

A fact sheet guide to the law – information for parents and carers

The Elective Home Education Team

We aim to build positive, trusting relationships with families. If we learn that you are educating your child at home, an adviser will make contact with you. The adviser will ask you about your aims for your child's education and will usually offer to meet to discuss your plans. We understand that some families prefer not to meet an adviser, and we will treat you fairly and reasonably whether you choose to have contact with us or not.

What does the law say?

You have the legal right to choose to educate your children at home rather than at school.

In England and Wales the main legislation relating to home education is the **1996 Education Act. Section 7** of this Act states:

'the parent of every child of compulsory school age shall cause him to receive efficient full time education suitable to:

- a) his age, ability and aptitude, and*
- b) any special educational needs he may have, either by regular attendance at school or otherwise.'*

The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of Protocol No 1 also supports this by saying:

'No person shall be denied a right to an education. 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.'

What does the case law say?

Home education and contact with the Local Authority

The case of **Phillips v Brown, 1980** established that a Local Authority can initially ask parents who are educating their children at home for information.

Mr Phillips submitted that unless and until something comes to the notice of a LA which causes it to conclude that particular parents are in breach of their duty under section 36 of the Education Act 1944 it is neither bound nor entitled to make inquiries of those parents...LAs should not oppress parents by inquiring whether there has been a breach of section 36.

In this case, Lord Donaldson said:

A LA needs to know what children of school age live in its area in order that it may perform its statutory duty to provide sufficient schools (section 8 of the Education Act 1944) and to ascertain what children require special educational treatment (section 34). It knows which of these children attend its own schools. It follows that an LA will or should know that certain children in its area are in a different category — namely being educated at other schools, being educated otherwise than by attendance at school or not being educated properly or even at all.

'Where an authority has a duty to take action in particular circumstances, it also has a duty to be alert to detect the possibility that those circumstances exist...I do not accept that it should do nothing...the most obvious step is to ask the parents for information. Of course such a request is not the same as a notice...and the parents will be under no duty to comply. However it would be sensible for them to do so.

If parents give no information or adopt the course of merely stating that they are discharging their duty without giving any details of how they are doing so, the LA will have to consider and decide whether it 'appears' to it that the parents are in breach of section 7 of the Education Act 1996'.

Efficient' and 'suitable' education

In the case of **R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust** (1985) Mr Justice Woolf held that:

'Education is 'suitable' if it primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so.'

In the case of **Harrison and Harrison v Stevenson (1982) QB (DC) 729/81**, the court of appeal reported that:

"education" demands at least an element of supervision; merely to allow a child to follow its own devices in the hope that it will acquire knowledge by imitation, experiment or experience in its own way and in its own good time is neither systematic nor instructive . . . such a course would not be education but, at best, child-minding. We should not, in the ordinary case, regard a system of education as suitable for any child capable of learning such skills, if it failed to instil in the child the ability to read, write or cope with arithmetical problems, leaving it to time, chance, and the inclination of the child to determine whether – if ever – the child eventually achieved even elementary proficiency in those skills'

Definitions

Compulsory school age

A child reaches compulsory school age on the 1st January, 1st April or 1st September immediately following their fifth birthday. They currently cease to be of compulsory school age on the last Friday in June of the school year in which they reach 16 years of age.

School leaving age

All young people must continue in education or training after they cease to be of compulsory school age until they are 18. This legal requirement to participate is on your son or daughter, but there will be no legal action taken against any young people who don't participate.

Parent

In education law the definition of 'parent' includes natural parents as well as anyone who has parental responsibility as defined by the 1989 Children Act, or who has care of a child. There may be people other than natural parents who have responsibility for, and are entitled to be consulted about, a child's education.

Full time education

There is no legal definition of full-time education. The hours set for children to be in school do not apply to children educated at home. Children are often taught on a one-to-one basis, or in small groups at home, in conditions very different to schools.

Who to contact for advice

Education Inclusion Service

gloucestershire.gov.uk/education-and-learning/home-education/

Email:

ehel@gloucestershire.gov.uk

☎ 01452 427622

Home Education Advisory Service

heas.org.uk

Email: enquiries@heas.org.uk

☎ 01707 371854

Education Otherwise

educationotherwise.org

Email via the contact page on the website

☎ Helplines 08445 867542 / 867543 / 867544

Education is compulsory... school is not