

Comments on Internal Audit Report on Elective Home Education

Introduction

The phrase in the Internal Audit Service Progress Report to the Audit Committee which originally drew this report to my attention was a reference to the authority's duty to identify children who "may not be" receiving a suitable education, as this summary of the law was incorrect. Laws are difficult to summarise without missing out important details, but this is a particularly sensitive detail around the issue of home education, as the authority's duty is, as far as it is possible to do so, to identify children who are missing education (not who "may be"). Consequently I asked to see the full report, and having done so, thought it would be useful to set my comments down on paper in the hope that they can assist the Internal Audit Service in taking forward its role.

The Overall Assessment

The first two paragraphs of the report summarise the broad purpose of the review and the relevant law. However, they are incorrect at a number of points, and this undermines the report. The two paragraphs mix together key points that are true ("the Council has no statutory obligation to monitor the quality of home education" and "there is a requirement that the Council will intervene if it appears that parents are not providing a suitable education") with others that are not true, and the overall picture is confusing as a consequence.

The statements that are not true include references to "the responsibility for ensuring that home educated children are receiving a suitable education". No such responsibility exists. The report refers to the Council's "statutory responsibility to have arrangements in place which will enable children educated at home to be identified and for assurance to be obtained that a suitable education is being provided". [See paragraph 2.6 of the EHE guidelines to local authorities from the DfE.](#) Again, no such responsibility exists. This must be a reference to the Council's responsibility to identify children who are missing education, but there is no responsibility on home-educating parents to register with the authority, or for the authority to find them (as home educated children are by definition not missing education, and are specifically exempted by statutory guidance on Children Missing Education), or for parents to provide any assurance that their children are being educated to the satisfaction of the authority in the absence of the authority having reason to believe that no suitable education is being provided. Proposals to that effect were made by the last government but did not make it through Parliament. [We have raised that the CYP O&S Committee deal with the previous government's bill.](#) The fact the last government sought to make this change underlines that fact that it does not represent the current law, or they would not have wanted to change it.

This has two related impacts on the Internal Audit report:-

1. It makes it difficult to establish what is being audited- the authority's actual legal role, or the role the service department seems to think it has. [This issue has again been raised in Recommendation 4 – to address exactly what is required.](#)
2. It sets a very high standard for the authority to meet, in trying to implement a statutory duty that does not exist, with powers that do not exist, and it is therefore difficult to understand how the service could obtain substantial assurance for doing something which it is not

possible for it to do. From the testing performed, and auditing against council guidelines (which did not go below national guidelines) the results were sound.

Para 1.5 refers to the ability of the local authority to ensure that home educated children are safe. The Council has no such responsibility. Paras 1.7 and 5.7 refer to the Badman recommendations not being agreed following the election of the new government. Actually the clauses implementing those recommendations were dropped from the Bill before the election. Local authorities have a duty under section 175 of the Education Act to safeguard and promote the welfare of children. In instances, some EHE officers are not allowed through the front door as the parents do not want them to identify that their children are not receiving the stated level of education. In these instances a referral will be made to the safeguarding team – and not undertaken by EHE officers. We would expect EHE officer to be proactive like this to ensure the children of Lancashire are safe.

Para 1.8 is very relevant in that the Task Group's report went beyond the Badman recommendations and did not rely on their implementation, yet it is unclear whether all the recommendations that the Council accepted have been implemented. Recommendation 2.

Paras 1.9 & 1.10 are problematic if the Council really believes it has a "statutory responsibility to have arrangements in place which will enable children educated at home to be identified and for assurance to be obtained that a suitable education is being provided". By only looking at changes to high school rolls the Council is ignoring all children of primary school age and all children who have never registered at a school. One would expect that to cover more than half of home educated children and others, and the Council would be failing in any such duty. How then could the service achieve substantial assurance? These would appear to be high residual risks, unless the Council accepts that its responsibilities are very much less than outlined in paras 1.1 and 1.2. And if it does accept that, there would also appear to be a case of "inefficient use of resources", which again constitutes a high residual risk. Identified in Recommendation 4 – the service have been selective in the information they retrieve. This is also the responsibility of the CME team.

Overall Objectives

Use of the term "ensure" in para 2.1 and elsewhere in the report is inappropriate. As stated above the authority has no legal responsibility to ensure these things, and where it does have a responsibility, the statute specifically mentions that it is only where it is possible to do so, and the guidance makes clear this provides no powers to enable the responsibility to be carried out otherwise.

Background and Context

Para 4.1 refers to children who "may not be" receiving a suitable level of education, not the statutory term that they "are not" receiving education. This is an important distinction in that the law only creates a duty where it is established the children are missing education. Similarly the law only allows the authority to intervene where it appears that a child is not receiving a suitable education. How can the authority intervene if they do not have the necessary information to do so? There is no power or provision where the authority lacks information, and no such duty can exist where the authority simply doesn't have sufficient information on which it can reasonably form the view that circumstances appear that way.

Para 4.6 reveals that 9 officers in 3 FTE posts are responsible for the 425 active cases in para 4.4, suggesting that each FTE would have responsibility for over 140 cases each on average. If the authority's role is a supportive one as mentioned in para 4.2, how can this possibly be achieved in a system of annual checks, where there is very little time to devote to each child, given the number of cases. There is no legal requirement for monitoring to be done, still less annual monitoring that eats up the available officer time, and turns it into ticked boxes. Would it not be better and more sustainable for there to be an initial period of several supportive visits to give advice and to talk through issues and problems, followed by the availability of telephone advice and personal visits where needed? [See paragraphs 5.18 & 5.19.](#)

Detailed Findings

Para 5.15 refers to the written policy and procedures in Lancashire. There is no assessment of them. In fact, there are a number of problems with them, and in a number of particulars they have never been correct, containing some blatant factual errors, and recently attracting criticism as some of the worst in the country from the Chairman of the House of Commons Education Select Committee, Graham Stuart MP. (see column 1220-1222 of <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110511/debtext/110511-0002.htm#11051175001130>)

Para 5.16 refers to the purpose of the document being to "assist the Council and home educators to build effective relationships of mutual trust". There is no evaluation as to whether this has been achieved, though the service department may draw a conclusion about this from a group of Home Educators complaining about the document to the LCC Corporate Complaints Committee, which upheld their complaint.

This complaint was being dealt with by the service department while the Internal Audit report was being finalised, and it is unclear whether it was drawn to the attention of the Internal Audit service. [No it hasn't.](#) The details are summarised online by the home educators at <http://www.lancashire.org.uk/LancslA.html>

Paras 5.18 to 5.20 usefully point out that the Council has no statutory duty to monitor the quality of home education on a routine basis, and yet maintains an annual assessment. Even though some families complete this assessment without a visit, this does not detract from the point that the Council is still implementing a routine where it has no power to. [No power to do so, but does to help families.](#)

Para 5.21 unhelpfully conflates the issues of education and safeguarding. This is seen as defamatory within the home educating community. The head of the EHE service appears to be saying that these visits are to check on the safety of the children, which is not the justification that parents are given, when the authority has no power to visit home educated children to check on their safety, and when no reason has been given for home educated children to require this kind of intervention. [Ok for families that effectively home educate their children, but most this does not apply to most cases.](#)

Para 5.23 refers to an assessment of children's social skills. There is no power for the authority to do this, and it is not clear why home educators' children should be assessed in this way when other children are not. It is not clear that home educating parents are aware their children are being assessed in this way, or whether they are aware the authority is assessing their children in this way

without any statutory power so to do, and whether parents' grant of access to their homes and children is therefore being abused.

Para 5.25 refers to a value judgement by EHE support officers as to whether the education is relevant for the key stage, which appears exceptionally woolly, and open to abuse of discretion by individual officers. There is no information here as to what parents or home educated children think about the assessments that have been made. There is very little customer information, even as to whether the customers want to receive the service that is being provided to them.

Para 5.26 refers to parents being "required to provide evidence to support" discussions around decisions about the child's education and social skills. In what sense can parents be "required" to provide evidence when there is no power to make such a requirement. This suggests a coercive culture in the authority's interactions with parents, rather than a supportive one.

Para 5.28 refers to EHE support workers being qualified LEIS teachers. As qualified teachers are prepared for classroom teaching in a school, and as home education entails a rejection of this, it is not clear why LCC requires that EHE support workers should be qualified teachers. This unnecessarily restricts the market of potential applicants and raises the cost of the posts to the taxpayer.

Para 5.30 states "The parents are responsible for obtaining assurance that appropriate checks are carried out to verify that (teachers employed by the parents) are suitable to have access to children." Parents have no such responsibility, and the Council has no responsibility to check on them as part of an assessment as to the adequacy of the education provided as detailed at 5.31.

Para 5.39 is problematic. As the Council has no responsibility to identify home educators, or any responsibility for identification of children beyond identifying those who are missing education, it is not clear on what legal basis information could be shared with the EHE team that has been collected for another purpose. Not only does this raise the spectre of breaches that the Information Commissioner would be interested in, but it could reduce the likelihood of parents providing information to services for one purpose if it is then used for an entirely different purpose without adequate legal support. To ensure that the council have the necessary information to perform their roles, data sharing with other authorities should be considered. As long as the information retrieved is for its intended use, this is feasible. The ICO have issued guidance for a data sharing checklist.

The CHYP directorate have a data sharing agreement in place for looked after children. The legal basis for sharing this information is within the Children's Act 2004:

- Section 10 (duty to cooperate and improve the welfare of children)
- Section 11 (arrangements to safeguard and promote welfare)

Overall, we have made this recommendation (Recommendation 7), and the relevant information guidance implemented would therefore not be a breach with the ICO.

The material in 5.42 to 5.48 is depressing. It is not clear how the lack of management and the lack of provision of even a basic service that is revealed in these paragraphs can be justified or result in a finding of substantial assurance, as they must reveal inefficient use of resources and thereby represent a high residual risk.

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Action Plan

Issue 4 is assessed as low risk. However, as the Authority has been gaining access to the homes and children of home educators by using a description of the Authority's duties which is unwarranted in law, it appears to me that this merits a substantially higher risk. The authority has found that its policies and procedures are wrong, and has only recently withdrawn them. The authority's letters to home educators make reference to an invented duty and give little no acknowledgement to visits and assessments being voluntary (see <https://webmail3.lancashire.gov.uk/exchweb/bin/redirect.asp?URL=http://www.lancashire.gov.uk/education/pdf/pid1/parents.pdf?sysredirect=y>). There is substantial risk that the authority has gained access, and used the time of home educators, based on materially inaccurate statements, and the authority is vulnerable to accusations from home educators that their cooperation and any materials that they have been required to provide has been obtained by deception, which may expose the authority and its officers to criminal and civil liability.

Issue 6 is assessed as medium. As the Council is effectively ignoring half of the children concerned, yet overstates its responsibilities to them, the Council is at risk of acquiring liabilities that it might not otherwise have had, and of missing children who are not receiving an education.

County Councillor Samuel Chapman
Chair of the Audit Committee
4 July 2011