

# How the State Demoted Parents

## *Reflections on the Portsmouth Judicial Review*

### Credentialism and hostility towards parents

On September 3rd, 2020, a representative of Portsmouth City Council told a home educating family that:

“a report alone however detailed, is in my view, not going to be enough to enable us to be confident that suitable education is taking place...[because] for every example of a parent whose child is receiving education and **performing exactly as described in the report, there will be another example of where this is not the case**” (53). [Numbers in standard brackets reference the [Portsmouth Judgment](#) throughout.]

The parent was, in essence, told that a report would be insufficient because parental assessments are unreliable.

Many parent-educators, especially those who are not qualified teachers, will be frustrated by comments such as those in paragraph 101: “a report from a parent who is a qualified teacher *might* be regarded as sufficient.” [Emphasis added] This appears to be based on the erroneous assumption that their training prevents qualified teachers from providing excessively optimistic or inexact assessments of their students' progress.

Similarly, when a judge accepts that the defendant in a case did indeed say the thing the complainant is complaining about, but then adds “...the defendant's actual position...is that ‘a written report alone, however detailed it may be is unlikely to be sufficient’” (91), we can be confident that the court, in forming its view, found little in favour of the claimant's central argument:

“It is, in my view, plain that the claimant is, in fact, aware of what is needed. The truth of the matter is that she is simply unwilling to provide it.” (100)

It is from this position that we will consider the two main issues that created the need for the judicial review in the first place: 1) the presumption of innocence, and 2) the government's acknowledgment that parents are legally responsible for their children's education - in part.

### The presumption of innocence (see [fairtrials.org](#))

The government's advice to local authorities states that “If a child is not attending school full-time, the law does not assume that child is not being suitably educated” (21), but adds that “Until a local authority is satisfied that a home educated child is receiving a suitable full-time education, then a child being educated at home is potentially in scope of this [Children missing education] duty.” (23) Finally stating, “However, this should not be taken as implying that it is the responsibility of parents under s.436A to ‘prove’ that education at home is suitable.” (23)

In simple terms, the law presumes that home educating families are complying with it - innocent until something suggests otherwise - but the local authority are directed to satisfy themselves that home educated children are receiving their education by making speculative enquiries to satisfy themselves of the parents' innocence. This is the case even for families which have been of no previous concern to anyone (and despite being advised that a choice to home educate is not in itself an issue that should cause them concern). Simultaneously, parents are told that they do not have to ‘prove’ that education at home is suitable, because the law assumes that it is.

Portsmouth City Council placed a clear requirement in its home education policy for parents to ‘*prove*’ that education at home was suitable:

“Parents who are home educating their child(ren) are expected to provide evidence of a suitable education that would, on the balance of probabilities **convince** [a synonym of ‘prove’] a reasonable person that a suitable education is being provided.” (36) [Emphasis added]

The authority's repeated desire for a “higher degree of professional curiosity” (47, 49, 53), is justified only by **the unevicenced implication that parents are not being truthful in their reports**, and openly states that the local authority is intentionally extending its enquiries beyond satisfying its legal duty, into

“curiosity.” This is despite governmental guidance stating that it is “important that the authorities’ arrangements are proportionate and do not seek to exert more oversight than is actually needed.” (24)

Given the power imbalances between local authorities and individual families, there is no justice for families in this situation. The government have wilfully abandoned families to the whims of local authorities, each with its own independent view on the suitability of home education.

The judgment also makes it clear that this power “flows from the **general responsibilities which local authorities have for the well-being of all children** living in their area.” (21)

### **The reality of parental authority over education**

“The department believes that although the primary responsibility for ensuring that children are properly educated belongs to parents, a local authority has a moral and social obligation to ensure that a child is safe and being suitably educated.” (17).

Here the government guidance separated the parent’s responsibility for ensuring children are “properly educated” from the local authority’s “moral and social obligation” to ensure they are “suitably educated”.

This division of responsibility is clarified further in the judgment:

“The parent is not the ultimate arbiter of whether, for example, the education being received by the child is suitable. The requirement in section 9 for the Secretary of State and the local authority to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents has no direct impact upon the section 7 duty.” (70).

This essentially says that the section 9 principle of children being educated in accordance with the wishes of their parents has no direct impact upon the parent’s duty to “cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs or additional learning needs he may have” (6).

Put simply, the parent’s stated intentions, outcomes and wishes for their children’s education (the educational philosophy which documents their strategic goals and rationale for their educational choices) “has no direct impact” on an LA’s assessment of whether their education is efficient or suitable. The responsibility for setting strategic goals has thus been transferred to the local authority.

### **This judgment relies on the confusion embedded in the 2019 Guidance**

The judgment also identifies how the transfer of responsibility for a child’s education is being achieved by first considering the government’s guidance for parents that “there are no legal requirements for you as parents educating a child at home to do any of the following:

- Acquire specific qualifications for the task
- Have premises equipped to any particular standard
- Aim for the child to acquire any specific qualifications
- Teach the National Curriculum
- Provide a ‘broad and balanced’ curriculum
- Make detailed lesson plan in advance
- Give formal lessons
- Mark work done by the child
- Formally assess progress, or set development objectives
- Reproduce school type peer group socialisation
- Match school-based, age-specific standards”

It then draws attention to a previously benign statement in the government’s guidance that “many home-educating families do some of these, at least, by choice” and uses this statement to give the local authority the freedom to pick and mix items from the list to suit their own set of preferences, using the justification that they are only asking for “some” of them. (98/99). A lack of clarity surrounds which ones they might

select, leading to the practical outcome that home educating families are forced to do more of them, just in case.

The government's intervention was to state that the threshold for local authorities "is a low one. It merely requires the defendant [LA] to take a view..." (84) and then to take action up to, and including, removing children from the care of parents who insist on raising their children in line with their own beliefs, if their philosophical convictions fail to align with those of their local authority or the Department for Education ([Summary flow chart, EHE Guidance for LAs, p.5](#)).

### **The significance of these insights**

The hostility directed towards parents who seek to raise their children in line with their beliefs is clear. We are all presumed guilty until proven otherwise. However, if the law did not presume that we were all innocent, we would live in a society where the state had a duty to satisfy itself that we were all innocent of any, or every crime. This would surely be a deeply unpleasant experience for everyone, improved not one whit were it to be carried out in the pursuit of "wellbeing," that nebulous term that now appears to justify the expansion of state intervention into any aspect of citizens' private lives, especially our children's.

*The historic British value of the presumption of innocence is an important principle to protect.*

It is clear that the state is creating a situation in which parents retain day to day responsibility for ensuring their children receive an education - whether through the state's preferred method of dropping them off at the school gate, or by delivering home education that satisfies a particular local authority - but the strategic direction of that education, the values that it pursues and, to some extent, the content of it will not be determined by the parents or by the child. It will be determined by the state, in the form of a home education officer to whom the local authority has given carte blanche to "form a view" in any way they choose, on any family.

It is also clear that credentialism is creeping into one of the most basic of natural daily human activities: teaching and learning, so as to stifle any activity that is not officially endorsed by those with the correct certification.

The power to determine the strategic direction of an activity is held by the person ultimately responsible for it, and parents are fast losing the power to determine the strategic direction of their children's education, both in school and, as illustrated in this judgment, within the family.

In the same way that a Board of Directors controls the vision and direction of a company and instructs, or fires, the CEO who delivers that vision on a daily basis, the government has through this judgment, - with the active support of a willing local authority - sought to seize from parents the responsibility for setting the educational direction and values of their children.

### **What can parents most usefully do in the present circumstances?**

So much has already been said and written about the [judgment](#), but reading it for yourself is well worth the time and will help you to understand the issues.

Concentrating your time on documentation that matters most is another strategy you might consider, though it will take time for the effect of Portsmouth's judgment to filter through to other local authorities, so don't assume that every local authority will be now following Portsmouth's lead.

However, parents need to be aware that under the 2019 Guidance, and emphasised by the court, informal inquiries are, in practice, *Notices to Satisfy*. The fact that they are not legal documents and are delivered in an informal manner is of no practical relevance.

*The distinction between informal inquiries and a Notice to Satisfy is now a bureaucratic sleight of hand.*

Secondly, given parent's beliefs and wishes are now less relevant to the assessment of whether or not their educational provision is suitable - though they may prove to be evidence against it being deemed so, there is little point in parents going to great lengths to provide an educational philosophy to a 'difficult' LA.

Likewise, if a parental statement of activity, learning or progression is not to be believed prima facie, there is little point in a parent writing reports with details of their children's progress. An alternative worthy of consideration may well be for children to be involved in compiling their own learning portfolios that capture their learning intentions, activities and progression throughout the year.

### **Strengthen children's ability to advocate for themselves**

In the light of the changing climate surrounding home education it is clear that many of the professionals involved in assessing the education our children receive do not care what we, as parents, say, and that many actively distrust us. There also appears to be a belief amongst some professionals that home educated children need to be 'rescued' from their parents, even where there are no actual safeguarding concerns.

The demand implicit in this case is for the people who have the power to gain access to the children, in order to tear the children's world apart as easily as they "form a view." This is likely to be causing a great deal of anxiety for children in our communities, especially those who already feel that state education has let them down very badly and that it is now pursuing them into their own home.

Building children's ability to advocate for themselves is therefore essential. Consider sharing ideas and organising group learning activities to explore how we can support our children as they develop the strength, confidence and skills to advocate for their own family led education. (See ["What is self-advocacy?" on understood.org](#))

### **A glimmer of hope?**

Despite what this judgment signals, there is one glimmer of hope buried in the Judge's "Discussion." The second part of paragraph 96 reads:

"As I have also mentioned, the claimant's grounds make it plain that she is not bringing any challenge to the assessment by the defendant of the suitability of the education that she provides to her children. In any event, the defendant's policy properly takes account of the 2019 guidance documents of the Secretary of State; and there is no challenge to the lawfulness of these."

This ruling makes clear that, through its 2019 Guidance, the DfE has opened the door very wide for LAs to treat home educating parents with contempt. The good news is that, according to Mr Justice Lane, this case has *not* undermined our future ability to try to push that door shut once more. It won't be easy to achieve, but no-one, children, parents or grandparents should underestimate the importance of lending their weight to the cause!

*November 2021*

*[The HE Byte](#)*