

Written evidence submitted by ADF International (UK)

Home Education Consultation

Responding to the Education Select Committee call for evidence

Prepared by ADF International (UK)

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1. Organisation introduction

- 1.1 ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
- 1.2 In the UK, we work with local allies to provide research, training, funding, and legal advocacy.
- 1.3 On an international level, we are accredited by the UN Economic and Social Council, the European Parliament and Commission, and the Organization of American States. Additionally, we enjoy participatory status with the EU's Agency for Fundamental Rights and engage regularly with the Organization for Security and Co-operation in Europe.

2. Summary

- 2.1 Parents have a right and a primary duty to raise their children, look after their well-being, and enable them to thrive; this is enshrined in both national and international law. The UK has always held to the principle that children should learn in ways that meet their needs. The right to elective home education (EHE), as protected by the Education Act 1996, permits parents to direct their child's education as is deemed suitable, whilst pushing for high standards to ensure that the child will be successful and well-integrated into society later on in life.
- 2.2 Home education can take a broader meaning than just "academics", and the benefits to this model include children being able to learn at a pace that is appropriate to them and have a curriculum that is tailored to their individual requirements.
- 2.3 There is a presumption in favour of parents that they act in the best interests of their children, which can only be displaced by evidence demonstrating a concrete risk of serious harm.
- 2.4 The right to educate without unnecessary interference or undue burdens, such as a maintained register of home educated children or State-funded inspections, is paramount to preserving the discretion that has always been afforded to parents to teach their children in accordance with their values and beliefs, and as they consider to be appropriate to the age and development of the children.
- 2.5 The current regime governing home education strikes the right and appropriate balance between parental rights, a child's right to education, and child protection. It also enables parents to have the flexibility to home educate as a long-term preference or a short-term option. Short term options include, for example, family relocation; the wait for a school place to become available; or as a response to mental health or bullying issues the child is facing in school.

- 2.6 In the case of a child protection or safeguarding concern, local authorities have been granted substantial powers to intervene, and no evidence has been produced to suggest that greater local authority powers over home education would result in a reduction in safeguarding concerns.
- 2.7 As regards to the proposals to inspect EHE, this paper argues that it would be both inappropriate and unfeasible. The current inspection framework deployed by Ofsted to schools is thoroughly unsuitable for home education inspections, and the alternative option of widening Local Authority powers to conduct inspections is ill-advised due to funding restraints and the lack of educational expertise.
- 2.8 No evidence or robust argumentation has therefore been made to warrant reform of the EHE framework.

FULL RESPONSE

3. The law protects the rights of parents to home educate children

- 3.1 The domestic legal landscape reflects the UK's position that parents, as the primary educators of their children, have the right to decide whether their child will receive school education or home education. Section 7 Education Act 1996 says: "The parent of every child of compulsory school age shall cause him to receive efficient full-time education... either by regular attendance at school or otherwise".
- 3.2 The international legal landscape, at Article 26(3) Universal Declaration of Human Rights (UDHR) upholds a prior parental right to choose the type of education their children will receive. Article 13(3) International Covenant on Economic, Social, and Cultural Rights (ICESCR) also recognises the right of an individual to send their children to non-public school, which has been interpreted by the UN Special Rapporteur on the Right of Education to include home education.
- 3.3 There is also a clear right of parents to educate their children as they see fit, according to their beliefs and the unique circumstances of their family.
- 3.4 Article 2 of Protocol No. 1 European Convention on Human Rights (ECHR) states: "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".
- 3.5 It is clear from the case law of the European Court of Human Rights in Strasbourg that this right protects the autonomy of parents in education, and moreover, that providing an opportunity for pupils to be exempted from certain classes may be required to ensure that parents' religious or philosophical convictions are respected.
- 3.6 Additionally, Article 18(4) International Covenant on Civil and Political Rights (ICCPR) provides that signatories must "have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions".
- 3.7 Therefore, parents are expressly granted the right to home educate *plus* the discretion to educate in accordance with their religious and philosophical beliefs in various

national and international frameworks. The human right to home educate children means that State-provided, directed, and funded education is not mandatory, if parents so decide.

- 3.8 Denying parents the right to ensure that home education and teaching content is in conformity with their own religious and philosophical convictions is likely to be contrary to the UK's domestic and international obligations.

4. The right balance is already struck between parental rights and State interests in EHE

- 4.1 Parents or legal guardians (“parents”) assume the full cost of educating their children at home if they chose EHE, including all examinations. The National Curriculum does not need to be taught to home educated children, giving parents the freedom to choose a suitable curriculum - although most opt for a clear academic pathway.
- 4.2 Home educating parents are not required to register their children with the Local Authority (LA), and there is no legislative power conferred on any body to inspect or monitor the provision of education. This reflects the historic right of parents to educate their children without interference.
- 4.3 Parents who decide to home educate are encouraged to discuss the options with their LA prior to enacting upon the decision, and the LA will offer advice and support based on the family's motivations for doing so. The LA will also outline the time and financial commitments involved in this decision. The Department for Education (DfE) perceives that this voluntary conversation between parent and LA is “likely to reduce the number of children who receive unsuitable education at home”¹.
- 4.4 Home educator parents are also required to ensure that children attend home education classes, and will be subject to school attendance measures if this is not observed. The DfE's statutory guidance for school attendance parental responsibility measures applies to EHE as to parents who have children in school².
- 4.5 If a parent decides upon EHE while a child is already in school, they have to inform the school in writing about this intention in order for the child to be removed from the pupil roll. Without doing this, parents could face the risk of prosecution.
- 4.6 Many LAs, such as the London Borough of Richmond upon Thames, encourage parents to complete a referral to the Single Point of Access (SPA) in the LA, which then moves to the Education Welfare Service (EWS) to offer EHE advice or support. An Education Welfare Officer (EWO) will then be assigned to the family to conduct an initial visit to ensure that adequate education is being provided, as well as annual contact to ensure that contact details remain the same. An annual visit will also be offered by the EWO to ensure that educational provision continues to be adequate. If the family refuse an in-person visit, the EWO may request to see written evidence from the children.
- 4.7 Ofsted monitor the statistics of children who are withdrawn from school for EHE and use this data to identify patterns. The results are publicly available.

¹ Department for Education, *Elective Home Education: Departmental Guidance for Local Authorities* (2019), at 2.3

² Department for Education, *School attendance parental responsibility measures: statutory guidance for local authorities, school leaders, school staff, governing bodies and the police* (2015)

- 4.8 For children who have never attended school, LAs have a statutory duty to make arrangements to establish the identities of children in their area who are not receiving a suitable education or who are at risk of harm. LAs use a ‘proportionate approach’ to make this determination, and are obliged to do whatever they can to ensure that they become aware of these children in a prompt fashion.
- 4.9 Therefore, whilst parents have a right to home educate their children as they see fit and in accordance with their values and education philosophy, the LA has a statutory duty to oversee the safeguarding of children in cases of perceived harm or inadequate educational provision. This strikes an appropriate balance between private and family life, as enshrined in Article 8 ECHR, and a State’s responsibility to protect the best interests of the child.
- 4.10 It is feared that if more intrusive powers were given to LAs to monitor the education of children at home and enter into family home life, then these powers would be used to a greater extent than intended, in order to be risk adverse. There are already concerns that the powers given to Ofsted, as an Arm’s Length Body, are extensive and disproportionate, and it is feared that with the thousands of homes to monitor, the inspection powers would be ungovernable.

A COMPULSORY REGISTER OF HOME EDUCATED CHILDREN IS UNFEASIBLE AND UNNECESSARY

It is submitted that the proposal to require all home educated children be listed on an official register is practically unfeasible, unnecessary for the purposes of child protection, and would become a burden for the Local Authority and parents to maintain. The proposal should be abandoned.

5. Sufficient arrangements already enable local authorities to identify home educated children and respond to safeguarding concerns

- 5.1 The legal framework does not assume that non-school educated children are not receiving a poor education. Rather, LAs are responsible for making timely and effective enquiries if they have reason to believe there is an issue – both with educational provision and with safeguarding.
- 5.2 In accordance with the risk that children might not be receiving a good education at home or might be at risk of harm, LAs are granted rights under s.436A Education Act 1996 to “make arrangements...to establish, so far as it is possible to do so, the identities of children in its area”.
- 5.3 Many LAs have voluntary registration schemes, providing parents the option of whether to register their child and receive additional support from the LA.

- 5.4 LAs are recommended to have a written policy for EHE, which includes the resources required to implement the policy; the organisational structures needed for dealing with parental communication and issues; and guidance offered to families as they home educate. LAs therefore ought to have a comprehensive internal framework for monitoring and managing children who are home-schooled, if the need arises.
- 5.5 If safeguarding concerns are raised, LAs have powers to act and remove the children, if necessary. Under s.10 and 11 Children Act 2004, and s.175 Education Act 2002, the LA is under a statutory duty to ensure that educators (including in the home) safeguard and promote children's welfare. LAs are also inspected by Ofsted to ensure that they deal with vulnerable children adequately within their jurisdiction; some home educated children fall within this category. Ofsted reviews the approach of the LA in identifying vulnerable children, and how they deal with them. This provides an additional layer of protection for children at risk of harm from within the home.
- 5.6 LAs also often establish relationships with health bodies, general practitioners, and other agencies to widen their knowledge of children who are not attending school. Under the Children Act, LAs can make co-operation arrangements with partners who deal with children and ensure that functions are discharged to safeguard and protect the welfare of children. Such arrangements include information sharing protocols, and this is specifically permitted under the Data Protection Act. Whilst the primary duty to identify children who are not educated at school is upon the LA, the process is therefore shared between multiple public bodies.
- 5.7 Statutory guidance on Children Missing Education has been provided to all LAs, outlining useful information on how to identify children and share data between LAs, as well as all legal responsibilities³.
- 5.8 Although there have been allegations that home educated children are 'invisible and isolated' and greater monitoring is needed, as suggested by the NSPCC, the evidence underpinning this is flawed. The Freedom of Information (FOI) research⁴ (with 152 LAs in England) which led to this conclusion found that, while home educated children were two times more likely to be referred to Social Services than children who attended school, Child Protection Plans were in place for 0.17-0.24% home educated children compared to 0.49% of 5-16 year old school educated children. The rate of 0.17- 0.24% for home educated was even lower than the percentage of teaching staff found guilty of an offence to children, at 0.18-0.46% population. These statistics plainly show that the safeguarding risk for home schooled children is not greater – but in fact lower – than for school educated children. The FOI research from Wales painted the same picture, with “home educated children, although more likely to be scrutinised by social services than their schooled peers, are less likely to be at risk than all children in Wales”⁵.
- 5.9 In the interests of child safeguarding, oversight by professionals in a formal schooling institution therefore does not equal the oversight provided by home educators; statistics suggest that children are more likely to be abused in the school environment.

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550416/Children_Missing_Education_-_statutory_guidance.pdf

⁴ NSPCC, Child protection system in England: Serious case reviews, 2015, Available from: <http://www.nspcc.org.uk/preventing-abuse/child-protection-system/england/serious-case-reviews/>

⁵ Ibid, at 14.

- 5.10 The DfE also maintains this position – documenting in their guidance, published in April 2019, “There is no proven correlation between home education and safeguarding risk”⁶.
- 5.11 While we are not arguing that children are de facto safer being home educated, the evidence suggests that placing a child in school is not a protective factor for their safety. Moreover, since home educated children are already twice as likely to be monitored by Social Services, they are already receiving a greater degree of oversight than school educated children.
- 5.12 There is therefore no additional need for home educated children to be registered with the LA, as there are no concerns that need to be alleviated by the existence of such a register.

6. An EHE register would be an unnecessary administrative burden

- 6.1 The government’s consultation ‘Children not in school’ revealed that LAs were unanimous in the call for government to fully fund them if they were required to create and maintain a register of children who are electively home educated⁷. Any additional funding that LAs might have been hoping for to enable additional activities has more than likely been subsumed under the Covid-19 deficit. This is further outlined in section 8.4.
- 6.2 An administrative burden will also lie upon families if they are required to register their children with the LA, particularly in situations where parents are undertaking EHE in a temporary capacity due to concerns about a particular school or whilst waiting for a preferred school place to become available.
- 6.3 Considering that the onus would be upon parents in the first instance to mandatorily register their child with the LA, a system of penalties would also need to be considered for parents who fail to do comply. This would add an additional layer of management and oversight by the LA – a system that is not economically viable at present and would have to be justified according to a clear cost-benefit analysis at any time.

TERMLY INSPECTIONS ARE UNNECESSARY, UNFEASIBLE, AND AN INAPPROPRIATE INTERFERENCE WITH PARENTAL RIGHTS

It is submitted that the proposal of termly inspections of home education is unnecessary for the purposes of ensuring that educational provision is academically adequate; it is unfeasible with current budget restraints and inspection models; and it would constitute disproportionate

⁶ Department for Education, *Elective Home Education: Departmental Guidance for Local Authorities* (2019), para.7.3

⁷ <https://consult.education.gov.uk/school-frameworks/children-not-in-school/>

and inappropriate interference with parental rights to choose an educational curriculum for their children. The proposal should be abandoned.

7. EHE inspections are unnecessary

- 7.1 Whilst the idea of requiring LAs to inspect the provision of home education on a termly basis has been proposed, no evidence has been produced to prove that inspections are necessary or even beneficial for the home education setting.
- 7.2 Parents of compulsory school age children are obliged to ensure that they receive efficient full-time education suitable to their age, ability and aptitude. There is flexibility granted to parents in the manner and curriculum that they teach to their children, since the National Curriculum does not need to be followed. Therefore, educational provision and content will inevitably vary between homes. The vast majority of home-schooling families, however, opt for their children to take GCSE, Baccalaureate, or A-Level formal exams in order for them to pursue higher education options.
- 7.3 Multiple studies show that home education has been positive in both academic and social ways for children, including when students progress onto higher education studies⁸. In fact, specific English research that has revealed that home educated primary school children learn better than children in schools, and in the national literacy project assessments, 80.4% home educated children even performed to the same level in their studies as the top 16% school educated children⁹.
- 7.4 LAs have a duty to make arrangements to enable them to establish the identities of children in their area who are not receiving a suitable education. In such a scenario, LAs have the statutory power to issue various orders – a Parenting Order; an Education Supervision Order; a School Attendance Order; a Penalty Notice (fine, of £60-120); or the start of a formal prosecution. In the case of a LA issuing a School Attendance Order for poor quality education¹⁰, the parent will have 15 days to enrol their child within a school or be guilty of an offence. In 2018-19, 1,400 School Attendance Orders were issued by 61 LAs¹¹, demonstrating the effectiveness of the current system in ensuring that children who do not receive an adequate education are directed towards institutional schooling.
- 7.5 The framework for LAs to ensure that all children within their area receive adequate educations is therefore workable and robust.
- 7.6 The previous Chair of the Education Select Committee, following an investigation, also found that home educating parents do a “better job” of educating their children according to the child’s needs and abilities than some schools¹². Indeed, this is not particularly surprising given that the decision to home educate by parents will normally be one involving considerable sacrifice (with regard to income, career, and

⁸ For example, Brian D. Ray *Home educated and now adults: Their community and civic involvement, views about homeschooling, and other traits*, 2004; Rhonda A. Galloway, *Home Schooled Adults: Are They Ready for College?*, 1995; and Richard G. Medlin, *The Question of Socialization*, 2000

⁹ P. Rothermel, *Home-education: aims, practices and outcomes*, 2002

¹⁰ s.437 Education Act 1996

¹¹ Association of Directors of Children’s Services, *Elective Home Education Survey 2019*

¹² Parliamentary Business, Graham Stuart MP, Chair of the Education Select Committee, column 1218, (2011)

the time involved in preparing and delivering an educational program) demonstrating the deep desire of such parents to give of their very best.

- 7.7 Therefore, without any evidence to suggest that the current arrangements governing home elective education are unsuitable to the educational needs of children, inspections are unnecessary.

8. EHE inspections would be unfeasible and unaccountable

- 8.1 The 2019 Elective Home Education census estimated that there were approximately 80,000 home educated children and young people in England¹³. With the proposed termly inspection regime for home educators, a staggering 200,000 inspections will need to be conducted annually.
- 8.2 To enable this tremendous effort, the Government faces a decision of whether an inspectorate will need to be created, or whether an existing inspectorate's powers will need to be sizably augmented. In either case, a huge amount of resources, additional training, administration, and inspector oversight will be required. In both scenarios, the inspection burden would be tremendous.
- 8.3 In respect of the first option, a new inspectorate, it is likely that the LA would have to undertake the role – if granted powers to formally monitor the provision of education at home. This would require new statutory authority, as EWOs do not currently provide a formal educational inspection based upon academic standards or in accordance with prior educational training. Practically, the existing capacity and capability of LAs will need to be seriously evaluated if this option were to be explored.
- 8.4 The National Audit Office (NAO) has clearly outlined how the spending cuts to LAs since 2010 have increased pressure, without a reduction in their statutory obligations to provide services. This means that spending is becoming more narrowly focused on services that are of highest priority, with “The current trajectory for local government [being] towards a narrow core offer increasingly centred on social care”¹⁴. With the fiscal deficit now even far higher than imagined when the report was written due to the Covid-19 pandemic, with the national debt at a record high of over £2tn as of September 2020¹⁵, there is no reasonable chance for LAs to be considering an increase in financial or service provision in the near or medium-term future.
- 8.5 Further, extensive training would need to be provided to the LA team to conduct academic inspections. Becoming an Ofsted inspector, by comparison, requires the candidate to possess a degree in a relevant subject; work for a minimum of 5 years in educational leadership; have a strong track record of improving services or standards; understand the statutory frameworks; and receive in-depth training relevant to the job. LAs would have to undertake a lengthy and costly recruitment process for this. Furthermore, a regime for challenging and disputing decision-making would need to be established, as well as a direct layer of accountability both to the DfE and the

¹³ https://adcs.org.uk/assets/documentation/ADCS_Elective_Home_Education_Survey_Analysis_FINAL.pdf

¹⁴ National Audit Office Report, Financial sustainability of local authorities 2018, <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>

¹⁵ <https://www.theguardian.com/business/2020/aug/21/covid-19-drives-uk-national-debt-to-2tn-for-first-time>, accessed 05/11/2020

Education Select Committee, if LAs were to deploy education inspectors into homes. Practically speaking, the capability and capacity of any LA to enable home education inspections – especially in our current economic and political climate – is extremely unlikely and implausible.

- 8.6 In respect of the second option, the remit of Ofsted would need to be increased to be able to accommodate home education inspections. However, there are significant concerns about Ofsted’s wide remit and decision-making within Parliamentary circles and public discourse, as well as a perceived bias against certain types of education styles and beliefs (which are themselves often a motivation to home educate)¹⁶. Having an initial mandate in 1992 to inspect primary, secondary and special schools in a cyclical schedule¹⁷, Ofsted have been given greater powers over time to include the inspection of further education, nursery education, childcare, independent schools, social care, teacher training, adoption/ fostering agencies, and child protection. Additionally, its jurisdiction now includes powers of entry¹⁸ and covert surveillance powers¹⁹, rendering the organisation with a huge amount of authority and liberty in the exercise of its activities.
- 8.7 By moving from an assessment of pupil outcomes towards the ‘quality of education’ in inspections under Ofsted’s latest Education Inspection Framework (2019), Ofsted has started to over-regulate the margin of discretion which was previously afforded to schools and enter into fine dictate about preferred teaching models based on philosophical ideas of ‘what good educational provision looks like’. From their interpretations of what constitutes “British Values” and “life in modern Britain”; to the “correct” teaching of phonics²⁰; to the appropriate and advised length of time for GCSEs to be taught²¹, Ofsted have oftentimes issued prescriptive decisions which are controversial to, and contested by, the wider educational community.
- 8.8 Considering that home educators have historically enjoyed a wide degree of latitude in how they teach children and deliver academic outcomes, inspections based on current Ofsted guidance would be hugely disruptive. Moreover, it would go against the DfE guidance which explicitly states that “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”²². This guidance directly contradicts Ofsted’s Education Inspection Framework and philosophy of educational provision approach, showing the chasm that would need to be bridged if Ofsted were to inspect EHE.
- 8.9 A NAO consultation of stakeholders has also accused Ofsted of being biased in their inspections, notably by inspectors having a pre-conceived view of an inspection outcome prior to formally conducting the educational review in schools²³. Illustrating

¹⁶ For example, see Policy Exchange, *The Watchman Revisited: Curriculum and Faith in Ofsted’s new Inspection Framework* (2020)

¹⁷ Formed under Education (Schools) Act 1992

¹⁸ Initially via s.159(4) and 162B Education Act 2002, and later s.97 and s.110 Education and Skills Act 2008

¹⁹ Regulation of Investigatory Powers (Intrusive Surveillance) Order 2003

²⁰ Ofsted, *School Inspection Handbook* 2019, para. 298

²¹ See Ofsted, *School Inspection Handbook* 2019, para. 176

²² Department for Education, *Elective Home Education: Departmental Guidance for Local Authorities* (2019) at 2.4

²³ National Audit Office, *Office for Standards in Education, Children’s Services and Skills: Ofsted’s inspection of schools*, HC 1004 Session 2017-2019 (2018), Para.2.34

this, multiple acrimonious court proceedings have been triggered when religious-ethos schools have sought to challenge decisions in inspection reports – including relating to accusations of pre-inspection bias. In one case, now known as the Al-Hijrah case, Stuart Smith-J concluded that the evidence he had seen suggested that the unpublished Ofsted report was “infected by a pre-determined mindset or prejudice that would be quite alien to the proper and independent inspection process upon which the education system and the public at large rightly depends”²⁴. This independent judgment confirms that religious community fears of Ofsted bias are at least to some extent, substantiated. However, the powers of Ofsted were not curbed as a result of this.

- 8.10 Adding to the accusation of Ofsted adopting a “secularist agenda” and anti-faith bias, as noted by the Education Select Committee and the Policy Exchange in previous years, Ofsted official statistics show that inspections disproportionately impact faith schools. The 2019 Ofsted Annual Report showed that only 39% Orthodox, independent Jewish schools were rated as ‘good’ or ‘outstanding’ for the year, compared with 76% independent Christian schools and 80% all non-faith independent schools. Moreover, Jewish schools were found to be four times more likely to be graded as ‘inadequate’ compared to Muslim and Christian schools²⁵.
- 8.11 Notable criticisms of the impact of poor grades for religious-ethos schools have been raised by representatives from Jewish²⁶, Muslim²⁷, and Christian²⁸ communities. Following an incident of inappropriate Ofsted inspector questioning of girls at a Muslim school, one particularly ruinous open letter directed at the DfE, and signed by over 1000 teachers, academics and faith leaders, even accused Ofsted of being discriminatory, institutionally racist, and creating a climate of fear and mistrust²⁹.
- 8.12 These concerns are worrying when applied to the home education landscape, which typically includes many religious and conservatively minded families.
- 8.13 Underpinning the above concerns about Ofsted is the lack of accountability applied to the body, consequently enabling it to pursue whichever agenda it decides when making inspections, even to the lack of evidence that the education provided is producing negative outcomes upon children. The thin layer of accountability applied to the organisation is currently only evidenced via the complaints process – which is itself cyclical and internal to Ofsted. The one additional body which plays a part in the complaints process, the Independent Complaints Adjudication Services for Ofsted (ICASO), cannot review the substance of inspection reports themselves, only the complaints handling process. Schools cannot challenge the substance of reports without filing a legal claim, therefore. Moreover, accountability is only thinly applied by the Education Select Committee, since it does not have the capacity to verify and substantiate claims made by the inspectorate after probing questions are asked. Ofsted’s current regime of accountability is therefore severely inadequate for EHE.
- 8.14 Therefore, any proposal to extend Ofsted inspections into EHE would face a large backlash from the home educating community, many of whom hold to self-directed

²⁴ R (The Interim Executive Board of X) v Ofsted [2016] EWHC 2004 (Admin), Per Mr Justice Stuart-Smith, para.45

²⁵ Ofsted, The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2018/19, at Figure 23

²⁶ <https://www.theguardian.com/education/2014/oct/14/jewish-schools-complain-ofsted-inspections>, accessed 13/10/2020

²⁷ <https://www.theguardian.com/education/2020/jan/26/birmingham-islamic-school-sues-ofsted-after-being-failed-for-leaflet-birchfield-girls-inadequate>

²⁸ Durham Free School, <https://www.dailymail.co.uk/news/article-2922591/Is-school-gay-inappropriate-Ofsted-questions-children-aged-just-11-school-children-branded-bigots.html>, accessed 15/09/2020

²⁹ <https://www.theguardian.com/education/2017/nov/28/ofsted-accused-racism-hijab-questioning-primary-schools>, accessed 15/09/2020

learning styles and a religious and socially conservative set of values. Without a thoroughly transparent inspection framework tailored to the unique education provision in homes, and a functioning participatory process for dialogue with parents about grades and recommendations, EHE inspections by Ofsted would be both unfeasible and unaccountable.

9. EHE inspections would constitute unreasonable interference with parental rights

- 9.1 In a recent interview, and in response to a question about the rights of parents to decide the religious and moral education given to their children, Her Majesty's Chief Inspector of Ofsted (HMCI) Amanda Spielman quoted: “[Britain has] an incredible degree of freedom for people who home educate. Because, by default, this is a very permissive country which allows people a lot of individual freedom”³⁰. Implicit in this response was the view that parents were free to home educate in accordance with beliefs and values, and that this freedom was outside of the realm of State interference or inspection. Further, it implies that the taught content required by the government for compulsory school-aged children and young adults in schools is not required within the home – regarding the national curriculum; examinations; and relationships and sex education.
- 9.2 As outlined above, international law is clear that parents have the responsibility for raising children in accordance with their philosophical and religious beliefs, and it is argued that the State should not interfere with those relationships unless there is clear evidence of a real risk of serious harm.
- 9.3 Over the past few years, it could be concluded that Ofsted have started to interfere with parent-child relationships in the arena of education provision in schools, and there is a fear that this same approach would de facto be translated to home education if an inspection regime were created.
- 9.4 Ofsted, not the Courts or Parliament, has been making decisions about whether, for example, parental concerns about sensitive sexual content are heeded to, or whether schools will automatically be downgraded for not teaching material classed as sensitive and not-age appropriate³¹. Ofsted has even mandated that primary schools teach sensitive sexual material to children that the DfE has explicitly documented does not need to be taught at that age³².
- 9.5 As a by-product of its function, Ofsted influences and directs culture and society unlike any other Arm's Length Body by setting the agenda for taught content in schools and interpreting statute and DfE guidance with flexibility. As HMCI quoted in relation to the controversial topic of sex education in schools, for example, “the

³⁰ <https://espitzer1.podbean.com/>

³¹ For examples of how Ofsted have been interpreting the Equality Act to mean that schools have to teach gender reassignment against the express wishes of parents and schools in primary school settings see the inspection reports for: Gateshead Jewish Boys Primary School, additional inspection, 27/11/2019; Keser Girls School, inspected 10-12 December 2019; Beis Yaakov High School (Salford), standard inspection.

Note, the DfE and statute does not require the teaching of LGBT content in primary schools, as per September 2020 guidance. Ofsted have therefore adjudicated ultra vires.

³² Department for Education, *Plan your relationships, sex and health curriculum: Information to help school leaders plan, develop and implement the new statutory curriculum 2020*

protected characteristics [under the Equality Act 2010] are set up in a way where there doesn't need to be any trade off, but that's not what the reality is in practice. They're bound to bump up to one another"³³. In these situations of "trade off", it is Ofsted which plays the role of arbiter – as the self-declared "main checking mechanism for the Equality Act"³⁴, and not parents.

- 9.6 Moreover, the Ofsted inspection remit to focus on academic education has significantly widened within the past few years, to the extent that Ofsted now spends a vast amount of time analysing how children are "personally" developing based largely on qualitative data. Various schools have criticised this approach and have asserted that it neither gives an accurate picture of a child's educational development, nor has been conducted appropriately. The questioning of children by inspectors has often focused on their sexual knowledge and is unnecessarily intrusive, especially for a one-on-one interview. For example, Ofsted has been found to question children from faith schools on whether they had ever met any gay or bisexual people³⁵; whether they knew how babies were made and whether they knew any homosexuals³⁶; and whether Muslim girls were wearing a hijab (following HMCI's assertion that this could be interpreted as "*sexualisation*"³⁷). As reported by the media, pupils decried feeling upset, uncomfortable, and distressed.
- 9.7 Indicating Ofsted's view that sexually-related questions should be asked to pupils to show whether they are developing personally and socially, one recent inspection report recorded that due to having "restricted access to pupils and limitations on [discussing sexual lifestyles], this inhibited our ability to...determine compliance with [the law requiring that pupils develop socially, morally, spiritually, and culturally]"³⁸. Another report said "pupils cannot show respect for those groups of which they are unaware"³⁹, reasoning which Ofsted used to claim that the schools needed to explicitly teach about LGBT identities in order for pupils to learn how to be respectful citizens in modern Britain. It follows that, under the current regime, if home educators were inspected termly, significant intrusion into pupils' moral and social personal development would similarly be expected – interference which persuades many parents to home educate in the first place.
- 9.8 Thus, the inspection approach adopted by Ofsted is currently entirely inappropriate for the home education sphere and is not recommended, as it constitutes too great an interference into family life, as well as likely violating the rights of parents to educate their children in accordance with their beliefs and values.

10. Conclusion

³³ See Department for Education, *RSE Statutory Guidance* 2019, para. 37, and Department for Education, *Plan your Relationships, Sex and Health Curriculum*, September 2020;

³⁴ Speech: Amanda Spielman at Stonewall 2019

³⁵ Durham Free School, <https://www.dailymail.co.uk/news/article-2922591/Is-school-gay-inappropriate-Ofsted-questions-children-aged-just-11-school-children-branded-bigots.html>, accessed 15/09/2020

³⁶ <https://jewishnews.timesofisrael.com/ofsted-bullying/>, accessed 15/09/2020

³⁷ <https://www.theguardian.com/education/2017/nov/28/ofsted-accused-racism-hijab-questioning-primary-schools>, accessed 15/09/2020

³⁸ Beis Ruchel Girls School, secondary school, 'requires improvement', inspected 14/01/2020

³⁹ Keser Girls School, inspected 10-12 December 2019

- 10.1 ADF International (UK) strongly urges the Education Select Committee to weigh the proposals for interference into home education against the national and international legal obligations upon the UK to respect the right of parents to home educate their children in accordance with their values and beliefs. Recognising the subsidiary role of the State in relation to child protection, it should be recalled that LAs are already under a statutory duty to ensure that education is adequate and children are protected from harm – including in the case of home education. The powers granted to them enable them to sufficiently do this – including through data sharing agreements with other public bodies. No evidence has been submitted that can be relied upon to persuade the Committee that children are at greater harm or are educationally disadvantaged by the current system of checks and balances.
- 10.2 If the Government wishes to reform the EHE landscape to require compulsory registration of home educated pupils and inspections of education within the home, it would need to produce substantiated evidence that such reforms would be economically viable; necessary for the best interests of the child; beneficial to the deployment of LA statutory duties; compatible with the prior right of parents to direct the education of their children, and fully accountable to Parliament. A full Public Sector Equality Duty impact assessment would also need to be done under the Equality Act, to analyse and evaluate the implications under the Equality Act for intervening into private and family life. Such evidence has not been produced while very real concerns for parents, families, and children are clear, as set out herein.

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