

## Minutes Meeting at Antrim Board Centre 08/05/14

Three home educating parents and Carol Johnston, Corporate Development Officer NEELB

### Preamble

Carol (C) made it clear that as Corporate Development Officer her role was simply to 'facilitate the consultation' and her role was 'not Home Education Related'. She had no knowledge of home education, the relevant law, the background to the formulation of the policy or any other relevant factors. Her function was to record and convey our comments.

C: Jane Millar has responsibility for this and questions and comment will be passed up the line to her.

The home educating parents (P) requested a meeting with somebody capable of answering our questions, and expressed disappointment that they would be unable to get any answers or have a productive discussion.

P: why is one consultation split into five?

C: explained that each board was a separate legal entity and could conceivably end up with a different policy at the end of the process. She emphasised that this is a draft and stated that after the consultation process there would be a further draft, which would then also need to be consulted upon. On being pressed she said that she could not promise this as it would not be her decision.

P: asked if it would be fair to say that it was the intention that all five boards would have a consistent policy – C said that she couldn't speculate

P: expressed the opinion that this wasn't really a 'focus group' given C's inability to answer questions or make any comment, rather an opportunity for 'oral consultation feedback'.

C: promised that any questions P had would be forwarded to the appropriate person and would receive an answer in time for incorporation in any consultation response.

### Documents

The following documents were left with C

- Lancashire Home Education Procedures (an example of good practice)
- Ministerial Answers:

**AQW 30468/11-15** Tabled Date: 03/02/2014 Answered On Date: 11/02/2014) the Minister for Education states:

"Parents are not required to notify their Education and Library board that they intend to educate their child at home unless the child has previously attended school or has a statement of special educational needs. The total figures therefore may be higher."

**(AQW 9311/11-15** Tabled Date: 06/03/2012

Answered On Date: 26/03/2012) the Minister for Education States:

"Parents of every child of compulsory school age are legally required to ensure that their child receives full-time education suitable to his or her age, ability and

aptitude; either by regular attendance at school or otherwise. There is no legal requirement for them to register the child with a school.

If parents choose to home educate there is no legal requirement for them to advise their Education and Library Board or the Department of their decision. “

- A briefing on the law as applies to Elective Home Education
- Copy of the early draft policy, which was presented as current to one home educator
- Critique of the Badman Statistics on Welfare produced by English Home Educators at the time of the Review

## Formulation of the draft

C: the draft was formulated by the Assistant Senior Education Officers from all five boards, this is merely a first draft.

P: we know from FOI requests that no stakeholders were consulted, no research was carried out, no costings done. Further long correspondence with C has failed to produce either:

- The legal advice received in drafting this
- A refusal to provide said document(s)
- A statement that no such document(s) exist

Thus we assume that no legal advice was sought, beyond a basic check that the legislation quoted was the right section.

## Conduct of the Consultation

### Publicity

P expressed concern that no efforts had been made to contact stakeholders, in particular C was asked about

- Why no media used, for example a small advertisement in local/national papers?
- Why no promotion of the consultation on the Board's own website? P commented that unless you know the correct search terms the information required is hidden.
- Why were major home education pressure groups such as Education Otherwise (EO) not contacted? C suggested that as EO covers the UK it might not have representatives here and that there was no reason she should have considered. She was assured that EO does have Northern Ireland representatives and P suggested a Google search would have provided the names of interested groups.
- C promised increased publicity on the NEELB website
- Access to focus groups compromised by lack of information (e.g. times so childcare can be organised) (C: times unconfirmed until attendee numbers could be assessed)

### Earlier drafts

- It emerged in discussion that an earlier draft with very similar content (dated Sep 2013) was posted to one P as part of first contact with the Board in summer 2013, with assurance that it was coming into effect that year in September. At the same time another P was in email conversation with the Board, and was being assured that this was an early draft to be consulted on in early 2014.
- Why were no stakeholders consulted during or previous to the formulation of the current draft? C suggested that this would have been difficult but P pointed out that she had been in contact at that time and requesting input.

## Missing Information

P: Forms referenced in draft are not included (though samples are included with Sep 2013 version). Unable to effectively respond to policy consultation without these forms as they would indicate the process to be followed, the information to be collected and the criteria to be used.

P: difficult to get answers to questions from Board, either through general correspondence or FOI requests. Questions often unanswered, or where given are often obtuse and unhelpful non-answers.

## Leading questions in the response proforma

P: the questions asked are leading and impossible to answer unless you presuppose the validity of the policy's legal position.

C: invited us to leave the questions and just submit a written response

## The Law

P: the whole scheme is entirely beyond the powers of the board. A legal briefing was left with C. This was discussed in depth:

- The primacy of the legal duties of the parent
- The Board duties are purely reactive, triggered by outside forces: a concern is raised. They have no power or duty to go fishing for concerns.
- The consequences of the Boards attempting to change the relationship between child/parent/state
- The possible liability of the Board if they prevent the parent from adequately carrying out their legal duties – eg by sending a child to school where an adequate education is not being provided
- The importance of the presumption of innocence, which is seriously damaged by this policy
- The Children's Order applies to all children. If they try to use it to give themselves powers of access and assessment then their duty will extend to all children.
- A duty to refer concerns already exists, if there are welfare concerns they should be dealt with by the proper body. If that body is incapable then invest in it, don't try to take over its role.

## Welfare

P: the conflation of welfare and education is offensive. Parents are labelled potential abusers simply because they home educate. Parents should be regarded as trustworthy unless there is evidence to the contrary.

- Given that other agencies have responsibility, the Boards becoming involved would cause confusion and children falling between the cracks. Multiple agencies, each thinking that the other has responsibility.
- Mandatory referrals in draft – 'any concerns' – any officer operating under that instruction will feel bound to refer the most minor concerns for fear of being liable otherwise

The Badman Review of Elective Home Education in England (2009/10) was discussed and the recent Welsh proposals, which were both dropped. Purported welfare concerns in the Badman Review were widely discredited.

P: the potential for the career of a parent to be adversely affected by the appearance on their record of a referral to CPSS, purely because of home education. Liability issues.

## Minimum Standards

When these were raised as setting a high standard of welfare, C suggested they were maybe 'aspirational'.

P: the Education Order refers only to education, any welfare duties must therefore apply to all children. If they are going to have mandatory home visits for home educators then they must also for all children.

- Taking responsibility for meeting such high standards raises possibility of Board being held liable if they are not met
- The standards are not well defined, assessment likely to be highly subjective

## The Opinion of the Child

P recounted experience of a child being asked their opinion, and then in front of the child the opinion being dismissed as irrelevant.

P: It seems likely that the opinion of the child would only be recorded where it is in line with the views of the interviewer.

## Budget

P: no costing given, FOI revealed that there is no specific budget for Home Education and no costing estimates on this policy or its implementation have been made

C was unable to state which budget would cover the implementation of this policy

## Monitoring

C wanted to discuss the frequency of monitoring, or the form. P explained that the correct number of mandatory visits is zero.

P: there is no duty and no power to monitor. Though a parent might wish to meet with the Board that would be entirely voluntary. The voluntary nature of such a scheme would need to be heavily emphasised in the policy, together with an assurance that failing to participate would not in itself be considered reason for concern. Further such a scheme should not be described as 'monitoring'.

P suggested that optional meetings could be offered as part of the currently empty support/resources offering, though representatives of Board would require training in home education rather than attempting to enforce a single "school-at-home" methodology.

## Special Educational Needs

P: the section on SEN is threatening in tone, potentially discriminatory in that only children with SEN (not necessarily having Statements) are required to show 'progress' (which is not defined) brings up the possibility of the Board forcing medical assessment (by Educational Psychologist) against the parent's wishes, and assumes that the parent is bound by any Statement. This is not the case – a statement is binding only on the Board.

## Language of Policy

C: asked if simpler language needed to be used. P expressed a strong opinion that the language was irrelevant if the policy was outside the Board's legal powers.

P: the policy should be used to express in simple language the procedures they intend to use to meet their legal duties, they cannot use policy to extend their legal powers.

P: the tone of the whole policy is threatening and offensive to current and potential home educating parents. The parent is presumed to be failing in their legal duties and must prove their innocence.

## Registration

Ministerial Responses to Written Questions presented stating that Home Educators are not required to register.

P: no provision within the draft for an appeals system, nor does the policy detail the consequences of failing to register

P: [commenting on requirement to meet with principal at the school before de-registration] mentioned that in their experience the head teacher is unlikely to know anything about home education.

P: delays to deregistration from school unacceptable – where a child is being failed the board must not prevent the parent from carrying out their legal duty to remove them. If they do then they are liable.

## Trust

P explained that we know of home educators who are unwilling to participate in this consultation, or attend focus groups, for fear of becoming 'known' and having such a scheme imposed on them. C assured P that no names would be attached to any of this and no families would be registered as a result of this consultation. P pointed out how terrible it was that such a conversation had to take place.

P suggested that if the Boards wish to build trust then they need to start with a policy that falls within their legal powers.

P shared personal experiences of being actively lied to by officials from the Board, and mentioned that this sort of interaction was not unusual, aware of many similar stories from other parents .

## Summary

P: as far as we can tell through enquiries and FOI requests the Board

- Has done no research
- Consulted no stakeholders before hand and not enough after
- Under publicised consultation
- No proper legal opinion sought on the interpretation of the law
- No consideration taken of English/Welsh case law and ministerial guidance, or experience through similar proposals
- No stated aims
- No stated criteria for success
- No costing or cost/benefit analysis

P: the whole conduct of the process so far has strongly suggested that the Board wish to treat this as a minor issue, whereas for home educating families this is a major issue.

## Action Points

- Increased publicity on the NEELB website, as a minimum, was promised

- C promised that any questions P had would be forwarded to the appropriate person and would receive an answer in time for incorporation in any consultation response
- Board to look into the sending of a previous draft in 2013 to a parent as incoming policy, then subsequent denial of this document

## Follow Up

The following was emailed to Carol Johnston on the 9th:

Some questions as promised. You mentioned that you would get them answered in time for the information to inform our responses to the consultation:

1. Can you specify the aims of this policy and the criteria by which success will be judged?
2. Can you confirm that a second draft version of the policy and a further consultation process will definitely follow this draft as you suggested at our meeting?
3. Is there ongoing communication and/or co-ordination between the boards with regard to these consultations and/or the draft policy?
4. Do the Boards consider it desirable that one policy should apply across Northern Ireland as a result of this consultation?
5. How is separation between the five consultations being maintained to preserve their individual integrity?
6. Can you specify the procedure or criteria by which any proposed program of education would be judged as appropriate to the child's age, ability and aptitude?
7. What home education specific training will be provided to front line staff, and what qualifications if any would be required of them?
8. Could you provide an estimate of the man-hours necessary to administer the scheme described in this policy, covering only currently known home educators?
9. Has the Department of Education or the Education Minister seen the draft, and if so have they approved it?
10. Has the Department of Education been involved in the commissioning or development of the policy? (If so then please detail who within the Department and in what way)
11. Were the authors aware of the case law and ministerial guidance in England relating to Home Education, or of the conduct and outcomes of the Badman Review 2009/10 in England and the recent Welsh consultation?
12. What expertise or experience in elective home education does each of the authors of this draft possess?
13. Who took the decision that each of the focus groups across all five Boards would be facilitated by a single individual with no knowledge of the policy (or home education), and what was the rationale for that decision?

Can you also please provide the following supporting documents:

1. up-to-date drafts of forms EHE1 and EHE2 mentioned in the draft
2. any evidence considered by the authors of this policy: statistics, internal reports, testimony, experts consulted
3. any impact assessments or costings of this policy
4. any written legal advice received during the drafting of this draft policy

however, a few days later an FOI acknowledgement was received. P responded with (on the 12<sup>th</sup>):

Thank you for passing them on. Have they been treated as an FOI - I received an FOI acknowledgement? I had been under the impression that I could send the

questions I would have liked to ask at the focus group and that you would make personal efforts to find somebody who was capable of giving an answer.

If so, I am concerned that several of the questions are not purely for information held by the Boards, and may not gain a response through that channel. For example questions on who took certain decisions and the opinion of the Boards on certain matters.

I'm also concerned that a full 20 working day wait will make it difficult to use any responses to inform my consultation response.

I hope you can reassure me on this,