

**NSPCC Response to the Revised Statutory Guidance for Local
Authorities in England to identify children not receiving a suitable
education**

(Department for Children, Schools and Families, 2008)

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Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC's purpose is to end cruelty to children. We seek to achieve cultural, social and political change - influencing legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC exists to end cruelty to children through a range of activities which aim to:

- help children who have suffered abuse overcome the effects of such harm;
- prevent children from suffering abuse;
- prevent children from suffering significant harm as a result of ill-treatment;
- help children who are at risk of such harm; and
- protect children from further harm.

We have more than 180 teams and projects throughout England, Wales and Northern Ireland. Their work includes:

- Providing telephone support for C&YP via ChildLine.
- Providing telephone support for adults concerned about the welfare of a child
- Providing support for vulnerable children, young people and their families to help keep these C&YP safe and well cared for
- Providing services for children, young people who need help to overcome the impact of abuse.

Comments

The NSPCC has a range of comments on the guidance gathered from discussions with our project staff.

1) One of our key concerns about the guidance is the assumption that a child/young person will come to the attention of the local authority if they are missing from education. In order to be known a child must either be registered with a school or there must be a data exchange between the Primary Care Trust and the local authority about pre-schoolers. However for a range of reasons some groups may not be known for example because they may be newly arrived from another country or because they are not registered with a primary care service provider.

There is also very little advice in the guidance on how authorities can be proactive in identifying children and young people who are not known to the system. It is important that the guidance should be clear about what is best practice in this area. Specifically, it should stress the importance of ensuring

that there is good coordination and sharing of information across the relevant agencies. For example we are very conscious that children and young people trafficked into the country would be very unlikely to come to the attention of local authorities, particularly if they are being used for domestic servitude or commercial sexual exploitation. These are some of the most vulnerable children and it is important that local authorities should be provided with advice on how to identify them and how to support them once they are identified as they need to be protected from those who are exploiting them. Local authorities need to have a link with the UK Borders Authority and also to have good relationships with community and faith groups. Our work on Safer Communities has demonstrated the willingness of communities to engage in safeguarding if they are afforded the opportunity to learn about it. Faith groups especially are more likely to be aware of such children and if they have a good understanding of how the child protection system works along with good relationships they are more likely to come forward to report a concern.

2) Some reference is made to accountability in paragraph 2.6. If this guidance is to be effective then scrutiny of its implementation is required on a regular basis (we would suggest annually). It is important therefore that the guidance is incorporated into the safeguarding elements of inspections of all those with a responsibility for children's protection: Trusts, LSCBs and schools.

3) Monitoring needs to occur actively at a school level. It is important that the guidance sets out that someone at school level does have responsibility for monitoring and ensuring action is taken when required. The earlier a child is identified as missing, response the more likelihood there is of a positive return to school and the child not coming to harm.

3) We comment in some detail on issues around elective home education in Q6, because the NSPCC and other organisations are concerned about the loopholes that currently exist in legislation, which we outline below. We would welcome further discussion on the legislation and its adequacy.

1 Based on your experience of local authorities implementing this duty since it was introduced in 2007, does the guidance make clear the actions which local authorities are expected to take to help them comply with the duty?

<input type="checkbox"/>	Yes	X	No	<input type="checkbox"/>	Not Sure
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The guidance stems from the requirement for statutory guidance under S436a of the Education Act 1996 and on that basis it should be about children not on the school roll (paragraph. 1.24). However, much of it (Section 3) quite rightly focuses on children who go missing whilst on the school roll. This has made the guidance somewhat confusing; we suggest that it requires some redrafting to provide greater clarity about what the guidance does and does not cover.

2 Does the guidance make clear the role that implementation of this duty has in the wider programme of work led by local authorities to improve outcomes for children and young people, including promoting their safety and well-being?

Yes	<input type="checkbox"/>	No	x	Not Sure
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The NSPCC welcomes the emphasis that this guidance places on the connections between education and the Every Child Matters programme. It is good to see that responsibility for this clearly lies with the Children’s Trust.

However as we have said already the guidance is confusing and is not assisted by the weaknesses in some parts of the legislation. There are also some gaps around the safeguarding needs of specific groups which we flag up later on in our response.

3 Does the guidance accurately describe the range of circumstances that put children's safety at risk and puts them at risk of not receiving a suitable education?

<input type="checkbox"/>	Yes	x	No	<input type="checkbox"/>	Not Sure
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The NSPCC recognises that issues such as Forced Marriage are fairly well covered, although there are some inconsistencies in this. Para 3.14 is at odds with paragraph 4.7 in relation to forced marriages. It is important to reinforce the point under 4.7, that under no circumstances should local authorities approach family members about a forced marriage, as they may agree with what is being done to the young person, and may themselves be involved in taking the young person abroad to force them into marriage. Approaching them could thus jeopardise a young person’s safety and put them in greater danger of physical violence. We have made further comments on forced marriage in our response to the DCSF guidance on “forced marriage”.

However there are a number of significant gaps and the list in paragraph 3.3 should include children who are at risk of or who are being sexually exploited and those who have been taken out of school / the country for a prolonged period of time for religious/ cultural reasons.

The lists include children living in refuges, but a number of women may stay with relatives rather than going to a refuge and so it may be more appropriate to include a general reference to children fleeing domestic violence.

4 Does the guidance show effectively what steps local authorities should take when children are living in difficult circumstances that put them at more risk of not receiving a suitable education?

As mentioned earlier this guidance operates on the assumption that children will become known to them. In section 2, the guidance sets out how the duty can be met, but this is limited. For example it refers to identifying key stakeholders, and it would be helpful to set some of them out. This needs to be explicitly addressed. It is important that there is engagement with the relevant bodies within the community and voluntary sector (such as faith groups, small local support groups) and not just the usual suspects such as police and children's social care. It would be helpful for the guidance to give some good examples about how the notification routes have been effectively publicised.

We especially wish to highlight the need to monitor children missing from Pupil Referral Units as they are amongst the most vulnerable. One of our practitioners commented that "*communication between agencies and with children is the key to safeguarding children*". However their experience suggested that a number of "*children did get lost in the system, especially when they moved boroughs*". "They regularly have to advocate on behalf of children for schools to keep places open and provide support to get the child to and from school. Their time is taken in being the "go-between" between boroughs, and this means they have less direct face to face time to support the child / young person. In this context it is vital that there is cooperation and communication across council or agency boundaries and this should be emphasised in the guidance.

Whilst the guidance sets out how an enquiry can be made of another local authority, there is an obvious gap here in setting out the difference in procedure (if there is any) if the child is believed to have moved to Wales, Scotland , Northern Ireland or the Channel Islands.

5 What are the key challenges local authorities could face to implementing these guidelines effectively?

This guidance is one further element that schools need to manage alongside many others. Trying to stay on top of all of them is difficult. Clarity will be needed both within the Children's Trust and within the Local Safeguarding Children Board (LSCB) about how this guidance is monitored and reviewed and who will be accountable for ensuring its effectiveness.

We also note that the Scottish Government published Safe and Well in 2005¹, guidance which drew together all the policies relevant to a school promoting children's wellbeing as well as keeping children safe. We are not aware that such a document exists in England but would recommend that the DCSF

¹ Scottish Government – Safe and Well - Handbook for schools and education authorities describing good practice in child protection in education and when a child goes missing from education 2005 <http://www.scotland.gov.uk/Publications/2005/08/0191408/14093>

consider such an approach in order to make it easier for schools to meet their legal obligations.

6 Does the guidance make clear the duties and powers that local authorities have in relation to home educated children when parents are not providing them with a suitable education?

Yes	X	No	<input type="checkbox"/>	Not Sure
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The NSPCC has a number of concerns about this area, and whilst these are strictly speaking not the focus of this guidance, they do need to be stated. The court case of Eunice Spry (March 2007)² highlighted the tensions that exist around elective home education, and specifically how a child's needs for protection are fulfilled when a child is home educated. Although the NSPCC recognises the right of parents to choose how their child is educated, the child's protection rights have not received sufficient attention. As the legislation and guidance currently stand there is no need for a parent to notify the local authority that they are home-educating a child, if the child is not registered with a school. From our perspective, we would expect parents to notify the authority if they are choosing to educate their child at home, irrespective of whether the child has previously attended school.

We recognise that some authorities have set out clear guidelines for their staff and for parents about how they will meet their duties. However the fact that this does not necessarily require a home visit or even for the children to be present during such a visit, let alone be seen by themselves, does make it that much easier for someone who is harming a child to avoid detection.

The guidance as currently drafted means that the local authority can investigate if they have a concern about the child's education, yet they do not have the powers to visit or meet the child. The guidance (paragraph 6.37) refers to the ability to see a child under s47 of the Children Act 1989, but in order to do so a professional must have sufficient concerns about the child. This evidence is hard to ascertain unless the professional had contact with the family. Consequently it becomes a "Catch 22" situation, allowing cases such as the abuse of the three children in the care of Eunice Spry to occur. It is important to note that this case was not exceptional. The London (LA) Children's Safeguarding Leads network are "*aware of a number of serious child protection cases where the child was electively home educated.*"³

The existing legislation and guidance on elective home education is unbalanced and we endorse the view set out by the London (LA) Children's Safeguarding Leads network that the government should review the legislation in order to balance the parents' rights to home educate their

² Eunice Spry was convicted for 14 years for abusing 3 children in her care. The children were home educated in order to reduce the chances of their injuries being seen by others.

³ London Children's Safeguarding lead network – response to DCSF consultation on guidance for local authorities on elective home education July 2007

children, the local authorities' duty to safeguard children and the child's right to protection.

Because the current legislation is inadequate, as set out above, it is perhaps inevitable that the guidance struggles to deal adequately with the safeguarding issues. We would therefore recommend that DCSF review the legislation pertaining to children educated at home in order to ensure that there are sufficient safeguards for the protection of children.

7 Does the guidance contain all the 'signposts' to other relevant guidance; sources of support and advice for local authorities that will enable them to implement this duty effectively?

<input type="checkbox"/>	Yes	x	No	<input type="checkbox"/>	Not Sure
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The policy landscape is immense and complex and as seen in our response to Q6 in some cases it is not clear and unhelpful. Rather than signposting to the range of guidance elsewhere, we recommend that the DCSF model its guidance on the Scottish Government publication Safe and Well (2005). This document draws together in one place all the guidance and policies relevant to a school promoting children's wellbeing as well as keeping children safe. We are not aware that such a document exists in England but would recommend that DCSF consider such an approach in order to make it easier for schools to meet their legal obligations.

9 Have you any details of good practice that would be useful to include in the final version of the 'guidance'?

x	Yes	<input type="checkbox"/>	No
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The NSPCC has developed a set of safeguarding standards for schools which underpin an interactive web-based safeguarding quality improvement tool. The tool is designed to help schools audit and improve their own safeguarding performance and demonstrate this within the relevant schools inspection framework? We have extensively consulted with schools in developing the standards and are currently piloting the tool. We would welcome the opportunity to share our learning and expertise with the Department for Children Schools and Families. There may be scope for this to include the issues around children not receiving an education.

10 Did you find the draft guidance clear, unambiguous and easy to follow?

No. This is difficult guidance to draft as a stand-alone document and that is why we are advocating a more joined-up approach with all the guidance included in one document. We consider that such an approach would result in guidance that is clear, unambiguous and easy to follow.

For further information and to discuss the quality improvement tool mentioned in response to question 9 contact Vijay Patel, Policy Adviser, on email: vijay.patel@nspcc.org.uk 020 7825 2543.