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10 April 2017

Dear Lord Soley

### **Re Private Members Bill – EHE**

I have circulated and collated the views of AEHEP members.

Title: **“Standards and welfare of children in home education”** bill

The rationale being the current emphasis across education and children’s services is around standards and welfare. Pupil progress in school is measured partly to ensure standards are reached but also to hold schools to account for outcomes. There is an argument that parents should also be accountable. The welfare of pupils is critical especially around the push for improved mental health where many EHE pupils are suspected of being isolated and in effect ‘invisible.’ We thought keeping ‘safeguarding’ or ‘protecting’ out of the title would be wise as this would possibly draw criticism from the powerful pro EHE lobby groups.

We recognise parents have a right to home educate ‘subject’ to the local authority being satisfied that the child is receiving sufficient education. Another way to achieve this would be to add a clause to the Education Act 1996 stating that ‘education otherwise’ includes home education. We have tried to keep any change of law as simple as possible but essentially want to be able more easily to know if a child is receiving a suitable education.

#### **Clauses:**

- A compulsory registration scheme maintained by individual local authorities capturing all home educated children and reported to the DFE on an annual basis (currently the DFE have no idea of numbers of EHE pupils).
- Confirming that provisions relating to LAs should uphold the best interests of the child and give specific powers, e.g. the monitoring powers - such as the

LA's right to see the child and the child's work in order to determine standards and welfare.

- The voice of the child to be heard. A requirement to meet face to face at appropriate intervals, with sensible maximum and minimum time limits, with a LA representative to provide information relating to the education being provided by the home educator. This should be evidenced based, not a verbal description.
- All parents should respond to enquiries from the LA in order to determine that education at home is suitable.
- Parents can expect to be given the opportunity to address any specific concerns and LA's can expect parents to provide further information as requested.

**Guidance:** please see the attached document. Updating the guidance is a good idea but should happen in tandem but separate from the need to legislate. Revising guidance does not require new legislation but strategically simply asking for clarification of the current law in the guidance is perhaps something that could be seen as a compromise position?

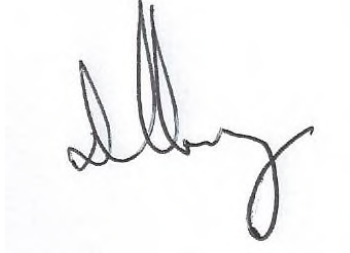
The following is an example of how under the current law and guidance some parents can evade their responsibilities:

"I have been calling around in the last few weeks and have been bounced from one person to the next. I have been most recently told I need to speak to you so I hope you can help me. I am 21 years old and concerned about my younger sisters who are 16 and 13 who live separately from me with my mum. From my knowledge, she has had various visits from education authorities regarding her plans to home school the children herself. I have heard her on numerous occasions mention that she has presented work that has been completed herself in order for there to be no further intervention. The older sibling has no plans to complete her GCSEs any time soon and I am aware they would be due to sit this year. My mother's intentions may be good but I worry that she cannot cope and am deeply concerned about my sisters' lack of education."

The changes we have suggested would result in cases such as this being more robustly addressed to the benefit of the child, parent and society.

I hope these ideas are helpful, I please do not hesitate to contact me should you require input from the AEHEP

Yours sincerely

A handwritten signature in black ink, appearing to read 'dharvey', with a large loop at the end.

David Harvey  
Chair AEHEP

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## Appendix 1

### Amendments AEHEP Guidance March 17

	Current	Proposed
2.16	<p>Section 53 of the Children Act 2004( "the 2004 Act") sets out the duty on local authorities to, where reasonably practicable, take into account the child's wishes and feelings with regard to the provision of services. Section 53 does not extend local authorities' functions. It does not, for example, place an obligation on local authorities to ascertain the child's wishes about elective home education as it is not a service provided by the local authority.</p>	<p>Section 53 of the 2004 Act sets out the duty on local authorities to, where reasonably practicable, take into account the child's wishes and feelings with regard to the provision of services. Section 53 does not extend local authorities' functions. However, good practice and equitability between the rights of children educated at school and those educated otherwise would require local authorities to capture and record the voice of children educated at home.</p>
2.3	<p>The responsibility for a child's education rests with his or her parents. An "efficient" and "suitable" education is not defined in the Education Act 1996 but "efficient" has been broadly described in case law<sup>1</sup> as an education that "achieves that which it sets out to achieve", and a "suitable" education is one that "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 a 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".</p>	<p>The responsibility for a child's education rests with his or her parents. An "efficient" and "suitable" education is not defined in the Education Act 1996 but "efficient" has been broadly described in case law<sup>1</sup> as an education that "achieves that which it sets out to achieve", and a "suitable" education is one that "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 a 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".</p> <p>In line with this definition there will be an expectation that provision within the home include supervised instruction in reading, writing and numeracy which takes into account the child's age, ability, aptitude and any SEND.</p> <p>"We regard the fundamental academic skills of writing, reading and arithmetic as fundamental to any education for life in the modern world.....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". (Harrison and</p>

		Harrison v Stevenson)
2.6	<p>Local authorities have a statutory duty under section 436A of the Education Act 1996, inserted by the Education and Inspections Act 2006, to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than being at school (for example, at home, privately, or in alternative provision). The guidance issued makes it clear that the duty does not apply to children who are being educated at home.<sup>2</sup></p>	<p>Guidance on local authorities duties under section 436A of the Education Act 1996. The last sentence in para 2.6 states that 'The guidance issued makes it clear that the duty does not apply to children who are being educated at home'. The guidance referred to here, in footnote 2, was replaced in 2009 and the new guidance made clear that the section <i>did</i> apply to EHE. It stated that:</p> <p><b>'In order to comply with this duty local authorities need to make arrangements which will as far as possible enable them to determine whether any children who are not pupils at school, such as those being educated at home, are receiving suitable education. In order to do this local authorities should make enquiries with parents educating children at home about educational provision being made for them'</b></p> <p>The 2009 guidance was subsequently replaced in November 2013 and this current guidance, similarly makes clear that the duty <i>does</i> apply to EHE, by referring to it explicitly (page 5) and, generally, by advising that: 'The LA should consult the parents of the child when establishing whether the child is receiving suitable education' (p4).</p> <p>Could para 2.6 be amended to reflect the current position?</p>
2.7	<p>Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis.</p> <p>However, under Section 437(1) of the Education Act 1996, local authorities shall intervene .....</p>	<p>Local authorities have no statutory duties in relation to monitoring the quality of home education on a uniform basis. Local authorities should though be able to ascertain that families are still living in their area and provision is continuing by receiving updates. Parents are expected to provide initial information regarding their provision at home at the point of deregistration or upon becoming known to</p>

		<p>the local authority in the case of children not previously on roll at school. This information should be updated at regular intervals.</p> <p>However, under Section 437(1) of the Education Act 1996, local authorities shall intervene .....</p>
2.8	<p>Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing. Such a request is not the same as a notice under section 437(1), and is not necessarily a precursor for formal procedures. Parents are under no duty to respond to such enquiries, but it would be sensible for them to do so.</p>	<p>Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing. All parents should respond to informal enquiries in order to assist local authorities to determine that education at home is suitable. Such a request is not the same as a notice under section 437(1), and is not necessarily a precursor for formal procedures.</p> <p>Philips v Brown case law would support this change</p>
3.4	<p>Local authorities should acknowledge that learning takes place in a wide variety of environments and not only in the home. However, if it appears that a suitable education is not being provided, the local authority should seek to gather any relevant information that will assist them in reaching a properly informed judgement. This should include seeking from the parents any further information that they wish to provide which explains how they are providing a suitable education. Parents should be given the opportunity to address any specific concerns that the authority has. The child should also be given the opportunity, but not required, to attend any meeting that may be arranged or invited to express his or her views in some other way. Parents are under no duty to respond to such requests for information or a</p>	<p>Local authorities should acknowledge that learning takes place in a wide variety of environments and not only in the home. However, if it appears that a suitable education is not being provided, the local authority should seek to gather any relevant information that will assist them in reaching a properly informed judgement. This should include seeking from the parents any further information that they wish to provide which explains how they are providing a suitable education. Parents can expect to be given the opportunity to address any specific concerns and local authorities can expect parents to provide further information as requested. The child should also be given the opportunity, but not required, to attend any meeting that may be arranged or invited to express his or her views in some other way.</p>

	meeting, but it would be sensible for them to do so.	
<b>3.6</b>	<p>Some parents may welcome the opportunity to discuss the provision that they are making for the child's education during a home visit but parents are not legally required to give the local authority access to their home. They may choose to meet a local authority representative at a mutually convenient and neutral location instead, with or without the child being present, or choose not to meet at all. Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision being made. Where local authorities are not able to visit homes, they should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. If they choose not to meet, parents may be asked to provide evidence that they are providing a suitable education. If a local authority asks parents for information they are under no duty to comply although it would be sensible for them to do so.</p>	<p>Some parents may welcome the opportunity to discuss the provision that they are making for the child's education during a home visit but parents are not legally required to give the local authority access to their home. They may choose to meet a local authority representative at a mutually convenient and neutral location instead, with or without the child being present, or choose not to meet at all. Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision being made. Where local authorities are not able to visit homes, they should, in all cases, be able to discuss and evaluate the parents' educational provision by alternative means. Parents will be asked to provide evidence that they are providing a suitable education. Parents might prefer, for example, to write a report, provide samples of work, have their educational provision endorsed by a third party (such as an independent home tutor) or provide evidence in some other appropriate form.</p>
<b>3.15</b>	<p>In their consideration of parents' provision of education at home, local authorities may reasonably expect the provision to include the following characteristics:</p> <p>consistent involvement of parents .....</p>	<p>In their consideration of parents' provision of education at home, local authorities may reasonably expect the provision to include the following characteristics:</p> <p>Supervised reading, writing and numeracy at a level appropriate to their child's age , aptitude, ability and any SEND</p> <p>consistent involvement of parents .....</p>