

Brighton & Hove City Council

Children, Young People & Skills Committee

Agenda Item 42

Subject: Elective Home Education in Brighton and Hove

Date of meeting: 9 January 2023

Report of: Executive Director Families, Children & Learning

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 The purpose of this report is to provide an update on the current numbers of Electively Home Educated (EHE) children in the city, a comparison with other Local Authorities and the reasons given for parents choosing to home educate their children.

2. Recommendations

- 2.1 That the Committee notes the information regarding the number of home educated children and how this reflects the regional and national position.
- 2.2 That the Committee notes the Council's process to safeguard children and young people who are Electively Home Educated and the mechanisms to engage positively with the EHE community in the city.

3. Context and background information

- 3.1 Elective Home Education is a term used to describe a choice by parents to provide education for their children at home, or at home and in some other way which they choose, instead of sending them to school full-time. This is different to education provided by a local authority 'otherwise than at a school', for example tuition for children who are too ill to attend school.
- 3.2 It is worth noting that 'flexischooling' is a form of EHE where the parents choose to educate their child but arrange with a school directly for some of that to be undertaken in school. The child is placed on roll at the school. It is for the school's leadership to decide if they wish to agree to this arrangement. There is no compulsion for a school to agree to a parental request for flexischooling and there are a small number of children attending the city's schools under this arrangement.

- 3.3 Legislation provides that the primary responsibility for ensuring that children are properly educated belongs to parents. The Department for Education (DfE) is of the view that, a local authority has a “moral and social obligation” to ensure that a child is safe and being suitably educated. If it is not clear that that is the case, the local authority should act to remedy the position.
- 3.4 In a recent High Court ruling, after a Judicial Review was launched against Portsmouth City Council, it was determined that a council acted within its powers when asking a home educating parent for examples of work to ensure their child’s home education was suitable. The parent had sent a “detailed” outline of their three children’s home education, but the council asked to see examples of the children’s work to ensure that the education described was actually taking place and being received by the child. The parent argued that this put the “burden of proof” on parents that children were receiving a suitable education, despite “no legal requirements” for them to mark or formally assess work.
- 3.5 The judgement held that the Local Authority was not “necessarily compelled to accept merely assertive statements by the parent...Without intending to be prescriptive, what may be needed in such cases could well involve a meeting with the child and/or an examination of the child’s work, whether or not this work has been marked by the parent.” A parent who receives an informal request for information needs to respond in a meaningful way if they are to avoid the Local Authority taking further action.
- 3.6 In addition, local authorities have a statutory duty to ‘establish, so far as it is possible to do so, the identities of children in its 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 at school (for example, at home, or in alternative provision).
- 3.7 The guidance on [Elective Home Education](#) outlines that ‘There are no specific legal requirements as to the content of home education, provided the parents are meeting their duty in s.7 of the Education Act 1996. This means that education does not need to include any particular subjects, and does not need to have any reference to the National Curriculum; and there is no requirement to enter children for public examinations. There is no obligation to follow the ‘school day’ or have holidays which mirror those observed by schools. Many home educating families do follow a clear academic and time structure but it should not be assumed that a different approach which rejects conventional schooling and its patterns is unsatisfactory, or constitutes ‘unsuitable’ education. Approaches such as autonomous and self-directed learning, undertaken with a very flexible stance as to when education is taking place, should be judged by outcomes, not on the basis that a different way of educating children must be wrong.’
- 3.8 It has recently been confirmed that the Schools Bill will not continue its journey through Parliament. It contained a duty on local authorities to establish and maintain a register of Children Not in School. The register was expected to record eligible children of compulsory school age that are: electively home educated, flexi-schooled, or receive alternative provision in an unregistered setting. Parents, and certain providers of out-of-school education will be required to provide information for this register.

- 3.9 The DfE wrote to all Directors of Children’s Services on 16 December 2022 to reassure them that the decision on the Schools Bill does not mark any change in policy in respect of attendance. The government still intends to make the new attendance guidance statutory, no earlier than September 2023. The DfE expects local authorities to continue to implement the changes introduced through the new school attendance guidance because as with all government guidance, local authorities are legally obliged to take the new guidance into account in exercising their functions.
- 3.10 There are a number of home educating families who are opposed to the register. We understand that there are concerns that any register and possible enhanced inspection will lead to more education programmes being deemed unsuitable.
- 3.11 The Bill also proposed to place a duty on local authorities in England to provide support to home educators (local authority support is currently discretionary). The support is expected to promote the education of that child, where this is requested by their parent. The nature and amount of the support are at the local authority’s discretion and the DfE will provide more guidance in due course. However, the support will need to be tailored to the child’s needs i.e. more support should be offered to those children that need it most, for instance whether a child has special educational needs.
- 3.12 The support is expected to, as a minimum, help the parent to ensure that the child is receiving an efficient, full-time, suitable education. If the child’s education is already meeting that standard without support from the local authority, any requested support should be aimed at further improving the child’s education. It is suggested that this may take the form of:
- advice about education of the child
 - information about sources of assistance for the education of the child
 - provision of facilities, services, or assistance (including financial assistance)
 - access to non-educational services or benefits
- 3.13 In the Q2 (July – Sept) data for 2022/23 there were 527 pupils registered as EHE. This is an increase on the previous three quarters.
- 3.14 At the time the report was written (06/12/22) the total number of children who are currently EHE in Brighton and Hove is 486.
- This includes 42 children and young people who are attending alternative education settings but are not on roll at a school and are therefore EHE. These are:
- Self-Managed Learning College (SMLC) (all age groups)
 - Plumpton College (years 10 and 11)
 - Greater Brighton Metropolitan College (Year 10 and 11)
- 3.15 These college courses tend to be 1 day a week at GBMC and include 3 GCSE courses and vocational courses such as Hair & Beauty, Construction, Creative Industries, Motor vehicle (3 days) and Catering.

- 3.16 At Plumpton College these are usually 3 days a week and include 2 GCSE/skills programmes and vocational qualifications such as Horticulture and Art and also include personal progress, employability and work experience.
- 3.17 Over the last academic year (2021-22)
- 205 children became EHE
 - 86 children were taken off the EHE register, 58 of whom returned to school.
 - The rest have moved out of area, with 3 pupils being referred to the Children Missing Education Officer with 2 moved out of area and 1 is still open to CME as we are still seeking their destination.
- 3.18 This academic year to date (06/12/22) 66 children and young people (C&YP) have been newly registered as EHE. 42 C&YP have been removed from the register in that time as they have reintegrated back into school or moved, 2 have moved abroad.
- 3.19 The most recent comparative data from south east local authorities shared internally indicates that 3 of 9 local authorities have a higher rate of children and young people electively home educated than Brighton & Hove.
- 3.20 All EHE referrals are allocated to one of the Access to Education team. Email information is provided immediately and phone contact is made as soon as possible, generally within two weeks. In those exchanges the Council seeks to ascertain the reason for the parent's decision to home educate, if the school has not provided it.
- 3.21 Once a child is identified as being home educated they are offered an initial home visit, followed by a review visit in 6-8 weeks. An initial check is done to identify any current or previous safeguarding issues, repeated yearly. All families are sent a letter/email to indicate whether provision is approved or not.
- 3.22 A RAG rating is used to identify the range of support and advice going forward. This ranges from red cases, where there is no or scant educational evidence, to amber cases where a child may have an Education Health and Care Plan, have previous attendance concerns or where there are low level concerns over the volume or appropriateness of education provided. Then green cases where there are no concerns identified.
- 3.23 Below are the broad reasons given for the move to EHE from the September 2022 numbers of C&YP recorded as EHE. The proportion of each reason remains broadly as it has been historically, although the numbers are greater. We do not have reasons for all children as we only get information where parents provide it; they are under no obligation to do that.

Reason	Number	Percentage (of those giving a reason)
Ideological	125	44%
School Allocation	14	5%
SEND need	17	6%
School issues: -dissatisfaction with school -unhappy at school	46	17%

Attendance/ School refusing	28	10%
Mental Health issues	14	5%
Covid concerns (initially)	36	13%
No reason supplied	233	N/A
TOTAL	513	

- 3.24 As indicated above, ideological concerns remain the main reason parents are removing their child to home educate.
- 3.25 Since the start of the pandemic there has been an increase in the number of parents who are home educating because they do not feel their child's needs are being met in school, either as a result of SEND needs, the manner in which schools deal with issues such as bullying, their child not enjoying school, mental health needs and the associated lowering of attendance.
- 3.26 Anecdotal evidence, (in conversations with parents and schools), suggests that Elective Home Education is seen as an option in ways it was not previously as there is a much wider knowledge that the option exists. This year on year increase is reflected nationally, as evidenced in the ADCS survey [ADCS EHE Survey 2021 Report FINAL.pdf](#) which is conducted yearly. There has been a substantial national increase following Covid. This year's data is being collected centrally by the DfE and will be part of the census data published later in the year.
- 3.27 The most recent government guidance on EHE reiterates the Local Authority's duty regarding safeguarding and home education. It encourages the use of statutory powers to identify any child not receiving an education and seeks to ensure their timely entry into school using those powers.
- 3.28 In Brighton & Hove we continue to use all available methods to identify and make contact with all known home educating families. These include links to health services and the private education sector alongside our CME obligations. We are advising schools to refrain from immediately taking children off roll where parents inform them that they are going to home educate and to contact the parents and have a conversation regarding the implications of their choice and to explore in more depth if it is the right approach for them. According to DfE advice they should be removed from roll immediately, but we consider for safeguarding reasons that there should be a discussion with parents prior to this happening.
- 3.29 The council sent out guidance to all schools on the steps they should use with parents who request removing their child to home educate which reiterated the information we already give to schools to ensure they have a challenge conversation with all parents who are requesting to remove their child to home educate.
- 3.30 The 2.4 FTE equivalent staff in the Access to Education team who work with EHE cases also share responsibility for the provision of education for children with medical needs in the city. Both of these areas have seen significant rises in numbers following the Covid 19 pandemic. For the financial year 2023/24 additional funding has been secured with the support of the Schools Forum to enhance the capacity of the team to manage the additional responsibilities and the greater number of EHE cases.

4. Analysis and consideration of alternative options

4.1 No options for consideration

5. Community engagement and consultation

5.1 There was no community engagement in the preparation of this report as the purpose of the report is to give the current position on home educated children in the city following questions from councillors.

6. Conclusion

6.1 Elective Home Education is a term used to describe a choice by parents to provide education for their children at home, or at home and in some other way which they choose, instead of sending them to school full-time. At the time the report was written the total number of children who are currently EHE in Brighton and Hove is 486.

6.2 local authorities have a statutory duty to 'establish, so far as it is possible to do so, the identities of children in its area who are not receiving a suitable education. There are no specific legal requirements as to the content of home education This means that education does not need to include any particular subjects and does not need to have any reference to the National Curriculum and there is no requirement to enter children for public examinations.

6.3 The most recent comparative data from south east local authorities indicates that three local authorities have a higher rate of EHE per 1000 pupils than Brighton & Hove.

6.4 All EHE referrals are allocated to the Access to Education team. Contact with families is made as soon as possible. In those exchanges the Council seeks to ascertain the reason for the parent's decision to home educate. A RAG rating is used to identify the range of support and advice required by the local authority going forward.

6.5 Ideological concerns remain the main reason parents are removing their child to home educate. Since the start of the pandemic there has been an increase in the number of parents who are home educating because they do not feel their child's needs are being met in school.

7. Financial implications

7.1 As set out in the report, the local authority is required to fulfil duties in support of EHE children in line with regulations set by government. In order to comply with these requirements, additional funding of £0.030m has been secured in financial year 2023/24, following agreement at the October 2022 Schools Forum meeting.

Name of finance officer consulted: Steve Williams Date consulted:16/11/22

8. Legal implications

- 8.1 The only statutory requirement in respect of home education is that the education received be suitable to the child's age, ability and aptitude and any other special educational needs that they may have (section 7 Education Act 1996). Local Authorities have a duty to monitor whether parents who are home educating their school age children are causing them to receive suitable education (section 436A of the 1996 Act).
- 8.2 The recent High Court case of R (Goodred) v Portsmouth City Council [2021] concerned a challenge by a parent to the manner in which the city council discharged its statutory responsibilities in respect of children not receiving education in school under the Education Act 1996. The court held that it is the Local Authority and not the parent who is the final arbiter of what constitutes a 'suitable education' and that parents can be asked to prove, instead of affirm, that the education being provided is indeed suitable.

Name of lawyer consulted: Serena Kynaston Date consulted 15.11.2022

9. Equalities implications

- 9.1 None identified

10. Sustainability implications

- 10.1 None identified

