were denied access to exams and excluded from predicted grade assessments by teachers/tutors. Although its focus is on England and Wales, written evidence<sup>24</sup> submitted by the Centre for Social Mobility, University of Exeter, to Westminster’s Education Select Committee in July 2020 echoes the unsatisfactory experiences of home educating families in Scotland through no fault of their own.

Home educators are represented on the Independent Qualifications and Assessments Review which is a positive step, albeit a little late, and it is hoped that there will be a more inclusive accommodation of home educated young people’s unique situations and needs in future years.

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<sup>23</sup> <https://scotthomeed.co.uk/wp-content/uploads/2020/04/190830-FINAL-HOME-DISCUSSION-RESPONSE-PDF.pdf>

<sup>24</sup> <https://committees.parliament.uk/writtenevidence/9204/pdf>

Recommendation 8 from Home Truths:

*“The guidance should strongly encourage councils to make resources available and facilitate exam access for home educated external candidates where parents have requested such assistance.”*

It may also be worth highlighting here a further suggestion from our response to the 2019 discussion paper:

*“Given the number of children and young people with disabilities, chronic illnesses and severe school anxiety, who may be home educated on a temporary or permanent basis, consideration should be given to the possibility of LAs funding virtual schooling for those who struggle with attendance. This would in our view represent a reasonable adjustment for children with ASNs and help avoid tribunal cases.*

*“We are aware of one child with ME who has been out of school for three years (still on the roll with no alternative education offered by the LA), but the parent’s request for virtual schooling has been rejected, despite the failure of all ‘multi-agency plans’ to force the chronically sick pupil into school. Access to online schooling would be a cost-effective option in such circumstances, which might usefully be endorsed in the guidance as a reasonable adjustment for children who become home educated by default.” (pages 16-17)*

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