

Scrutiny Briefing Note

The Children and Lifelong Scrutiny Panel have asked to monitor progress on the following issues. This briefing contains the latest position as at 10th November 2020.

Subject:

Elective Home Education

Overview of Legislation

1.1 The 1996 Education Act (Section 7) made it explicit that education for children aged between 5 and 16 is compulsory but schooling is not. The legal duty placed on parents is to ensure the regular attendance of their child at school or to assume full legal responsibility for their educational provision known as '*Education Otherwise*'.

1.2 DfE Guidance for EHE was drawn up in 2007 and has not been revised since despite the radical changes to the national educational landscape. The guidance emphasises that '**parents should neither be encouraged nor discouraged by schools or local authorities to electively home educate**'.

1.3 The Badman Report (2009) made a series of recommendations about EHE including a **requirement for parents/carers to register their child as EHE with their LA**. This and other recommendations were not implemented by the incoming coalition government in 2010. **The Children's Commissioner for England recommended that all parents should register their child/children as being EHE**. The DfE issued a national consultation document to all LAs during the Summer Term 2019 focusing on the desirability of requiring that parents should register as EHE with their LA. NELC strongly supports this recommendation and responded accordingly.

1.4 Parents who elect to home educate their child are required by law to provide '**an efficient and full-time education which is suitable for their age, ability and aptitude including any special educational needs if relevant**'. Parents of children who are on roll at a special school do need to seek the agreement of the LA before the withdrawal from roll can proceed. A briefing note has been written in conjunction with the SEN team to ensure parents are aware of their responsibilities. The legal definition of '*efficient*' is that the education provided '*achieves what it sets out to achieve*'. For example, if parents provide an education which largely prepares their child to continue living within their immediate community then this can be viewed as '*suitable*'.

1.5 Whilst the DfE Guidance refers to the desirability of a '*broad and balanced*' educational provision to prepare young people for their post 16 progression to further study, training and work, there is no requirement to follow the National Curriculum or for them to be prepared for



national key stage tests or GCSE examinations. Neither is there any requirement for parents to assess their child's academic progress in similar ways to school assessment methods.

1.6 The LA only has a legal power to intervene when it is clearly evident that parents are not providing a suitable education. However, **English case law does indicate that LAs are reasonably entitled to make 'informal enquiries' to ascertain that a child is receiving a suitable education.**

1.7 DfE Attendance Guidance (October 2014) explicitly states that **'EHE should not be seen as a way of avoiding the use of fixed penalty notices and prosecution for persistent absence or behaviour sanctions – including permanent exclusion - by either schools or parents.'**

1.8 In March 2013, the DfE confirmed that '*Flexi-Schooling*' can be agreed with parents at the discretion of an individual headteacher. The child remains on the school roll and the headteacher has the legal responsibility for reporting their attendance and achievement. NELC does not have a formal monitoring role for any child who becomes '*flexi-schooled*' but does offer information and guidance to parents, schools and partner agencies. During the academic year 19-20, to date, there have been two requests for information regarding flexi-schooling; both for primary aged pupils. The Inclusion Lead provided advice and guidance around the rationale for their decision and ensured that there was both parental agreement and strict time parameters in place during this period.

1.9 In October 2020, the DfE issued 'Your Duties, Our Expectations', strongly recommending that the local authority, school and parents co-ordinate a meeting to ensure the best interests of the child are discussed fully before making a decision.

National Context

2.0 There has been a continued increase in the levels of interest in EHE since 2016:

- The DfE, Children's Commissioner for England and the Regional Leads have requested data for EHE referrals by schools and academy trusts
- Ofsted Single Inspection Framework for LAs and data requests
- Association of Directors of Children's Services (ADCS) issued surveys in February 2016, October 2017, 2018, 2019 and 2020 requesting statistical trend data and information from each LA. ***These are the first comprehensive national surveys in recognition that definitive EHE numbers across England and Wales are not known.***
- A major NSPCC Report (2015) highlighted safeguarding concerns through citing incidences of EHE and Serious Case Reviews
- Northamptonshire Safeguarding Children Partnership published a practice overview report in January 2020, highlighting the significant harm Child Ab endured at the hands of his parents during the period he was EHE. Northamptonshire have highlighted:

'Consideration of the national plans in regards to children who are home educated and the required resources to enable Elective Home Education to be effectively assessed and monitored is a lesson learned from this review and one which requires urgent attention if children are to be protected from the risk of significant harm.'



- The National Association of EHE professionals was launched in February 2015 with representation from all the regional termly network meetings
- Significant increase in Freedom of Information requests for data and statistical trends
- Increased levels of interest from national and regional journalists and subsequent media coverage (*Channel 4 Dispatches Investigation: 04.02.2019*).
- The Home Education (Duty of Local Authorities) Bill (2017) was introduced in June 2017 and received its second reading in November 2017.
- DfE updated guidance published in April 2019.
- Anecdotal evidence from regional partners in the Yorkshire and Humber region have shared they have seen an exponential rise in EHE numbers since the lockdown period of March 2020.

2.1

A central government Education Select Committee (December 2012) identified 3 recommendations:

- i) Local Authorities should continue to provide support for children with Education, Health & Care Plans (EHCP)
- ii) The provision of registered exam centres for students to take public exams
- iii) Access to 14-16 provision offered by sixth form or further education colleges

The Select Committee did not include safeguarding in relation to EHE within its remit.

NELC Context

The EHE data clearly indicates that the sustained upward trend in EHE numbers is not exclusive to NELC. The LA faces similar challenges to the national context in relation to:

- the limitations of the 2007 legislation
- significant concerns about off-rolling
- the level of autonomy of academies
- acute capacity issues in relation to the frequency of the monitoring visits which can be arranged.
- A significant increase in EHE requests from March 2020 to date (over 50%), with parents citing the pandemic as a primary reason (89 new requests Sept-Oct 2020)
- Numbers following the October census indicate the following:

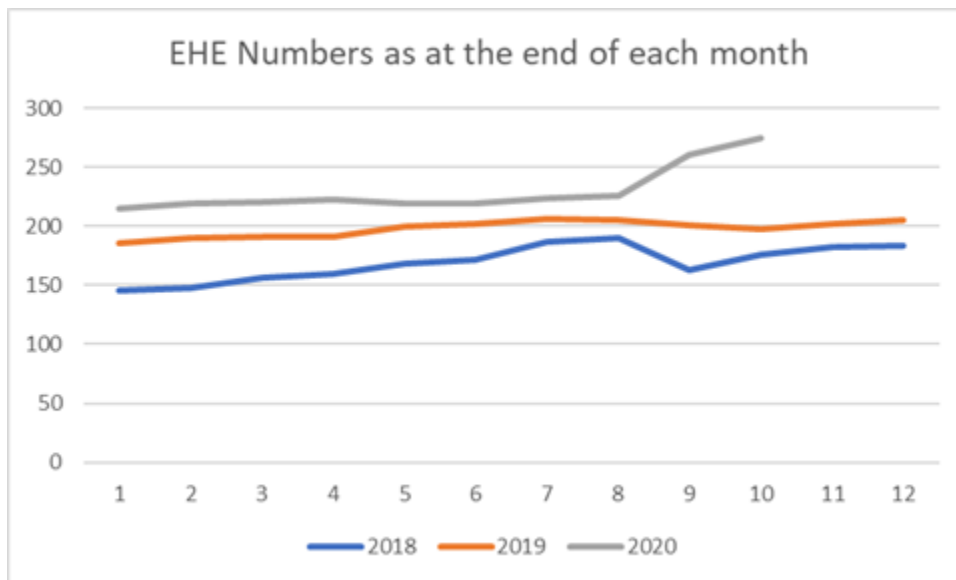
2020: 209

2019: 126

2018: 112

2017: 63





2.2 Ofsted (July/August 2017) commended our good practice in the final report: ***effective and clear procedures are in place to support children and their families***. Although not recorded in the report, the inspector commented on *‘the high numbers for a relatively small unitary LA’*.

2.3 Discussions with DfE and Regional Schools’ Commissioner with follow-up data returns on EHE requests at individual school and multi-academy trust levels.

2.4 Scrutiny Panels & follow-up ‘closed’ workshop

Elected Members expressed the following concerns:

- Given the magnitude of the decision and the potential consequences for children & young people, concern was highlighted as to the relative ‘ease’ with which a parent can elect to home educate their child on the basis of a signed letter requesting withdrawal from a school roll.
- The balance of legal rights and responsibilities for parents and the council respectively
- The right of children and young people to receive an education
- The standards of EHE being provided by parents and the LA’s monitoring arrangements to assess the suitability of provision
- Outcomes for young people at age 16: the Adviser emphasised that the only outcome which could be ‘measured’ is in the form of post 16 destination data monitored by the Young People’s Support Service. YPSS information, advice and guidance – at an individual level through home visits - significantly reduces the risks of young people becoming NEET.



Actions:

1. Portfolio Holder: letter sent to the Secretary of State requesting that consideration be given to changes in legislation. *She received a generic reply acknowledging the increase in EHE numbers nationally.*
2. Scrutiny Panel members receive the Quarterly EHE Monitoring Report
3. EHE capacity to be considered as part of the Phase 2 Review of Education Services

Other local updates:

0–19 Phase One has impacted on EHE support and delivery systems. The Schools' Nursing Service and YPSS no longer have a designated EHE lead. Instead several professionals from both services contribute to monitoring and support roles on a locality basis. Four YPSS personal advisers provide support to Year 11 EHE enabling them to plan their post 16 progression routes. This direct intervention and support minimises the risk of EHE young people becoming NEET and contributes positively to the NELC's commitment to promote learning and skills for all young people.

YPSS and the Inclusion team meet to discuss the EHE cohort and have now embedded signposting Year 10 EHE students to YPSS, so full consideration and planning can be taken into account for their GCSE year.

The creation of the new Education Mental Health Support Team with the tender awarded to 'Compass Go' has EHE as one of their primary foci. The inclusion team can directly refer to the Education Mental Health Professionals where a young person or their parent has expressed concern about mild to moderate mental health concerns.

13 young people were entered for their GCSEs in June 2020 Due to the pandemic, this cohort of students were unable to receive Centre Assessed Grades. Despite the fact the Beacon Academy had kindly supported those EHE students as an exam centre, they actually withdrew the entries as they could not validate their grades and subsequently, those students were not awarded any GCSE grades. This is in no way a criticism of Beacon Academy but highlights the challenges those Year 11s faced who were EHE across the country.

2.5 Fair Access Protocol

Since September 2017, an increasing number of referrals were for young people who were previously EHE. All these young people have accessed appropriate educational provision either in mainstream schools, PRUs or personalised tuition. The FAP (Fair Access Protocol) referrals have been invoked when a parent has been declined places at local academies following the completion of applications using In Year Admissions and Appeals procedures. The current FAP agreement includes schools should readmit those students who were previously on their roll within a 12 week time period, if a parent wishes their child to return to school.

2.6 School Attendance Orders (SAO): to develop an agreed protocol for academies to be named on a SAO so it can proceed to Legal Services and become a Court Order. During the



academic year 19-20, the procedure for two separate SAOs commenced. In both cases, it was deemed that the education was not suitable for 'age, ability and aptitude' despite a range of supportive measures being implemented and offered to the families. In case one, the student moved out of area, and in case two, the student made the decision to return to school, and subsequently, was presented at the FAP.

NELC Policy & Procedures

2.7 NELC's EHE Policy was revised in January 2016, and again in January 2020 (following consultations with social care senior managers) to emphasise more clearly the fundamental importance of safeguarding. It highlights how – for the overwhelming majority of children - attending school is the most effective way to achieve a rounded educational experience and minimise the risks linked to social exclusion and invisibility from professionals.

2.8 NELC does recognise that parents/carers have a legal right to electively home educate their child and officers seek to work in partnership with families in a positive and supportive way. Parental consent and partnership working are central at all stages of the EHE process. The policy refers to home visits and reports as education monitoring reviews rather than *inspections*. Ordinarily, in the limited time available during an individual visit, officers read a sample of the child's work which will, ideally, provide consistent evidence that a broad and balanced learning programme has been planned and achieved. Reports are completed following home visits. The format covers National Curriculum areas of learning as well as opportunities for social interaction. It includes a judgement about the suitability of the educational provision as well as offering advice and recommendations. The lockdown period which commenced in March 2020, has meant the officers have had to adapt their working practices. As a result, all new EHE families are 'triaged' in accordance with information shared by the school they have left, and a range of social care checks. All families are contacted via telephone, and a monitoring call to ascertain the effectiveness of provision is made. Whilst this is not the most effective way of ascertaining whether or not the educational provision is suitable or not, due to capacity issues, this is currently a way of ensuring contact is at least made with families at the start of their EHE journey.

5.3 Unsuitable provision is challenged through discussion and recommendations for improvement. If the education remains unsuitable, a return to school is recommended as the most supportive and timely way of addressing the concerns. For families who are unable to provide a suitable education (and where a parent is unwilling to support their child's return to a school through universal admissions, appeals procedures and/or via the Fair Access Protocol) the local authority should seek advice from Legal Services regarding the use of a School Attendance Order. Experience indicates that – in practice – this is a protracted and adversarial process.

5.4 When parents/carers withdraw their child from a school roll they are required by law to send a signed letter to the head teacher stating their intention to take full legal responsibility for their education (known as '*education otherwise*'). The school notifies the LA Admissions Team through returning Leaver's Form SA5 including the parental letter. To support the complexity of the increasing numbers which have arisen as a consequence of the Covid-19 period, schools are asked to complete an additional form, in which they can share any concerns they may have,



academic profile, including SEN and attendance information. This additional form does inform the RAG process.

5.5 At this stage the inclusion officers contact the parents to arrange the initial monitoring call. The focus is to issue and explain information about the legal responsibilities of parents as well as to discuss how they will plan educational provision.

5.6 Current and accurate data on the EHE cohort is recorded on Capita at the point of the school admissions team receiving the SA5 (School Leavers Form). Where necessary, contact is made with relevant agencies such as children's social care, the previous school, and the SEN team. To support this recording and auditing process, there is close liaison with the LA Admissions Service which also has responsibility for tracking children missing from education (CME).

Data and Key Issues to Note

Prior to 2012, **typically there were 50-55 children in NEL who were known to be EHE**. The sustained increase in referrals began during the Spring Term 2012 and numbers have continued to rise to the **current 208**. All the trend data clearly indicates that the number will continue to increase.

Before 2012, the majority of parents elected to home educate for philosophical, religious or cultural reasons. Up to 40% of referrals in recent years are primarily based on families reporting high anxiety levels and/or school phobia. Following the lockdown period in March 2020, there has been an exponential rise in EHE numbers, with a large majority of parents citing Covid-19 as their primary reason for wishing to become EHE.

The figures below highlight the significant rise in new referrals for the September-October half-term period:

2020: 89
2019: 26
2018: 18
2017: 23

| Reasons provided by parents | Percentage |
|-----------------------------------------|------------|
| Covid-19 | 50% |
| Anxiety/Emotional Health related issues | 30% |
| School Attendance/Behaviour issues | 5 % |
| Philosophical/Ideological | 5 % |
| Religious/Cultural | 5% |
| Medical reasons impacting on learning | 5% |

EHE Numbers (23.10.2020) are subject to continual change

| Characteristics | Numbers |
|--------------------------------|---------|
| Education, Health & Care Plans | 8 |



| | |
|----------------------------------------|------------|
| Children who have never been to school | 7 |
| Key Stage 1: Reception to Year 2 | 15 |
| Key Stage 2: Years 3 - 6 | 60 |
| Primary cohort | 82 |
| Key Stage 3: Years 7 - 9 | 65 |
| Key Stage 4: Years 10 & 11 | 62 |
| Secondary cohort | 127 |
| Total EHE cohort | 209 |

Upon receipt of the SA5, the School Admissions Team change the base on Capita to EHE and inform the Inclusion Team. Following an EHE referral, the Inclusion Team complete initial checks with the school and both the Capita database and Liquid Logic to identify any other agencies working with the child/family. Where appropriate, the potential safeguarding concerns, risks linked to social isolation and invisibility from professionals are discussed with colleagues in children's social care. There have been several cases of student who are EHE who have been discussed during complex case meetings, whose representation includes social care, legal, admissions, inclusion and SEN and the Virtual Head for CLA.

Officers have expressed concern about the increasing complexity of the cohort, with a range of additional tasks associated with the initial monitoring call. This has included completion of Early Help Assessments, referrals to the School Nursing Team, Compass Mental Health Support Team, Young Minds Matter, and SENDIAS.

Currently, the officers conduct manual checks of Liquid Logic to ascertain if there is any involvement of families with Children's Social Care. Where appropriate, the officers make contact with the relevant social worker or Families First Practitioner. Although there have previously been six children on a Child Protection Plan who are EHE, there are currently none in the current cohort. When this has been the case, the officers have attended the relevant case conferences and core groups. There are no Children Who are Looked After who are EHE. In this case, the Virtual Head would seek to find an immediate school place for that young person.

Effective information sharing between LA services and partners across NEL leads to integrated support depending on the assessed needs of the individual child/family. These include the following:

- Single Assessment plans and reviews
- Early Intervention & Prevention with access to children's social care services
- Families First Practitioners
- YPSS Advisers for 14-16 year olds to ensure the risks of EHE young people becoming NEET are minimised through post 16 planning and support.
- SENART, SENDIASS and NEL Parent Participation Forum: typically, 50% of EHE children/young people were placed at SEN Support prior to being withdrawn from their previous school



- Health services including School Nursing, YMM, and Compass Go. Awareness raising presentations have also been given to GPs, and School Nurses in the borough.

Developments:

1. YPSS: significant involvement to avoid young people becoming NEET at 16 +, with support offered to both Year 10 and 11 students.
2. Complex Case Pathway involving the MASH team manager, legal team, SEND managers and access and inclusion managers.
3. All cases are now RAG rated by the team, after Liquid Logic checks and at times, anecdotal evidence provided by the team. The Informatics team are now looking at the reporting mechanism of EHE, to best reflect the changes in data.
4. One Secondary Academy is trialling a 'cooling off' period during which parents can re-enrol their son/daughter
5. Information sharing events for both school nursing teams and GPs in the local area.
6. EHE literature updated and sent to parents who make initial enquiries. Process maps developed to ensure a timely response to initial queries and effective streams of support are embedded within the access and inclusion team.
7. Bi-monthly newsletters sent to parents during the lockdown period to ensure parents were signposted to appropriate health and education services

Areas of challenge:

- A lack of understanding of the implications of EHE, evident from schools, other agencies, and crucially, parents themselves; anecdotal evidence shows that parents have been previously actively encouraged to EHE to prevent exclusions, court appearances etc. Despite the huge implications for young people and their educational journey when they don't have SATs data, or GSCE grades, parents have still cited concerns around Covid-19 as the overarching concern.
- The conflicts between the legislative requirements of EHE and CME – new guidance indicates a move from the DFE for a formal register of all students who are EHE within the area.
- The sustained increase in EHE cases since 2012 and the challenge this poses when conducting the initial monitoring call. Currently, the Education Welfare Team are managing the caseload, but this continues to have a detrimental impact on their service level agreement work, which is funded by schools who purchase their service.



- The significant increase in the range and complexity of EHE cases, requiring the completion of lengthy Early Help Assessments and additional associated signposting work.
- Many EHE students struggling to return back to formal education, and the school of their choice. Process with School Admissions to discuss via FAP.
- The continued need for an officer to work specifically on the management of the EHE caseload.

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