

HAMPSHIRE COUNTY COUNCIL

Report

Decision Committee	Children and Young People Select Committee
Date:	14 January 2022
Title:	Elective Home Education
Report From:	Director of Children's Services

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Purpose of this Report

1. The purpose of this report is to give an overview of Elective Home Education (EHE) in Hampshire and consider potential changes in national guidance.

Recommendation(s)

2. That the Children and Young People Select Committee consider the report and note the actions being taken by the department.

Executive Summary

3. This report summarises the work undertaken by the Elective Home Education (EHE) team in relation to the increased numbers of families requesting their children to be Electively Home Educated. Whilst the number of children electively home educated continues to rise there is also a considerable turnover of children being electively home educated with many choosing to return to school after a limited period. The highest ever number of children and young people were recorded as being EHE in Hampshire during the academic year 2020/21, mainly linked to the COVID-19 pandemic. This mirrors data provided by other Local Authorities.
4. Following the 2019 Government consultation 'Children not in school: proposed legislation' it is anticipated that the DfE will accept that there should be a requirement for parents who chose to electively home educate their children to register them with the Local Authority. It is anticipated that this will require new legislation which is likely to be brought forward during 2022.
5. Whilst the national guidance around EHE was updated in April 2019, the recent Judicial Review judgement in Portsmouth, which was published at the

end of November, is likely to influence future legislative changes in relation to the EHE guidance -see below:

<https://www.bailii.org/ew/cases/EWHC/Admin/2021/3057.html>

National Framework for EHE

6. The law is clear, namely that education is compulsory, but school is not. EHE is a legal option where parents take responsibility for their child's education. The DfE defines EHE as "the term to describe a choice by parents to provide education for their children at home or in some other way they desire, instead of sending them to school full time". Section 7 of the Education Act 1996 provides that:
 7. The parent of every child of compulsory school age shall cause him/her to receive efficient full-time education suitable –
 - To his/her age, ability, and aptitude, and
 - To any special educational needs, he/she may have, either by regular attendance at school or otherwise.
 8. EHE is a form of 'education otherwise at school' although the DfE, in its EHE Guidance for LAs states in section 9.5 'The department does not believe that it is in the interests of home educated children, parents or local authorities for there to be detailed centralised guidance on what constitutes suitability'. New DfE guidance was issued in April 2019 replacing the 2007 guidance that was widely accepted as being not fit for purpose. HCC welcomed the new guidance; however, it is anticipated that the 2019 guidance will be reviewed again following the findings of the Goodred V Portsmouth City Council Judicial Review in November 2021. The current guidance is split into two parts – guidance for parents and guidance for the LA.
 9. The guidance helps LA's to understand their existing powers, duties and how these relate to the obligations of parents. It aims to enable the LA to identify those children not receiving a suitable education and to act where necessary. Where education is considered by the LA to be suitable then oversight should be annual. The onus is on the LA to determine if the education is suitable or not, which means that the LA must make arrangements to find out as far as possible whether EHE children are receiving suitable full-time education. The guidance confirms that this is a legitimate part of the LA's overarching responsibilities.
 10. All arrangements are to be proportionate, sensible and allow LA's to focus on families who are most at risk or need most support to provide a suitable education. However, for those families that do not cooperate, the guidance provides options, one of which includes that the LA is entitled to conclude that education is not suitable if parents refuse to provide evidence of education. Para 7.5 of the guidance makes it clear that not receiving an education can meet thresholds that the child is suffering or is likely to suffer significant harm. These are major changes to the 2007 guidance.

11. The recent outcome from the Goodred V Portsmouth City Council Judicial Review decision is helpful as it is the first detailed consideration of the statutory regime around EHE for around 30 years and the first under Education Act 1996. In effect, as a consequence of the judgement, LAs are entitled not to be satisfied by a report from the parent and are entitled to ask for more evidence, which may result in serving a school attendance order if nothing more is provided. The Judicial Review found that *'The fact that a parent may, for example, not teach the National Curriculum, does not absolve the parent from the practical requirement to show that the requisite education is, in fact, being received by the child and that it is suitable to his or her needs. Nor does it mean that the local authority is necessarily compelled to accept merely assertive statements by the parent. ... what may be needed in such cases could well involve a meeting with the child and/or an examination of the child's work...'* (Goodred, [98-99]).
12. Following the 2019 Government consultation 'Children not in school: proposed legislation' the DfE appears to have accepted that there should be a requirement for parents who chose to electively home educate their children to register them with the Local Authority. It is anticipated that this will require new legislation which is likely to be brought forward during 2022. This change in legislation would be welcomed by Local Authorities although it is understood that it will be controversial with some parents who choose to EHE their children.

EHE in Hampshire

13. HCC registers all EHE young people (where known) on a database. At the point of registration Children's Services Social Care and Early Help Hub records are checked. Where there is an open case, the relevant Key Worker is contacted. The EHE team performs regular checks to cross-reference EHE children with social care involvement and actively seeks contact with allocated workers.
14. An introductory letter, information pack and request for information is shared with parents. This makes the offer of a single EHE visitor appointment or multiple visits where appropriate. Subsequently a written report is shared with parents. Where information is submitted and is not sufficient, extensive efforts for follow-up contact with parents is made.
15. Prior to 2019, in line with the DfE guidance in place at the time, Children's Services did not press parents if they did not reply or chose not to engage. Consequently, in our view, we were not able to have effective oversight and were not able to judge if the education was either efficient or suitable for the vast majority of children that were EHE. By 2018 the team had started to grow and were focussing on finding out about education provision for more vulnerable EHE children and offering support to them. The 2019 guidance is clearer around the expectations of LA's, and we are now more proactive around assessing the suitability of education for the whole cohort.

16. A growing number of referrals are being made to the Attendance Legal Panel for s437 Education Act legal notices in order to satisfy the LA about the child's education. Universal website guidance for is available for parents and schools and bespoke telephone or email guidance is also available for parents and schools.

<https://www.hants.gov.uk/educationandlearning/educationinclusion/service/electivehomeeducation>

17. The service also offers to pay up to £287 for Year 10 and 11 examination fees of GCSE or equivalent qualifications subject to published conditions.
18. The EHE service also maintains good links with EHE parent groups, NHS, Social Care and other services responding to the child's needs.
19. The number of children registered as EHE has continued to rise, reaching 2107 (including Year 11 children) in June 2021 (see Chart 1). This equated to 1.2% of the school aged population. There is considerable turnover of children being electively home educated and over the course of the 2020/21 academic year over 2700 children and young people were EHE at some point.
20. Generally, there has been increased turbulence in the EHE population as more children and young people come on and off a school roll, often for short periods. At the end of the academic year 2020/21, 27.8% of the cohort returned to school or other LA provision.
21. Most children being electively home educated are in the secondary sector, 1.9% of the Hampshire school population compared to 0.7% in primary. For children and young people new to EHE in 2020/21 the balance moved to more primary aged children (54%) than secondary aged children and young people for the first time. 51% of EHE children and young people are boys and 49% girls. The largest single year group in EHE remains Year 11.
22. Some districts have more children and young people registered as EHE, namely East Hants (1.6%) and New Forest (1.5%) whilst other districts have considerably less such as Hart (0.8%).
23. At the end of the academic year 2020/21 the proportion of children and young people being electively home educated who were known to social care in the past 12 months was 9% of the cohort. 4.9% of children being electively home educated were open to Social Care on Child in Need, Child Protection plans or receiving support from Early Help. This includes new and more longstanding cases.
24. Children and young people with some level of special educational needs represented 18.7% of the cohort in the summer term 2021 and 4.5% of the cohort had an EHCP. Children with SEN are listed at the time of removal from school but if a child has an EHCP issued whilst EHE this data is subsequently

included.

25. The Covid-19 pandemic in 2020/21 has seemed to cause the highest ever rate of children and young people becoming EHE in Hampshire with 1355 new entries being made on our register (see Chart 2). This mirrors data provided by other Local Authorities which also indicate large rises. The LA saw a surge in children and young people being registered for EHE when return school became compulsory in September 2020 and March 2021 (see Chart 3).
26. In the 2020-21 academic year, there was a large increase in the number of Year R registrations, some of them may have been due to parents delaying their child's start at school due to the pandemic. Covid-19 fears and emotional/physical health reasons are the major reasons listed for children and young people new to EHE. The reasons provided by parents may not reflect the full impact of the pandemic.
27. The 2021 EHE survey by the Association of Directors of Children's Services has published a report which provides useful information about the national picture.

<https://adcs.org.uk/education/article/elective-home-education-survey-report-2021>

Staffing

28. Due to the increase of children and young people becoming EHE, which was linked to Covid-19, additional temporary EHE visitors and an administrator were recruited in the Spring Term 2021.
29. The increased staffing helped the department to keep abreast of the increasing requests for EHE, but still provided the team with a challenge to ensure every child was receiving a suitable education. During the Autumn Term 2021 there were 381 additional children and young people recorded. All these have required a detailed review of information from the parents about the provision they are making. Support and guidance for those who engage with the offer also needed to continue. Whilst some parents have welcomed the support, others are wary of LA contact and are resistant to engage. Any contact with parents, either by telephone, email or post is time consuming especially if the parent does not wish to engage. The service is finding that a significant minority of parents claim not to want to EHE but believe they have no other option.
30. The service has three permanent EHE Visitors and one casual amounting to the equivalent of three FTE, term-time only staff. A temporary full-time EHE Visitor left in September and recruitment is underway to fill the role which will now become permanent. The temporary Administrator's post was due to end 31 March 22, but the post-holder has left. A recruitment process to replace

this role with a permanent one is also underway.

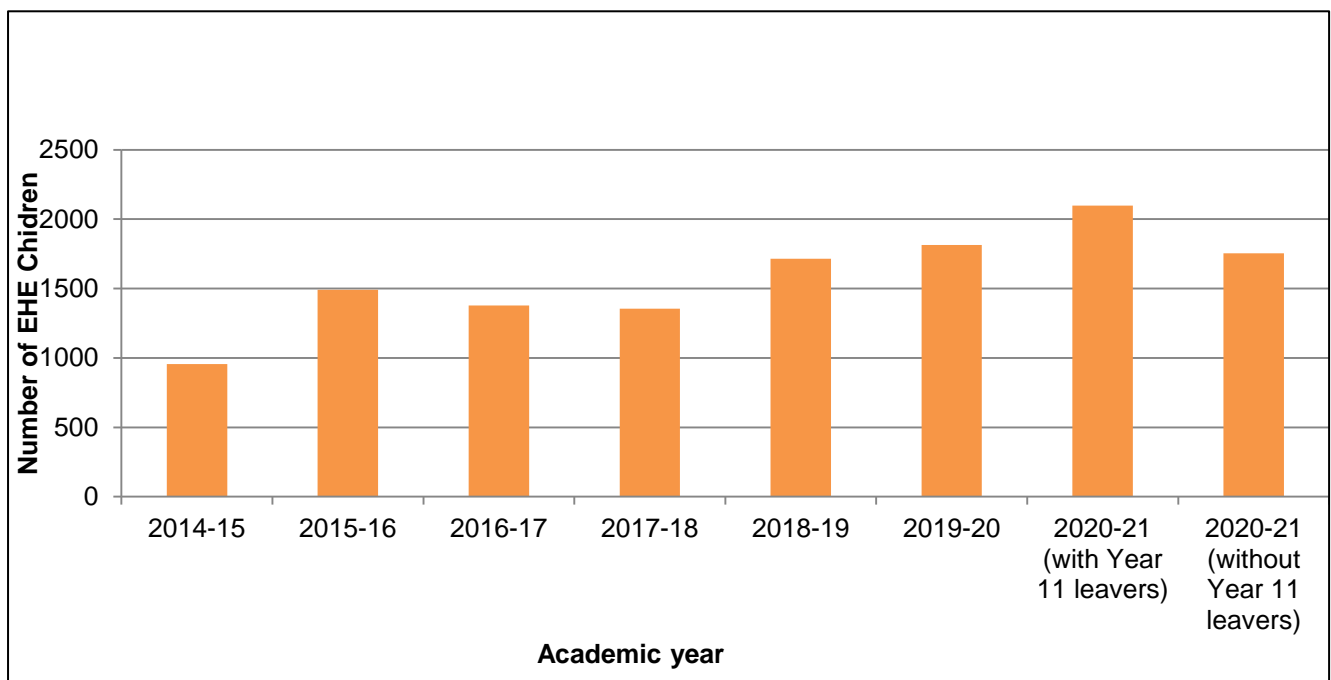
31. It should be noted that the additional expectations on Local Authorities are a creeping 'new burden' in financial terms. When a child is EHE the funding for the school (the Age Weighted Pupil Unit – or AWPU) is clawed back in due course by the DfE. Officers have made representation to the DfE that this funding should be passported to the local authority to enable us to fulfil our duties.

Data and Tracking

32. Data quality is much improved because the temporary extra staffing allowed some capacity to investigate and challenge provision by parents that had been providing EHE for a longer period. The service was also able to track and close cases where families are no longer living in Hampshire. The team is linking closely with the Children Missing Education and Attendance Officer and have access to a national database to assist tracking children who may have moved away and have appeared on school registers.
33. Close multi-agency working continues. The team regularly attend Child Protection meetings, core group and Child in Need meetings, many are for multiple children. A Short Guide on EHE for HCC professionals has been distributed to social workers and other professionals to raise awareness with LA colleagues.

Guidance for Hampshire schools

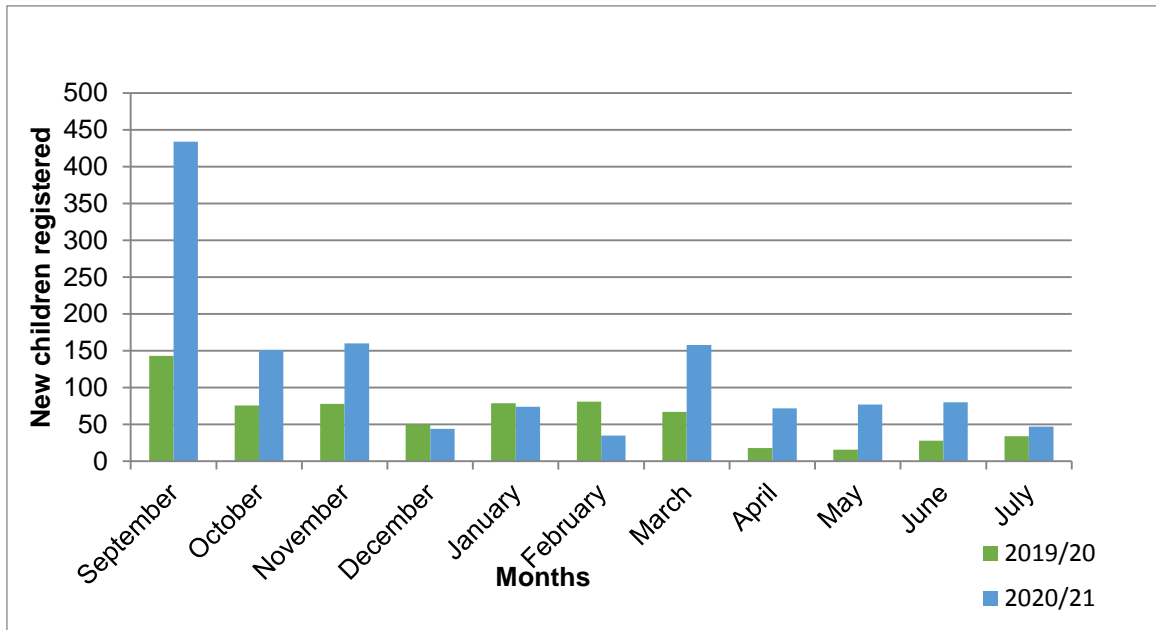
34. Guidance for Hampshire schools was revised in the Autumn term, and a significant addition to this guidance was a new policy around phase transitions. Schools are not required by law to notify the LA of a child who does not take up a school place at standard transition phases, for example primary to secondary school, but the revised Hampshire guidance follows the DfE recommendation to make local arrangements for schools to notify the LA if a child does not turn up.
35. A suite of documents for schools including guidance on conversations with parents considering EHE and transition planning for a return to school have been published.
36. As we identify more EHE children who are not receiving a suitable education it is anticipated there will be an increase in the need for School Attendance Orders (SAO), with liaison between Inclusion Support Service, Legal Intervention Court Officers and School Admissions who become involved identifying schools to be name on legal warning notices and SAOs.
37. **Chart 1** - Number of children and young people registered as EHE – end of academic year numbers



38. **Chart 2** - Total new children and young people registered as EHE during Academic Years

Date	Hampshire*
Academic Year 2017/18	639
Academic Year 2018/19	839
Academic Year 2019/20	670
Academic Year 2020/21	1355
Autumn Term 2021 only	381

39. **Chart 3** - Number of children becoming EHE by month during the last two academic years



Contextual

- 40. The service has discovered that the more they seek information, the more information is required to act upon and do further work. A sizeable minority of parents do not wish to engage with the EHE service and as the work with families is progressing, the service is finding more children and young people are not receiving suitable education.
- 41. Half of all children and young people registered as EHE, where a reason has been identified, are reactions to a problem, not an active lifestyle choice. For example, emotional/physical health needs and Covid-19 fears, or 'preferred school not available'.

Performance

- 42. Since 2018 the EHE team has significantly improved parental engagement. In the academic year 2020-21 there were 2160 engagements via conversations, home visits, video calls and parent reply forms representing contacts of 1559 children who were listed as EHE. This represented 73% of the cohort total at the end of the summer term. During the academic year 2018-19 there were just 199 home visits with no other contacts.

Consultation and Equalities

- 43. None

Climate Change Impact Assessment

- 44. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate

change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

Climate Change Adaptation and Mitigation

45. The Inclusion Support Service team is sensitive to climate change and all journeys to schools and other provisions are factored in with reducing the length and time of the journey where possible. School visits are carefully planned so that schools geographically located close together are selected to be visited on the same day, to reduce travel, mileage, and carbon emissions. Where possible we reduce printing and do not waste paper printing. The team is sensitive and mindful of the issues surrounding climate change and are active in their promotion of good housekeeping with the use of energy both at work and in their homes. Unnecessary journeys are avoided, and car sharing is discussed where possible.

Carbon Mitigation

46. The team is mindful of the County Councils commitment and carbon emissions. Microsoft TEAMS meetings are held, however the need for face-to-face meetings is high on the agenda, especially around vulnerable children, and families. The current regulations around COVID 19 are factored into the decisions around the way in which meetings are arranged and organised.

Conclusions

47. The number of children and young people becoming EHE has increased significantly in Hampshire and across England with large rises during the 2020/21 academic year and a correlation in additional numbers linked to returns to compulsory school attendance during the Covid pandemic.
48. The report demonstrates progress since the last report to this committee regarding statutory duties and the impact on the service during 2021/22, of which much can be linked to Covid-19. The increased staffing helped the department to keep abreast of the inflow of children and young people becoming EHE. Over the next twelve months work will need to be undertaken to ensure that the team is able to meet the expected changes in legislation/guidance and the work arising from the Goodred v Portsmouth CC Judicial Review.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	Yes
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	

Section 100 D - Local Government Act 1972 - background documents	
The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

See guidance at <https://hants.sharepoint.com/sites/ID/SitePages/Equality-Impact-Assessments.aspx?web=1>

Insert in full your **Equality Statement** which will either state:

- why you consider that the project/proposal will have a low or no impact on groups with protected characteristics or*
- will give details of the identified impacts and potential mitigating actions*