

**Policy interpreted: the effect of local authority  
administration and officer perception and practice  
on national home-education policy implementation.**

**Fe Mukwamba-Sendall BA (Hons), MA, MBASW.**

Thesis submitted for the degree of Doctor of Philosophy

Department of Educational Research

Lancaster University

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Department of Educational Research,

Lancaster University, UK.

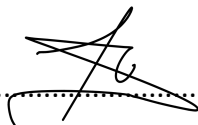
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This thesis results entirely from my own work and has not been offered previously  
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## **ABSTRACT**

*Home-education is enshrined in State legislation and statutory guidance, which is administered by local authorities (LA) and implemented by their officers. Home-education engenders concern. Stakeholder critics allude to risks for children ranging from educational or psychological harm to physical neglect or abuse. Accusations, which lack evidenced based research, problematise home-education creating suspicion which impacts on LA administrator and officer implementer. This is observable in their beyond-legal authority practices. This research examines LA administration of State policy 'strategies' through Freedom of Information questionnaire responses and documentary evidence (webpages, literature, and officer job descriptions). Interviews examine influences on officer perceptions which impact on their implementation practices. Interviews with home-education advocates provide insight into outcomes of LA administration and officer implementation. The study is sited within Implementation Theory, specifically Street Level Bureaucrats, Lipsky, 1969, 1971, 1980, 2010; Implementation Staircase, Reynolds and Saunders, 1987; and Communities of Practice, Wenger, 1998, 2006, 2010. Conclusions are drawn through the adoption of a thematic analysis approach. There is a marked lack of homogeneity in the implementation of State policy at local level, with policies and practices varying between different local authorities and individual officers. There is discord in the opinions of stakeholder commentators, academics, professionals and EHE advocates regarding specific concerns of, educational suitability, registration, monitoring, visits, and safeguarding. State strategy becomes redefined resulting in hybrid local policies visible in LA administration and officer implementation practices*

*which imply powers or legal authority that they do not have. Such changes constitute a degradation of State strategy. Locally adopted policy stimulates a precedent of practice, whereby intended State strategy becomes redefined during the delegated process of implementation.*

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## **DEDICATION**

To those that inspired, loved and believed in me but are no longer here:

**Alexander Ronald Barr 1916-2006**

**Stella May Duggan (nee Hill) 1929-2004**

**Frances Mary Ashworth 1959-1996**

**Frank Edward John Sendall 1953-1994**

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To my children who I love to ‘infinity’. They have grown into amazing, independent, and resilient people.

To the diverse home-education community. Specifically, those who have directly supported me in this endeavour – particularly but not exclusively: the Liverpool home education group c2010 (Maria, Hanna, Lorraine, Ruth, and Nagheba) who supported me from the beginning, and Wendy Charles-Warner and Graeme John Evans who were ‘there for me’ and got me to the end.

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To my ‘Ed Res’ departmental community: my fellow TRR students who journeyed with me, and the staff that have buoyed me, especially my supervisor Jo Warin (not sure Jo knows how wonderful she is).

Lastly, anyone who knows me will know how much this thesis owes to the consumption of coffee – therefore my thanks must expressly go to the bean!

## LIST OF DEFINITIONS

**Advocates** – are individuals from the HE community who readily share their expertise with a range of people and organisations, from legislators to new home-educators providing advice and support, training LAs, engaging national debate and campaigning for the right to home-educate.

**EHE (Elective) Home-education** - Home-educators prefer the term home-education and the abbreviation HE. However, HE in academic circles commonly denotes higher education: therefore, this thesis uses the acronym EHE.

**Stakeholders** - are individuals, professionals, groups, or organizations which have an interest or concern regarding the practice of home-education and home-educators

**Stakeholder critics** – are stakeholders who have anxiety about the practice of EHE: particularly educational suitability, or welfare and/or rights of the EHE child. Further, they express concerns that EHE lacks professional oversight and call for changes in national policy by increasing the power and authority of LAs and officers.

**Ultra Vires** – Latin, meaning "*beyond the powers*", applied to actions taken by local authorities and their officers that exceed the scope of power given to them by law or national policy. It is a term often used within the sphere of home-education and is adopted in this study.

## **LIST OF ABBREVIATIONS**

**ADA** - Addiction to Drugs and Alcohol

**ADCS** – Association of Directors of Children's Services

**CME** – Children Missing Education

**CoP** – Communities of Practice

**CRA** - Cultural and Religious awareness

**CSE** - Child Sexual Exploitation

**DCSF** – Department of Children, Schools and Families (now defunct)

**DfE** – Department for Education

**ECHR** - European Convention on Human Rights

**EHE** – (Elective) Home-education – see above definition

**EHEGLA** - Elective Home Education: Guidelines for Local Authorities

**EO** – Education Otherwise (UK Home-education charity)

**EOTAS** – Education Otherwise than at School – see above definition

**EWO** - Education Welfare Officer

**FGM** - Female Genital Mutilation

**FII** - Fabricated and Induced Illness

**LA** – Local Authority

**LGA** – Local Government Association

**LGBTB** – Lesbian, Gay, Transgender and Bisexual



**LSCB** – Local Safeguarding Children Boards

**MH** – Mental Health

**NCB** – National Children's Bureau

**NGO** – Non-governmental organisation/s e.g. NSPCC

**NSPCC** – National Society for the Prevention of Cruelty to Children

**OFSTED** - The Office for Standards in Education

**SLB** – Street Level Bureaucrats

**SCR** – Serious Case Review

**UN** – United Nations

**UNCRC** - United Nations Convention on the Rights of the Child

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## CHAPTER 1: INTRODUCTION

The purpose of this study is to ascertain factors which impact on the implementation and adherence to nationally created home-education policy; implementation in England occurs at a local authority level. Specifically, this original piece of research is designed to assess perceptions of English local authorities (LA) towards elective home-education (EHE) policy implementation. This study seeks to understand issues and factors which have bearing on the policy administration of LAs and on the practices of EHE-officers as the implementers of policy.

It should be noted that in the UK the common term for the practice of parents who elect to educate outside of the school system, choosing instead home-based education is “home-education” (HE). However, this study has adopted the acronym EHE (elective home-education) as within educational research ‘HE’ is the acronym for higher education.

This study contributes to home-education knowledge by identifying factors that impact on local policy implementation. The study examines the propensity of LAs and EHE-officers to comply, or not, with national legislative requirements.

Specifically, this thesis enquires if local policy deviates from nationally derived policy and what influences any deviation, and what way any ‘redefinition’ impacts on LA and officer practice towards home-educators. The study’s contribution to EHE

knowledge arises in probing how locally defined EHE strategy, be it the LAs procedures and/or officer practice, becomes altered from that intended.

The study considers issues cited as causes of concern in respect of the practice of EHE: e.g. educational suitability, professional oversight, parental/child rights, and safeguarding. In respect of safeguarding: the extent, nature, and impact of conflating home-education with safeguarding and welfare. These issues of concern are assessed to see if they are a driver for local EHE-policy and practice to deviate from that intended by State policymakers.

Central to this study are the individuals tasked with implementing home-education policy, the EHE-officers, the factors which impact on officer practice. For instance: this study seeks to ascertain whether officers have training in home-education and/or does it deliver an understanding of Legislation and EHE practices; and to understand if any previously held professional role (e.g. teacher, social worker) impact on or influence their current role and practice? Factors which can influence or determine how officers, as the implementers of policy, might (intentionally or otherwise) within their individual practice implement policy which maybe at variance with Legislation and/or The Elective Home Education Guidance to Local Authorities (2013) published by DfE.

The study will provide insight into how LA policies, practices, and perception of 'duty' are frequently perceived by home-educators to be at variance with State Legislation

and Guidelines. Home-educators can see such 'variance' as LAs being 'heavy handed,' overly officious or acting *ultra vires* (beyond powers). Conversely, LAs, educational, welfare, health and other professionals, alongside national and local politicians, various professional and official bodies, organisations concerned with child welfare, and the media, can view home-education as problematic. This is based on the perception that the practice of EHE is 'relatively' unchecked and/or has become a charter for abuse, leading to calls to review current State Legislation and Guidance. It is within this dichotomy of views that disagreement and potential for conflict between home-educators and 'professionals' arises.

Therefore, this study focuses on the implementation of EHE-policy by LAs and considers whether LAs implement policy as intended by legislators. To help understand the issues that impact on the implementation by LAs and officers, the study draws on a range of data; LA data gathered from LAs responses to a questionnaire submitted via Freedom of Information Act, and a range of LA produced literature: letters, webpages, 'handbooks' and EHE job advertisements. Additionally, LA officers were interviewed as they are central players to policy implementation. LAs delegate day to day policy implementation to EHE-officers. Officer practice therefore becomes the 'public face' of policy as experienced by home-educators. To tease out these influences this study considers:

- Officer understanding and interpretation of Statute - Legislation and Guidelines,

- Officer understanding of conflict between national Statute and local policy, and the effect on officer practice,
- The influence of Local Safeguarding Children Boards, Serious Case Reviews, media, and social media on officer practice.
- The effect of officers' previous employment and professional training (e.g. Teaching).
- The nature, extent and impact of training received for the officer role (e.g. training on EHE, safeguarding,)
- Their understanding of EHE practices and EHE 'communities'.

Additionally, EHE-advocates were interviewed to provide insight into the home-educators view of State strategy (Legislation and Guidance) and implementation of policy and practice by LAs and officers.

## **Myself in the research**

**A 'note' on myself as researcher:** I come to this research project with a personal interest in home-education. This is an interest that grew out of experiences formed through home-educating my children and overtime I became a home-education advocate: one who publicly supports, advises, and promotes home-education. I am also a registered social worker, which gives me an additional level of insight into professional concerns regarding the practice of home-education.

**I am a 'retired' home-educator:** I home-educated my, now adult, children.

However, in recognition of their right to privacy I will not detail our home-education journey. At a personal level, I have 30 years' experience of home-education, adopting a child-led model of education where the young person directs their own learning and I act as facilitator. If the yardstick to measure success of this educational approach is the achievement of higher and postgraduate education, then in respect of my children, it was successful.

As a home-educator, I personally did not experience any of the issues raised in this study. As a home-educating parent I had limited but positive contact with our LA, to whom I was initially 'unknown' but my advocacy work brought me to their attention. The EHE-Officer was good, adhered to national policy, specifically the Guidelines (EHEGLA, 2013,) understood alternative forms of education, and sought to create a 'local policy' in consultation with home-educators. However, the replacement officer contacted me after six months in the role: with no training or support forthcoming from their employer they wanted help "to do the job right."

**I am a home-education advocate:** I am still active in home-education. Historically, I was local contact for home-educators in the North West, providing information and support. I met with LAs to encourage compliance with State policy and Guidance, and to improve relationships between local home-educators and their LAs. At the time of writing, I am a Trustee and 'Chair' of Education Otherwise: a national home-education charity providing EHE support and information. In this role, I have met



with several governmental bodies, LAs and organisations who have expressed concerns about home-education. I have created and/or act as an administrator on several home-education social media platforms. These are a mixture of national, local and specialist area groups (including Flexi-schooling and Academic Research) which aim to help and support home-educators and those interested in EHE.

Home-education has been a positive experience; my EHE-children became self-motivated, independent thinkers, craving out successful lives for themselves. In other EHE-children I have seen how, in the main, they grow and blossom educationally and as individuals. EHE, as opposed to a school paradigm of education, provides a personalised form of education, one more tailored to the child's interests, aptitude, and ability. However, I recognise EHE is not for all: it demands parental time and commitment and I believe that for many other educational roads are best travelled.

**I am a registered social worker:** I have worked within the field of LA child protection. One of the notions and concerns that come through in this study is 'professional' unease that the home-educated child is at increased risk of abuse compared with a schooled child. This fear can result in LAs, their officers and others in society at large having a heightened sensitivity to safeguarding: conflating elective home-education and welfare. My social work background gives me insight into professional concerns and issues of 'risk'.

**My impetus for this study:** My motivation arises through my experiences as an EHE-practitioner, advocate, and social worker. These experiences raised issues I thought were sufficiently significant and thought-provoking to merit in-depth research; inspired, in part, by increasing reports from home-educating families of negative experiences with LAs and officers. These reports came via Education Otherwise helpline and from EHE national and local groups. Such reports highlighted a range of issues including:

- LAs and officers acting officiously in purporting duties and powers they do not have.
- Threats of referral and referrals made to social service, especially if have recently deregistered or refused home visits.
- Concern that EHE-officers lack appropriate understanding of EHE and that officers are (frequently) teaching professionals who hold a school model of education.

My academic interest arose during the Badman Review (2009) which was commissioned out of concerns that home-education was a safeguarding risk. In 2012, I submitted a dissertation for an MA in Social Work which looked at the conflation of EHE and safeguarding (Mukwamba-Sendall, 2012). The successful completion of this initial study triggered my interest in issues of EHE-policy implementation, specifically, the factors that impact on local policy and officer practice, which forms the subject of this thesis.

**Researcher awareness:** I am acutely aware that my own experiences and insights as a home-educator and advocate, whilst useful, could impact on my research. However, my training as a social worker provides the insight of a professional and social work practice is by its very nature reflective (BASW, 2017). Therefore, during the process of this study, I have actively sought to be self-critical, to constantly question my analysis, to remain reflective and to find balance. I shall revisit this issue in Chapter 5.

### **Home-education: scene setting**

In the post-war period, a small number of parents began to home-educate or 'educate otherwise' (term arising in the 1944 Education Act, S. 36). Over time the small but growing, informal network of home-educators led to the establishment of the national charity Education Otherwise (EO) in 1997. EO's principal aim was to provide a support and information network for families who 'educate otherwise'. Recent years have seen an increasing growth in number of home-educating families, as the internet, social media platforms and wider publicity have led to a burgeoning of awareness and interest in EHE.

Home-education, at its simplest, is education provided by a parent or guardian which follows their own philosophical belief system and methodology. Parents educate their child at home instead of delegating that responsibility to a school and without recourse to the State purse. Home-education as a practice is the ultimate expression

of parental involvement: requiring commitment to provide their child's education and individual educational needs themselves (Jeynes, 2005).

**Education Act 1996 S. 7:** sets out parents' duties, namely "*to cause their child to receive efficient full-time education suitable to age, ability, aptitude and special needs... either by regular attendance at school or otherwise.*" The wording 'or otherwise' denotes that while education is compulsory, school is not, thus providing the option to home-educate. Crucially S. 7 places the duty to ensure a child receives an education on the parents. Parents can decide not to delegate the duty 'educate' to schools and can elect to provide their children with an education via home-education (Hopwood *et al.*, 2007; Nelson, 2010; Jennens, 2011; Education Committee, 2012; Lees, 2013).

In the exercising of the right to home-educate families often come to the attention of their LA. LAs are directed within the Statutory Guidance on Children Missing Education (2009) to identify all children in their area who might be missing education. While Case-law has directed that it is reasonable for LAs to undertake "*informal enquiries*" to ascertain a child's educational provision (Phillips v Brown, 1980). LAs are obligated to act '*if it appears*' that a child is not receiving education (Education Act, 1996, S437,) and to enquire further. However, Guidance (DfE, 2013, 2015a, 2017b; EHEGLA, 2013) makes clear that this duty becomes discharged once the LA has confirmation that the child is home-educated. Moreover, there is no

overarching duty to ascertain suitability of home-education; LAs need only act where there is genuine appearance of failure to provide an education.

There is no legal definition or determination of home-education in Statute, although Case-law (judicial decision making) has offered some clarification (Eddis, 2015). The absence of a defined determination creates an environment where perceptions and interpretations of LAs, officials and home-educators are likely to differ. A lack of homogeneity is evidenced by individual LAs policy and practice differing, and with all potentially being non-compliant to Statute and national Guidance. The implementation of Statute and national Guidance, as expressed in local policy and practice, is a source of conflict. For instance, conflict can arise in the meaning of providing a child with *“efficient full-time education suitable for their age, aptitude and ability”* (Education Act 1996, S. 7): home-educators view of education can differ markedly from EHE-officers trained in a school paradigm of education, based around curriculum and in school-based socialisation.

In the UK, the responsibility education (and thus for home-education) in Scotland, Wales, and Northern Ireland is under devolved administration. Therefore, this research solely considers the impact of Legislation, policy, and practice in England. The system of local government in England is one whereby the creation of Legislation arises nationally within Parliament, but many of the functions are administered at local level by LAs. Parliament delegates a wide range of legislative policies (for instance public health, social services and education) for local administration and

implementation (Chandler, 2009; Wilson and Game, 2011). This delegated system comes with the expectation and obligation that LAs will ensure that legislative requirements are complied with, including having regard to any relevant statutory Guidance. As LA functionaries EHE-officers have similar expectations and obligations (Elliot and Thomas, 2014, p. 290-296; Barnet, 2016, p274-276).

LA functions and responsibilities are conferred through Acts of Parliament and associated legal duties. Therefore, in respect of home-education the expectation is that LAs and officers will adhere to relevant Acts and statutory Guidance. Specifically, the 'Elective Home-education: Guidelines for Local Authorities' (EHEGLA) (DfE, 2013,) which the Department of Education (DfE) directed must be treated as statutory (DfE, 2011). Nonetheless despite this 'expectation' there are anecdotal reports from home-educators and available evidence that LAs and officers fail to adhere to this direction (Stuart, 2010, 2010a, 2014, 2014a, 2014b; Sauer, 2010; Truss, 2014).

The issue of adherence arises within each LA's administration, interpretation and implementation of Legislation and Guidance. In this manner policies and practices can vary between LAs. Individual LA and officer understanding of their responsibilities and duties can differ and lead to individual policies and practices divergent from those intended by legislators (HC 559-1, 2012; LGA, 2016). LAs and officers can also "*believe*" that local policy supersedes State Legislation (Stuart, 2014). Such inconsistency potentially creates conflict between LAs, their officers and home-educators. As this study will show home-educators and EHE-advocates have

divergent views of LA duties and powers as codified in State Legislation and Guidance. LAs and officers' implementation practices lie in their interpretation of policy, be it Legislation or Guidance. The interpretation of Legislation and Guidance is contentious; for instance, home-educators and EHE-advocates express divergent interpretations on the roles and responsibilities of LAs, their officers and EHE-parents. The Parliamentary Education Committee (HC 559-1, 2012) acknowledged that local policies and practices are often divergent from State strategy recognising that this jeopardises the relationships between LAs, their officers and home-educators (S. 11).

It is in the area of local interpretation, be it the local authority or their officers, that State Legislation and relevant Guidance that EHE-policy can become altered from that intended by Statute. The aim of this study is to identify factors which affect or negate LA and officer compliance. This study seeks to assess LA implementation of national EHE-policy (Legislation, Case-law, and Guidelines) examining specific issues which affect LAs interpretation of the impact of local policy and officer practice.

The study considers several issues:

- Do LAs **interpret** and implement policy which differs from State defined Legislation and Guidelines on EHE-policy?
- The role of LA delegated officers: their understanding, ability, and/or willingness to adhere to State Legislation and Guidelines.

- Whether LAs and officers do act outside their powers. If so, is this driven by increased sensitivity to perceived concerns in respect of the education and welfare of EHE-children?

A LA's interpretation of State policy (e.g. Legislation and Guidance) will guide their officer-employee practice. As professional frontline staff EHE-officers have a measure of autonomy to decide how they administer LA policies and procedures with a degree of leeway to interpret and focus their role. Officers are the visible implementers of policy: the impact of their practice choices directly impacts the experience of policy by EHE-families. Therefore, the influences which might bear on officer practice are of crucial relevance to this study whose aim is to identify and assess the level, cause, and validity issues which impact on EHE-policy implementation. Eddis (2007) in her doctoral research noted that LA officers tend to focus on three issues when dealing with EHE. Firstly, a preference for home-education to reflect the national curriculum which officers considered to be: broad and balanced, providing standardisation for assessment and the best opportunity for future study or employment. Secondly, socialisation is critical, inclining towards a school model of playground interaction with contemporaries. Thirdly, concern about 'welfare,' frequently conflating home-education with welfare and increasing their activity to monitor and assess EHE.

My MA dissertation (Mukwamba-Sendall, 2012) specifically examined the rising tide of concern over welfare and its conflation with home- education. This study



considers the impact that increased expressions of safeguarding concern have on LA and officer policy and practice. LAs have a duty to *'ensure appropriate arrangements to safeguard and promote the welfare of all children residing within their area, including EHE-children'* (DoE, 2010, para. 2.21). In recent years, LAs are interpreting this as a proactive policy, seeking to see children and conduct home visits; rather than the reactive duty Legislation intended thereby exceeding their duty and powers (Charles-Warner, 2014). Local Safeguarding Children Boards (LSCB) are directing EHE-officers to report children to Children Social Care who are unseen and/or unvisited, increasingly families are being subjected to child protection assessments (Sauer, 2010, 2013; Education Otherwise, 2014).

## **The Study and Research Questions**

The potential for conflict in the implementation of EHE-policy and its impact is the crux of this research. The study is a considered undertaking seeking to understand how LA locally defined policy and procedures evolve from that put forward by central government. This thesis examines how LA policy impacts on the practice of EHE-officers delegated to carry out LAs functions and officers' ability or willingness to adhere to national Guidance. Finally, this study considers the ramifications implementing local EHE-policy and practice which does not reflect national Guidance and Legislation in respect of home-education. This study interrogates how far *'local authorities observe State Legislation and Guidelines in respect of home-education? What factors affect officers' perceptions of policy and practice around EHE?'*

Therefore, to arrive at a response the study poses several interlinked research questions:

1. How far do LAs interpret national EHE Legislation; how in this reflected in their local policy?
2. How does LA interpretation of State Legislation and Guidelines impact on LAs officer practice and their ability or willingness to adhere to State Legislation and Guidelines?
3. What specific issues are affected by LAs interpretation of State Legislation and Guidelines?
  - How does this impact on LAs policy and officer practice?

To answer these questions a there is a wide-ranging review of EHE relevant literature, including Statute, research, and reports (Chapters 2 and 3). The study utilises a theoretical framework of policy implementation models (Chapter 4). It draws on a range of research methods and thematic analysis of LA policy administration and officer implementation practices. The evidentiary data comes from two discrete areas: LAs drawing on the responses to an extensive questionnaire and a review of a variety of LA generated documentation; and extended semi-structured interviews with LA officer implementers and EHE-advocate (Chapter 5). The data findings are presented in Chapter 6 and Chapter 7 respectively. Discussion of the data findings are given in Chapter 8, whilst conclusions and recommendations comprise Chapter 9.

## CHAPTER 2: STATE STRATEGY: REVIEW OF POLICY LITERATURE - LEGISLATIVE AND GUIDANCE.

*"The respect of parent's freedom to educate their children according to their vision of what education should be has been part of international human rights standards since their very emergence."* (The Special Rapporteur to the United Nations Commission on Human Rights, 8th April 1999).

.....

This study's concern is solely the management and implementation of home-education policy within England. LAs have responsibility for local administration of State sector education services, with their functions set out in Acts of Parliament and associated legal duties (Chandler, 2009; Wilson and Game, 2011; Chitty, 2014; Parliament UK, 2017). Therefore, management and administration of these functions and duties occurs at local level, with policies and practices varying between authorities (Local Government Association, 2014). The expectation is that LAs and their delegated officers will adhere to Acts of Parliament and related Guidance (DfE, 2011; Elliot and Thomas, 2014, p. 290-296; Barnet, 2016, p274-276) but determination as to how they meet the requirements occurs locally. However, the [Parliamentary] Education Committee (2012) noted that: local policies and practices are often at variance, not only between LAs, but crucially, with State Legislation and Guidelines, and as a result jeopardise relationships between stakeholders (S. 11). It is the area of local interpretation of State Legislation and Guidance by LAs, which impacts on officer practice and policy outcomes.

Stuart (2014,) then Chair of both the ‘Education Select Committee, and the All-Party Parliamentary Group on Home-education’ highlighted that LAs interpretation of ‘duty’ accorded via Legislation and Guidelines resulted in policies and practices that can exceed their responsibilities and/or powers. Additionally, ‘some LAs hold the belief that local policy supersedes national Legislation, creating conflict where LAs duties and powers are at variance with their perceived responsibilities’. Therefore, conflict arises between the intent of State strategy (Legislation and statutory Guidelines) and policy implementation at a local authority level, when it can be prone to interpretation. It is the nature of interpretation and its impact on local policy that forms the crux of this research: to understand the formation of LA policy and procedures, which is sited in their interpretation of Legislation and Guidelines, and how the interpretation of policy is revealed routines and procedures of officer-implementers’ practice.

This chapter will summarise and synthesise legislative literature providing an assessment of government in policymaking: Legislation, Case-law, and Guidance relevant to home-education. Understanding the legislative base is essential to gauge propensity for divergence from intended national policy. This chapter also includes a legal assessment by academic commenters. This review is crucial to ascertaining legal nuances so providing context to Chapters 6 and 7’s ‘data-analysis’ concerning the implementation of policy and practices of local authorities and LA officers respectively. Chapter 3 will review the wider spread of non-legal literature pertaining to home-education.

## Historical Overview of the Development of Education Statute

For historical context, this section provides a summary of the history of home-education and the legal position in England prior to the pivotal 1944 Education Act. This is to provide legislative context to development of EHE's legal status within England today.

The practice of home-education (EHE) is long established preceding the 19th century introduction of mass universal education. Traditionally, most education within a home setting was often the only education children received (Knowles, 1988; Knowles *et al.*, 1992; McIntyre-Bhatty, 2007). The progression to universal education followed the implementation of various nineteenth century Factory Acts, which sought to prevent the employment of very young children. The introduction of universal education was a means of social control in respect of children left to their own devices and to create suitable future workforce (Smithers, 2008).

The 1876 Elementary Education Act introduced universal compulsory education, whereby children aged 5 to 10 years must receive education in reading, writing and arithmetic. This Act introduced the role of School Attendance Committees, with powers to compel attendance at school. The 1876 Act also introduced in law the principal that it is the "*duty of parents to secure the education of their children.*" This crucial wording directs and places the duty to ensure education unequivocally on the parent.

The 1895 the Bryce Commission made two impactful recommendations for greater unity of educational control relevant to this study. The Commission created a national centralised education authority initially called the Board of Education, later the Department of Education (Aldrich, 2000). It established 318 local education authorities (LEA,) based upon city, counties, and county boroughs. These authorities were directed to consider all educational needs, to take such steps as necessary to supply or aid the supply of education, and to promote the general co-ordination of all forms of education (S. 2(1), 1902 Education Act). These functions in adapted form are relevant to local authorities today. However, until the 1944 Education Act these bodies showed no interest in 'home-education as it was mainly the preserve of the country's elite' – whose children were often educated at home by an employed 'teacher' (Wootton, 2003; Webb 2011).

The 1944 Education Act enshrined the principle of home-education as a legal option in England. S. 36 of the Act stated parents have a "*duty to ensure an efficient full-time education, suitable either by regular attendance at school or otherwise.*" Whilst home-education was never expressly illegal the two words "*or otherwise*" confirmed that parents could, in exercising their 'duty to ensure' provide an education for their child 'otherwise' than in school and via home-education. The phrase '*or otherwise*' establishes the lawfulness of home-education and provides the crucial distinction between education and school attendance. It establishes the presumption, in English law, that it is education that is compulsory, while attendance at school is not (Monk, 2009, p. 159). However, home-education is not an explicit right: the term '*or*

*otherwise*’ is undefined in Statute and does not ‘name’ home-education. Monk (2004) maintains that it is arguable whether the intention was to give a universal right to home-educate (p. 572). This is a view shared by Kitto (1983) a home-education proponent, who noted that inclusion of the phrase ‘or otherwise’ was to accommodate the privileged classes who wanted to continue educating at home with tutors. Legislators did not envisage that these two words ‘*or otherwise*’ would allow any parent to avail themselves of this effective loophole - to opt out of the general presumption of a school-education. Nonetheless, the explicit right of children to receive an efficient fulltime education, and the unintentional right to home-educate remains in subsequent Education Acts. This provides evidence of the continuing acceptance of validity of education outside the school system.

## **Current Education Legislation**

**The 1996 Education Act S. 7:** this directly replicates S. 35 of the 1944 Act without change or debate (Bainham and Gilmore, 2013, p. 897). Responsibility to ensure a child receives an education continues to reside in the parents as S. 7 makes clear:

*Duty of parents to secure education of children of compulsory school age.*

*The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable—*

*(a) to his age, ability and aptitude, and*

*(b) to any special educational needs, he may have,*

*either by regular attendance at school or otherwise.*

However, comparison of the relevant sections of the 1944 Act and the 1996 Act do have a notable change in the terminology. The 1944 Act spoke in terms of *compulsory schooling* (S. 35 to S. 40,) whilst the 1996 Act replaces this phrase by adopting the concept of *compulsory education* (S. 7). This reinforces the determination that education is compulsory while attendance at school is not. The change from compulsory schooling to compulsory education, whilst not explicitly referencing home-education, solidifies the right to education outside the school system.

The phraseology of *'the duty of the parent of every child of compulsory school age to cause him to receive efficient full-time education'* is one of the few positive duties imposed on parents in English Statute (Petrie, 1998; Monk, 2009; Jennens, 2011; Charles-Warner, 2014). The right to home-educate is, however, conditional on parents complying with the duty to provide education. Additionally, due to childrens' lack of capacity, parents have a duty as the child's representative to act in their best interest (UN, 1989,) whereby, parents determine for the child what (they believe) the child would choose if they were able (Archard, 2014, p. 3-4; Eddis, 2015, p. 102). In other words, parents have responsibilities for and to their children, not rights over them (Probert *et al.*, 2009; Bainman and Gilmore, 2013, p. 449). But, under S. 437(1) Education Act 1996 LAs are afforded powers to act if:

*"if it appears to a local authority that a child of compulsory school age is not receiving a suitable education by regular attendance at school or otherwise **they shall serve** a notice in writing on the parent requiring them within the period specified in the notice (**to show**) that the child is receiving such education."*



Worded negatively S. 437 is a reactive duty. The phrasing of *'if it appears'* is directive: LAs shall only intervene *if it appears* that parents are not providing a suitable education. There is no direction for LAs to take pre-emptive or proactive steps to assess educational suitability. However, 'suitable education' is undefined in Statute or Guidance (Monk, 2004, p572; 2009, p. 165). Nonetheless, *if it appears* to the LA that the educational provision is unsuitable or inadequate they can *serve notice* on parents requiring them to demonstrate their provision. The wording of S. 437(1) is such that it takes the form of a sifting test, giving LAs a limited duty to take a general look and the authority only to act if further enquiry is necessary. However, Monk (2004, 2009) disputes this view and interprets the wording *'if it appears'* as giving LAs the right to determine what is or is not a *'suitable education'*. Thereby, the duty to ensure that education is suitable lies not with the parents but the LAs. For Monk, the direction to LAs is absolute and proactive, arising from the phrase *'they shall serve a notice'*. Despite a lack of definition of suitability LA officers cited Monks' interpretation as justification to routinely ask for evidence of educational suitability (see Chapters 6 and 7).

## **Other Relevant Legislation to the Practice of EHE**

**The Education Reform Act 1988** established the National Curriculum; however, it only applies to children who are on a school roll. Therefore, home-educating parents do not have to use the national curriculum and can select the style and form of education they provide.

**The Education (Pupil Registration) (England) Regulations 2016** prescribes the responsibilities of parents and schools when a child is (to be) removed from a school roll to be home-educated:

- The parent must write to the head,
- The head must remove the child's name immediately, and
- The head must notify the LA.

These Regulations make it clear that the onus is on the school to notify the LA of a child's deregistration. There is no requirement on parents to notify the LA thus a child who has never been on a school roll may be 'unknown' (Morton, 2010). This creates an anomaly in that home-educators who remove their children from the school roll are by default known to LAs. If the Government were to introduce registration for home-educators, the Regulations would have to be extended in order to place an obligation on parents to notify LAs (Monk, 2009).

## **Human Rights Legislation**

Increasingly, Human Rights Legislation appears in narrative around home-education. The 'right to education' is intricately connected to the 'rights of the child' and to the overall furtherance of human rights.

**European Convention on Human Rights (ECHR) 1950** is given effect in English law by the Human Rights Act 1998. Of specific relevance is Article 2 Protocol

1 ECHR: Right to Education, which states that “*no one shall be denied the right to education.*” The wording is negatively phrased enabling Monk (2003, 2009, 2015, 2016) to argue that this imposes a requirement on LAs to ensure that children are receiving an education. However, in addition to this negative phrasing, Article 2 of Protocol No.1 goes on to affirm that the “*... State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*” This implies a positive obligation on the part of the State, in countries where home-education is a legal option, to respect the rights of parents to provide an education in line with their own philosophical viewpoint. Therefore, and counter to Monks’ viewpoint, whilst a child must not be denied an education, it is the parents’ convictions which are supported, not those of the child (Charles-Warner, 2016).

**United Nations Convention of the Rights of the Child 1989** to which the UK is a signatory, makes clear in Article 5 that: ‘*States shall respect the responsibilities, rights and duties of parents*’. This affirms the role of parents to choose how to exercise this duty. Article 5 is reflected in the Education Act 1996 (S. 7,) whereby it is the duty of parents to ensure provision of suitable education. Article 5 makes it clear that parental wishes are to be respected, not usurped by the State: it does not remove responsibility for children from parents nor does it increase the authority of the State. However, Lubienski (2003) sees an inherent danger that some parents may not act in the best interest of the child, and this concurs with Monk (2003, 2009, 2015, and 2016) that home-education requires increased State oversight.

## Home-education Case-law

In considering how far LAs and officers observe national home-education policy Case-law forms an important aspect of State policy creation. Case-law arises in judicial decision making and is a cornerstone of the English legal system creating a doctrine of legal precedent. Individual judgments establish a body of Case-law either by: creating a legal precedent where no Legislation applies; or by interpreting Legislation where it does. Inferior Courts and relevant bodies must have regard to such judgements (Williams, 2002, p. 111-120).

The choice to home-educate has seen five main challenges in the courts, each case relevant to a specific issue in respect of the right to home-educate. In theory, these challenges are contrary to law or challenges that are 'diaphanous' showing disdain or dismissiveness towards EHE (Lees, 2014, p. 38). Home-education Case-law is important to the implementation of EHE-policy and practice given they are binding and not open to reinterpretation. There is a legal expectation that LAs and officers will observe these judicial decisions which should be reflected within local administration and implementation practices.

**Presumption of the right to home-educate:** Norfolk Quarter Sessions by the Appeal Committee: 17th July 1962 (unpublished) confirmed the right of all parents to choose to home-educate their children. Thereby, confirming that education is compulsory, while attendance at school is not.

**Home visits:** this judgment tested the assumption that LAs may not insist on seeing education in the home but acknowledged there may be cases where that is necessary, in the ‘particular’ circumstances of the case. The judgment confirmed that there is no general right for LAs to visit unless there are very specific or extreme mitigating factors (1963 Tweedie Regina v Surrey Quarter Sessions Appeals Committee ex parte Tweedie QBD 61 LGR 464).

**Informal enquiries:** this judgement tested the scenario where parents declined to give any information to the LA’s enquiries to ascertain if a child was receiving an education. Judgment found if parents give no information to the LA, it would not allow that authority to consider whether ‘it appears’ that the parents are fulfilling their duty, but to assume that not to be the case. This judgement reinforces the two-step nature of the Legislation in respect of home-education:

- Step. 1 allowing the LA to make an informal enquiry as a ‘sifting process’,
- Step. 2 to decide whether ‘it appears’ that education may not be suitable.

It cannot and does not provide that a parent must satisfy the Local Authority prior to the serving of a notice under the Education Act 1996 s437. As Lord Donaldson stated:

*‘Life would have been much easier for all concerned, including Mr Phillips, if he had seen fit to place evidence before the magistrate designed to prove this point, but he did not do so’.*

The judgement saw refusal to respond to the LA 'informal' enquiries as unreasonable, it deemed this was not necessarily sufficient reason to conclude that the education being provided is unsuitable'. However, refusal would allow the LA to consider whether it is or not and enables them to consider the service of a notice under the Education Act 1996 s437. (1980 Phillips v Brown, Divisional Court (20 June 1980, unreported).

**Suitable education:** the judgement directed that education must meet two thresholds

- *The education: prepares child for life in modern society, and*
- *Enables them to achieve their full potential.*

(Harrison and Harrison v Stevenson Appeal, 1981, Worcester Crown Court, unreported).

**Extended definition of suitable education:** this judgement extended the definition of suitable education to:

*'education: prepares child for life in modern civilised society' with the addition of 'equips a child for life within the community of which he is a member, so long as it does not foreclose the child's options in later life ...'*

(Woolf, J., 1985, R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust).

**Relevancy of judgements to EHE:** these Case-law judgements form a doctrine of precedent, which arises through Courts adjudicating the intention of relevant Statute. Courts interpret existing Legislation applying it to facts of the case and provide the legal rationale behind their decisions. Existing Legislation interpreted by courts forms Case-law, sets legal precedents and becomes part of the law. EHE Case-law has clarified several issues in respect of home-education policy implementation, with the expectation that LAs, EHE-officers and EHE-families should observe its direction.

### **Department for Education (DfE) Guidance - applicable to EHE:**

Primary Legislation formed by Acts of Parliament and relevant Case-law form the bedrock of EHE-policy. However, Legislation is complex, challenging to understanding and compliance. It is therefore routine for Government departments to issue 'Guidance' to make legislative policy accessible and understandable.

This study considers how far local authorities and officers observe State policy in respect of home-education. Crucial to transmission of State EHE-strategy is the publication of Guidance to explain policy expectations. There are two sets of Guidance which have specific relevance to home-education and both are issued by the Secretary of State for Education. Firstly, Elective Home Education Guidance for Local Authorities (EHEGLA) (2013) which is the authoritative document detailing how LAs and EHE-officers should act in respect of EHE. Secondly, the Children Missing Education Guidance (2013/2015) makes limited but specific reference to home-education, by highlighting that a home-educated child is not a child missing

education (CME). The two guidance's outline statute and the roles, and responsibilities that LAs need to follow (Gov.UK, 2017a). The DfE informs LAs that 'Guidance *'is issued by law; you must follow it unless you have a good reason not to'* (Gov.UK, 2017b). Therefore, such guidance is deemed statutory, thereby forming secondary Legislation.

However, Monk (2016) has contested the 'statutory' nature of Guidance, specifically in respect of the EHEGLA (2013). Noting that the EHEGLA (2013) Guidance states:

*"the purpose of these Guidelines is to support local authorities in carrying out their statutory [sic] responsibilities and to encourage good practice by clearly setting out the legislative position, and the roles and responsibilities of local authorities and parents in relation to children who are educated at home"* (para. 1.3).

Monks' opinion is that EHEGLA (2013) is advisory as *"the purpose of these Guidelines is to support ... to encourage good practice."* If his interpretation is correct this has implications for the local administration and implementation of State generated EHE-policy. As it would provide some justification for LAs and officers adoption of locally defined policies that lie beyond the dictates of the EHEGLA.

However, the EHEGLA (2013) explicitly states the guidance is *"clearly setting out the legislative position, and the roles and responsibilities"* (para. 3.1). This statement is a firm indication that the intention of the DfE is for the Guidance to be treated as statutory and followed. Further, the DfE (2011) abolished the category of non-



statutory Guidance, directing that the Guidance is *“by definition statutory and you must have regard to it.”* The DfE explicitly noted that Guidance exists to clarify powers and duties arising in Statute and to tell *“duty recipients”* how they should exercise such powers and duties. Furthermore, LAs and their officers must adhere to the Guidance when they ordinarily apply their powers and duties as directed (DfE, 2011; Gov.UK, 2017b). Additionally, Working Together to Safeguard Children (WTSC) (HM Government, 2015) which details a wide range of Legislation under which this *“Guidance is issued under”* and stresses in S. 3 that the LA must have regard to any Guidance given to them by the Secretary of State. Further the WTSC states Guidance *“applies, in its entirety ... and should be complied with unless exceptional circumstances arise”* (S. 4 and S. 5). The EHEGLA (2013) is Guidance issued by the Secretary of State; therefore, LAs are not at liberty to ignore it.

If as Monk (2016) contends, that EHEGLA (2013) is non-statutory Guidance (had the DfE not abolished this category) then Case-law arising from *Ali v London Borough of Newham* [2012] EWHC 2970 would be relevant. The judgement although not related to education, decided that LAs must give due regard to Guidance *“as if it is authoritative”* as it emanates from the Secretary of State. The judgement confirms that, LAs and officers should, as a rule, follow and apply within their local administration and practice Guidance, this decision extends to the EHEGLA.

## **Elective Home Education Guidance for Local Authorities (EHEGLA) (2013)**

The introduction of EHEGLA in 2007 (revised 2013) provided State recognition that EHE is part of the educational scene (Lees, 2014). The Guidance is of pivotal importance as it sets out the LA and officer responsibilities, detailing the nature and extent of their powers. It also provides an overview of rights and responsibilities of parents, specifically detailing what parents do not have to do. The content of EHEGLA is crucial to this study as it provides a road map of how LAs and the officers should act in respect of home-education. This provides the means to measure LAs and officer adherence to national EHE-policy in their local implementation and practices.

Reflecting the 1996 Education Act S. 7, whereby it is the parent's duty to ensure that their child receives '*efficient full-time education suitable for their age, aptitude and ability at school or otherwise*' the EHEGLA confirms that home-educated children remain the parents' responsibility (para. 2.1. and para. 2.2). The Guidance verifies that LAs have a duty to establish the identities of children not receiving an education but that they can only act if it *appears* that a child is not being educated (para. 2.6). Therefore, LAs can only reactively intervene or request 'evidence' '*if it appears that parents are not providing a suitable education*' (para. 2.7). Guidance footnotes direct LAs to Case-law (Woolf, 1985) for a definition of "efficient" and "suitable" education (para. 2.3). But the Guidance makes it clear that LAs are not to routinely monitor, evaluate or assess EHE-children (para. 2.7).

The Guidance details what LAs carrying out informal enquiries might 'reasonably expect' parental responses as to provision to include:

- Consistent involvement of parents or other significant carers,
- Recognition of the child's needs, attitudes, and aspirations,
- Opportunities for the child to be stimulated in their learning experiences,
- Access to resources/materials required to provide home-education for the child – such as paper and pens, books and libraries, arts and crafts materials, physical activity, ICT and the opportunity for appropriate interaction with other children and other adults (para. 3.15).

However, paragraph 3.6 advises that the choice of how to respond to informal enquiries rests with the parents. There is no requirement for: parents to accept visits, to show work, or for children to meet the LA officer. The Guidance confirms that parents are not required to inform the LA of their decision to EHE or register with them (para. 2.4) and that it is reasonable to allow parents a realistic timescale to settle into home-educating (para. 3.11). Paragraph 3.13 details for LAs and officers the things parents 'are not required to do:'

- Teach the National Curriculum,
- Provide a broad and balanced education,
- Have a timetable,
- Have premises equipped to any particular standard,
- Keep set hours during which education will take place,

- Have any specific qualifications,
- Make detailed plans, in advance,
- Observe school hours, days, or terms,
- Give formal lessons,
- Mark work done by their child,
- Assess, formally, progress or set development objectives,
- Reproduce school type peer group socialisation,
- Match school-based, age-specific standards.

As Pattison (2015, p. 632) notes in each case this is a “*category applicable to mainstream education which then becomes nullified.*”

Lastly, the Guidance confirms a general duty under S. 175(1) of the Education Act 2002 to safeguard and promote the welfare of [EHE] children. However, it does not extend the LAs functions. Explicitly, stating that LAs do not have powers ‘*to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of EHE*’ (para. 2.12; para. 3.6). The Guidance clearly states LAs are not accorded powers ‘*to see and question*’ EHE-children, solely to ascertain if they are receiving a suitable education, nor to do ‘safe and well checks’ (para. 2.15). The EHEGLA makes it clear that local authorities’ safeguarding powers extend to all children, whether in school or home-educated: the mere fact that a child is ‘home-educated is not a cause for the use of the Children Act intervention powers’ (Bishop, 2015).

## Children Missing Education Guidance

The DfCSF recognised the potential for conflation with children missing education (CME) within the 'Revised statutory Guidance for local authorities in England to identify children not receiving a suitable education' (2009). The Department made it plain to LAs that home-educated children are not CME. However, Children Missing Education Guidance (2013) [to read alongside the Education (Pupil Registration) Regulation 2016]] mandates LAs to identify CME and directs schools to make reasonable enquiries to track down a 'disappeared' child's and to additionally notify LAs of non-attenders or children removed from roll (CME, 2013, p7). The updated 'Children Missing Education Guidance' (2016) strengthened the revised 'Pupil (Registration) Regulations' (2016) to enable a 'robust tracing' of children who are not in school; requiring schools to collect and record onward destinations of children removed from roll and to provide details to LAs. LAs must investigate children not attending a school when the reason is unknown to ensure the child is receiving suitable education (CME, 2016, p. 12).

The 2016 CME Guidance changed in one significant aspect regarding EHE-children from the 2013 Guidance. Previously the requirement had been that schools only had to notify the LA on deletion of a child from the school roll (CME, 2013, p. 5). The revised Guidance 'advises' schools to contact the LA if "*parents orally indicate that they intend to withdraw their child to be home-educated.*" (CME, 2016, para. 14). This additional wording encourages schools to pre-empt formal deregistration by alerting the LA in advance: to discourage hasty decisions to home-educate as a

response to potential issues with the school and allowing the possibility of resolution.

## **Theoretical Consideration of Home-education Related Statute**

Theoretical literature looking at issues of nature, function, methods, and outcomes of EHE inspection exists in relation to European countries which permit home-education (Petrie, 1995; Petrie *et al.*, 1999; Guttman, 2000; Koons, 2010; Blok and Karsten, 2011). This European body of research focuses on a growing recognition of childrens' rights and the right to education via the United Nations Convention on the Rights of the Child, Articles 28 and 29; and The European Convention on Human Rights, Article 2. These authors identify conflict between the rights of children, parents, and the State.

Home-education is "*ambiguous, in academic or practitioner texts it receives little, if any, attention*" (Monk, 2009, p. 155). This statement reflects that academia has all but ignored EHE specifically university funded educational or legal research. More typical is the proponent authored literature and research rising from within, and reflective of home-education communities of practice (CoP,) (e.g. Petrie, 1992; Barson, 2004; Charles-Warner, 2014). Additionally there is targeted research into specific concerns commissioned by stakeholder CoPs e.g. safeguarding CoPs (e.g. Brandon *et al.*, 2013; NSPCC, 2014a; Forrester *et al.*, 2017).

Most UK academic EHE literature briefly outlines English Statute to give context to the legality of home-education. There is only limited literature which considers the wider legal situation in any depth (Petrie, 1993, 1998, 2001; Whitehead and Crow, 1993; Lubienski, 2003; Gabb, 2004; Dowty, 2011; Charles-Warner, 2014; Donnelly, 2016). Monk (2003, 2004, 2009, 2015, 2016) is unique in writing from a purely *“theoretical and socio-legal perspective.”* His interpretation on EHE Statute is of relevance to this thesis, as a major legal commentator, and because he *“advises and works with a number of public agencies into issues relating to home-education, [and] children’s rights”* (Monk, 2017). This includes providing training and advice on the legal aspects of EHE, to LAs, officers and other organisations e.g. the Association of Elective Home Educating Professionals (AEHEP). In chapter 7 the interviews with officers further confirmed that LAs and officers are now using the advice of Monk to inform their local policy and practices. Therefore, to answer the research questions (see p. 32) it is pertinent to review the main themes of Monks’ interpretation of Statute given his opinion is impacting the standpoint of LAs, officers and stakeholders by informing their interpretation of national EHE Legislation.

Monk views the practice of home-education as challenging to the State and democracy (Monk, 2003, 2009, 2015). Contending that the State, in the guise of LAs has a ‘legitimate responsibility to monitor parents’ provision’ (2009, p. 29). The State is obligated to ensure children's rights, including to oversee and to scrutinise home-education. In citing Bainman (2005, p. 542) *“to deprive a child of the experience of school life would, in itself, be a denial of children’s rights and a failure to discharge parental responsibility ...”* Monks’ position is seen to reside in an acceptance of a

school paradigm of education. Monk sees school attendance as both appropriate and a basic right (2003, 2015). The crux of Monks' argument lies in two key issues. Firstly, he sees unregulated home-education as an implicit challenge to State education and wider societal aims of upholding values of harmony, democracy, and the status quo. Secondly, the potential for EHE to hide or remove children from 'normal' society denies or limits their individual rights to develop their own views and values which attendance at school protects. Monk sees these two issues as interrelated: failure to send children to school will result in weakening the States influence (2009, p. 180).

Monk (2003, 2015) opines that EHE has become a trifold 'rights' issue. The right of parents to home-educate, the right of the child to an education, and the right of the State to protect a child's right to education which is achieved by setting standards and undertaking necessary verification. It is a trifold rights issues which becomes visible in the conflicting perspectives of EHE-stakeholder communities of practice (see Chapter 5). For instance, educational professionals, within their CoPs, may be more concerned the child's right to education or ensuring State oversight. Whilst, home-educators, within their CoP, may priorities their right to home-educate unimpeded.

Monk sees the practice of home-education as quashing the child's rights and silencing their voice in the pursuance of parents' rights to home-educate. He asserts that this contrary to the 'best interests' principle [which arises in Article 3 of the UN



Convention on the Rights of the Child] that in “*all actions [in all public and private institutions] the best interests of the child shall be a primary consideration*” (Monk, 2002, p. 48). Whilst later he contends that:

*“ ... Art 28 states that ‘young people should be encouraged to reach the highest level of education of which they are capable’ and Art 29 stipulates further the goals of education. These provisions read together with the requirement in Art 4 that Governments ‘take all available measures to make sure children’s rights are respected, protected and fulfilled’, not only legitimises but, arguably, requires at least some form of State monitoring of home-education”* (Monk, 2009, p. 159-160).

In this statement, Monk juxtaposes the rights of the parent and the rights of the child. It is a view which conflicts with Legislation, whereby the State should seek to uphold the freedom of parents to exercise their responsibilities to decide what is in their children's best interests (Article 3(1) of the UNCRC, 1989; s.2 and s.3 Children Act, 1989).

Monk’s voice is ‘being heard’: by legislators, government officials, organisations, LAs and officers who have an interest in EHE. In recent years, as revealed in Chapter 6 and 7, Monk provides the only source of training to LAs. The training is legalistic, underpinned by his interpretation of Legislation (Monk, 2014). However, EHE-advocates contend that Monk lacks insight into the educational and philosophical underpinning of EHE (Charles-Warner, 2014, Nicholson, 2017). Further, his opinion is

purely theoretical, lacking in empirical basis or evidence to back up what are otherwise mere assumptions. There is concern that such a 'one-sided' approach is negatively impacting, on for example, officers understanding and approach to home-education and home-educators (EO, 2015a).

## **Governments' Position on Home-education (Summer 2017)**

The Government confirmed that it had no plans to review or change the Guidance [EHEGLA, 2013] on home-education (Education Committee, 2013;) and this was most recently reiterated in House of Commons Briefing Paper on home-education (Foster, 2017). The briefing paper also restated key points including: LAs have "*no statutory duties in relation to monitoring the quality of home-education on a routine basis.*" Nor do LA safeguarding functions extend to seeing and questioning children just because they are home-educated; such powers can only be used where there are genuine welfare concerns (para. 1.3).

## **Summary:**

This study seeks to ascertain how far State strategy on EHE is actively implemented at local level and to identify factors which impinge on compliance at LA and officer level. Understanding State policy in the form of Legislation, Case-law, and Guidance (which forms State EHE-strategy) is essential to assessing if LAs and their officers implement policy locally in accordance with nationally intended policy. The review of

national policy undertaken in this chapter enables the identification of deviation from expected State strategy later in this study.

LAs have a duty ensure children 'known to them' are receiving a suitable education: a duty satisfied once the parent confirms home-education. Otherwise, the LA only has power or responsibility "*if it appears that a suitable education is not taking place.*"

LAs should detail specific concerns and give parents the opportunity to provide evidentiary proof of education before they take any further action. As reiterated by Foster (2017) State policy does not oblige LAs to investigate all EHE-children, be it for assessment of education or safeguarding purposes. There is no legislative direction to LAs to be proactive in their dealings with home-educators. On the contrary, it places a solely reactive duty on LAs and their delegated officers to intervene if, and only if, it appears to the LA that a child is not receiving a suitable education; or there is a genuine reason, beyond being home-educated to suppose a child is at risk of harm. Therefore, LAs only needs to act when there is a legitimate 'appearance' of concern. LAs have no obligation to routinely conduct home visits, do safe and well checks, or assess education provision. Parents are not required to provide evidence, submit to visits, or inform the LA that they are home-educating. Although parents would be wise to respond to any informal enquiry, how they respond is up to the parent. Parents only need to provide evidence of education after a legitimate problem has been identified (i.e. "if it appears...") and failure to do so would enable the LA to legitimately exercise their powers under Education Act 1996 S. 437.

## CHAPTER 3: EHE LITERATURE REVIEW

This research seeks elucidate the under researched area of local authorities (LAs) administration and officers' implementation of State defined home-education policy. Specifically, the study aims to identify factors which impact the implementation of intended State EHE-strategy as expressed within the clearly written EHEGLA (2013). This chapter reviews and synthesises a range of relevant literature which engages with issues which may influence LA and/or officer willingness or ability to implement State Legislation and Guidelines. The focus is on societal issues or expressions of concern (e.g. educational suitability or welfare) which potentially affect local implementation on LA administration and officer implementation practices.

Compared to the wide-ranging spread of literature within the extensive field of educational research, there is a relative dearth in respect of home-education. Much of the existing EHE literature provides an international perspective. In the UK home-education attracts less research interest and is under resourced in comparison to countries such as USA and Australia (Taylor and Petrie, 2000, p. 61). The USA produces the largest body of work, (e.g. McMullen, 2002; Ray, 2005, 2006, 2015; Gaither, 2009; Boschee and Boschee, 2011; Kunzman and Gaither, 2013; Mazama and Lundy, 2013). This research typically relates to the concept of 'home-schooling' (creating school at home) a practice familiar in the USA. But home-schooling is an alien concept to UK parents, who typically practice of home-education where 'learning is home based,' which is not reflective of 'school at home'. There is also research arising in Australia (e.g. Jackson and Allen, 2010; Rowntree, 2012; English,

2015, 2016). Whilst within Europe research is generically European and/or country specific (e.g. Spiegler, 2009; Villalba, 2009; Merry and Karsten 2010; Hagen, 2011; Blok *et al.*, 2016). However, whilst acknowledging this body of research it is outside the purview of this study's concern: implementation of English EHE-policy and practice.

## **Evolution of UK (English) Research**

In the UK home-education has been a fairly 'obscure issue' which has attracted little public, governmental, or academic attention (Monk, 2004, p. 569). However, research has been increasing with the rise interest (Galloway, 2003). Jennens (2011) notes prior to 2004, single researchers typically undertook EHE research, their interest initially arising out of their own curiosity or from personal experience of home-education (e.g. Webb, 1990; Petrie, 1992; Thomas 1998; Rothermel, 2002; Barson/Safran, 2004; Fortune-Wood 2005a; McIntyre-Bhatty, 2007). Their research tended to explore the experiences of EHE-families, parents, and/or children. There is no central or local register of home-educators, so the research cohort was drawn from self-selecting 'volunteers' within home-education groups and organisations. Potentially, self-selecting cohorts are unrepresentative of all home-educators; given not all belong to EHE groups or organisations.

In recent years there has been a rise in university generated EHE research originating in PhD theses (Lees, 2014; Gaither, 2017, p. 322). For instance, the doctoral (or Masters) work of Petrie, (1992;) Page (1997;) Eddis (2007;) Wolstenholme (2008;)

Okeke (2009;); D'Arcy (2010;); Nelson (2010;); Mukwamba-Sendall (2012;); Sin, (2012;); Jones (2013;); Daniels (2017;); Fensham-Smith (2017). Post-doctoral 'home-educationalists' find it extremely tough to get a foothold into educational research departments. They do not talk or identify with 'education' within an institutionalised lexicon: that which requires knowledge of schooling. Post-doctoral research is restricted to short term, poorly funded projects (Lees and Nicholson, 2017). However, several academics holding an interest in home-education are now employed at English Universities, Lees: York St Johns, Monk: Birkbeck; D'Arcy and Fensham-Smith: Bedfordshire; and Pattison: Liverpool Hope.

Further, there is a body of work arising from independent scholars (e.g. Barson 2004; Safran 2008, 2009, 2012; Fortune-Wood, 2005a, 2005b, 2006, 2011, 2012; Mountney, 2008; Charles-Warner, 2014, 2015). Indicative of the lack of university-based home-education research is the charity 'Centre for Personalised Education' (CPE) (2016) run by and for academic-practitioners. CPE provides a range of support, information learning-exchanges, and undertakes research within the area of alternate education including EHE. The British Educational Research Association (2017) has only recently formed a special interest group in Alternative Education, which encompasses home-education.

Taylor and Petrie (2000) observed that, besides Petrie (1992, 1998,) there had been four further studies within the UK: Goymer (2001) who studied late adolescents in transition from EHE; Page (1997) effects of home-schooling on the development of

the family; Rothermel (1999, a, b, c,) critical evaluation of EHE and families; and Thomas (1998) educating children at home. Safran (2008) sought to identify academic books on home-education published in the UK during the previous five years, could only find two - Lowe and Thomas (2002) and Lewis and Lewis (2003). In the last decade, there has been a rise in home-education books or book chapters authored by UK academics (including: Monk 2015; D'Arcy, 2010, 2014; Lees, 2014; Rothermel 2015; Lees and Nicholson, 2017, Carnie, 2017). There is also a body of journal articles (including: Meighan, 1984a, 1984b, 1995; Monk 2002, 2003, 2009, 2016, 2017; D'Arcy, 2014a, 2017; Rothermel, 1999c, 2000, 2002, 2010; Jennens, 2011; Stafford, 2012).

However, the review conducted into UK research revealed most lies outside the remit of this study. Below is a brief synopsis of the areas generally addressed in UK research:

- **Motives** (Rothermel, 2002a, 2002b, 2003; Fortune-Wood, 2005; Morton, 2010; Kraftl, 2013).
- **Educational success** (Rothermel, 2000; Safran, 2012).
- **Number and nature** of home-educating families (Petrie *et al.*, 1999; Hopwood *et al.*, 2007; Fortune Wood, 2006; Safran, 2008; D'Arcy, 2012; Nelson, 2014).
- **Impact on children:** on their learning and on their enculturation (Webb, 1989, 1999; Goymer, 2001; Safran, 2008; Pattison, 2014; Jones, 2013, 2014).
- **Philosophical principles** of the purpose and social meaning of education (Monk, 2003, 2009, 2015; Aurini and Davies, 2005).

- **Type of support needed** for EHE-families (Page, 1997; Arora, 2002; Fortune-Wood, 2006; Okeke, 2009).
- **EHE-children with special educational needs** (Arora, 2006; Fortune-Wood 2005b; Burke, 2007; Morton, 2010, 2011; Daniels, 2017).
- **Gypsy, Roma and Traveller children** (D’Arcy, 2010, 2014, 2014a, 2017; Bhopal and Myers, 2016; Fensham-Smith, 2014).
- **Home-education styles and/or their relative merits** (Thomas, 1998; Meighan, 1984a, 1984b, 2000, 2001, 2004; Rivero, 2002; Rothermel, 2002, 2003).

**In the last decade** Education Otherwise, the EHE charity, of which I am Chair, has noted a perceptible increase in undergraduate or Master student ‘research’ enquiries for dissertations in education, psychology, and social work. Within EHE groups there are *“increasing expressions of irritation from home-educators”* frustrated at being dissertation material (EO, 2015a). Such research *“is superficial, failing to address the real issues, when what is needed academically rigorous research”* (Shayler, 2016).

## **Home-education Research**

This study takes a holistic view of EHE-policy implementation, challenging the supposition that locally effected policy and practice is that intended by the national policymakers. The study seeks to identify potential issues and causes within local administration which may stimulate the implementation of divergent policy. Drawing together factors from within the data collected for this study which might inhibit acceptance of State [home-education] policy by professionals tasked to implement it



(Després, 2013). As previously noted there is limited research into home-education. In the main EHE research is from the standpoints that do not address the issues of this study, i.e. the role of LAs in implementing policy and the factors that impact on and of officer practice. Only a few UK researchers have specifically considered LAs and their role, policy and/or practice (Petrie, 1991; Okeke, 2009; Nelson, 2010; Lees, 2011).

This chapter will draw on academically published books and journal articles. It will include a range of Governmental and non-governmental commissioned reports into home-education. It will also encompass a rich source of data EHE-proponent literature, written by members of the EHE community (Bendell, 1997; Education Otherwise, 1999; Guthrie, 2000; Dowty, 2004a, 2004b; Fortune-Wood, 2005a, 2005b, 2006; McIntyre-Bhatty, 2007; Mountney, 2008; Safran, 2008, 2009; Webb, 2011; Charles-Warner, 2014, 2016; and a number of home-educator Masters or Doctoral theses' (e.g. Petrie, 1992; Rothermel, 2000; Barson, 2002; Mukwamba-Sendall, 2012). Such proponent literature often addresses anxieties about the practice of home e.g. safeguarding, socialisation and educational provision (e.g. Badman Review, 2009; OFSTED 2010a, 2010b, 2011; NSPCC, 2009, 2014a, 2014b; Ryder *et al.*, 2017). Perceptions of anxiety potentially moves us towards an explanation LA administration and officer implementers' willingness to observe or to interpret State EHE-strategy

Additionally, the review draws on literature from:

- **Media:** judicious reference to media reporting of EHE, specifically in respect of issues of 'welfare' and policy issues as such literature has the potential to impact on the perceptions of society at large including those who implement EHE-policy.
- **Governmental sources:** Education Parliamentary Committees, Government Ministers and MPs;
- **Local Government sources:** local councillors publicly available correspondence, reports from Association of Directors of Children's Services and Local Government Association;
- **Non-governmental organisations:** National Society for the Prevention of Cruelty to Children, The Office for Standards in Education, Children's Services, and Skills and National Children's Bureau.

## **Media**

There is a substantial justification for the view that home-education is 'used, abused and manipulated' (Lees, 2014, p. 43). This study contends that the implementation of policy and officer practice is affected by factors which arise in anxiety about risk in respect of home-education. This is most apparent in 'media' reporting, which overwhelmingly portrays EHE as a cause of public concern. Particularly focusing on aspects concerned with abuse, safety or welfare, and claims of 'invisible' children. The media impinges on our lives; it is influential and informs public opinion, including professionals, who can accept media reporting as 'knowledge' (Reynolds and

McCombs, 2002; Jacobsen *et al.*, 2014). This influence was apparent in the officer interviews (see p. 257).

One of the rationales underpinning this study is that the impact on local policy and practices is, at least in part, influenced by acceptance media induced 'knowledge'. UK media sources frequently engage in negative reporting, be it television or radio programmes (e.g. BBC, 2010c; Jeremy Vine Show, 20/01/2009; Wright Stuff 24/11/2011; Channel 4, 2017;) and news print media (e.g. BBC 2010a, 2010b; Paton, 2012; Edwards, 2015). The media stance is mainly provocative or alarmist e.g. the Channel 4 (2017) programme *'Feral Children'* filmed legitimately home-educating families, but both the programme title and resultant newspaper stories can be described as inflammatory e.g. *"Mum of 'feral kids' who dodge school are allowed tattoos and piercings"* (Mullin, 2017,) and *"Why parents of seven let their 'feral' kids shave their hair, skip school and go to bed when they want"* (Paget and Minn, 2017).

The last few years has seen media reports linking [Islamist] radicalisation to home-education, e.g. *"Home-schooling of 20,000 children across the country will be reviewed amid fears they are being radicalised by parents"* (Wyke, 2015). Additionally, the media has reported on home-education as linked to forced marriage, fabricated induced illness, female genital mutilation, social isolation, radicalisation, illegal schools, 'children in need of help and protection', and unknown thousands of missing children (DfCSF, 2010a; Botham, 2011; NSPCC, 2014; Edwards, 2015; Jeffrey, 2015; Bussey, 2016; Ryder *et al.*, 2017, p. 17). Reporting can arise from sources such as Government

commissioned reports e.g. the Badman Report (2009,) the Casey Report (2016,) or the Wood Report (2016) which the media distil into selective stories. As Rothermel (2008) observed that professionals and others tend to pass judgement on EHE, solely on 'knowledge' or opinion rather than sound academic enquiry. The stream of often negative media reports not only informs the 'public' but becomes but 'knowledge' for those who question the 'right' to educate otherwise (e.g. Balls, 2010; Parliament UK, 2014; Soley, 2017, 2018).

Media reporting is most stark when covering EHE 'related' serious case reviews, for instance: Spry (Gloucestershire SCB, 2008;) Khyra Ishaq (Child 14, 2010;) and Family W (Unnamed LCSB, 2013, 2013a, 2013b). Media furore is generated when influential experts, commentators or credible organisations express views that suggests EHE may be responsible for neglect or abuse reports, such as Ryder *et al.*, (2017;) NSPCC (2013, 2014a, 2014b;) and Soley, (2017). Borrowing imagery from Cohen (1972) such reporting is turning home-educators into the 'folk devils' of this decade serving to provoke a 'moral panic'. Knowledge informs and influences not only officers' perceptions but the implementation of policy (Lees, 2014). A lack of academic research makes it difficult to counter inflammatory media reporting.

An inadvertent consequence of adverse media reporting, including that generated during the Badman Review (2009), was the flow of information which allowed the *negative discovery* of home-education (Eddis, 2007, 2015). At time of 'stress' negative reporting raises awareness of EHE as a legal, viable option by increasing

awareness resulting in a rise in home-education (Lees, 2014, p. 144-146). Certainly, the helpline run by Education Otherwise (2015a) gets an increased volume of calls seeking information and support when home-education is in the news regardless of negative reporting. Even negative media reporting regardless of the nature of the story enables the dissemination of home-education as a legally valid choice (Eddis, 2007, 2015; Thomas and Pattison, 2010; Lees, 2015).

## **EHE marginalisation**

Within the political and public sphere education has come to be seen as indistinguishable from schooling (Suissa, 2006). Pattison (2018) refers to a discourse of educational mainstream where home-education becomes cast as 'other' (p. 55) Thereby, home-education becomes viewed as *conceptually subordinate to schooling*" (Pattison, 2015) and in the UK is "*marginal and marginalised by ignorance*" (Lees 2014, p.46-47; Lees and Nicholson, 2017). Stakeholder bureaucracies and professionals as well as the media play a role in marginalising EHE, generating a climate of suspicion and concern. Historically this was based on stereotypes of home-educators as "*innocuous but weird, unsocialised, egotistical hippies*" (EO, 1981). In the last decade this image has been replaced by more insidious representations: whereby EHE parents depicted as a latent danger to their children, with the potential to inflict abuse or neglect of a psychological or physical nature.

There is a general unawareness that home-education is a legal alternative to school (DCSF, 2007; Nelson, 2013). It is a practice which is an anathema to those who are

socialised into and accepting of a culture of school-based education. Home-education is a practice at variance with the common school paradigm of 'education'. EHE is not presented as a viable alternative to school, for example when LAs provide information for parents in respect of school choices, home-education is not mentioned (Lees 2011). School and home-education are equally legally valid choices; however, there is no obligation on LAs to 'communicate' this. Parents are often unaware of their educational rights which can impact on areas that could influence the decision to EHE: unofficial exclusions, bullying or unmet needs. EHE-children with 'special needs' can be additionally marginalised through lack of awareness of entitlement or ability to access support, unless they have previously been involved with LAs and allied services (Ryder, 2017, p. 82). The likelihood of an EHE-child getting a "*personal budget is rarer than rocking horse poo*" (Sauer, 2016). Home-education must be named as the provision, so assessors must be convinced home-education is better than school for that child, an unlikely scenario within the dominant culture of school-education.

## **Research into Local Authorities**

One study that is reflective of the objectives of this thesis is Petrie's 1992 doctoral enquiry. Petrie examined the relationship between local education authorities (LEAs) and home-educators and considered the major conflicts which arose. Petrie's enquiry drew on officer responses to a questionnaire to explore conflict between LEAs and home-educators: by investigating the procedures adopted by LEA officials to suggest ways of reducing conflict (Petrie, 1992, p. 33). Petrie's drew on Conflict

Theory to explain the attitudes of officers toward home-educators, the education provided by the parents, and the difficulties that LEA officers can experience when scrutinising EHE (p. 250).

Petrie's research is useful, although now an 'historical' overview, as it is still reflective of the issues of the present, and in later chapters of this research similar themes become apparent. In 1992 the 'local education authorities' (LEA) reported that they primarily monitored the education provided and visited children at home two or three times a year. The LEAs identified concerns over: the definition of 'efficient education'; families' home-educating after a record of poor school attendance; and poor engagement of home-educators with LEA officials (p. 334). LEA officers gave importance to parents' abilities, home environment and facilities. There was officer consensus on the importance of socialisation and concerns about mental and physical wellbeing of EHE-children (p. 300). The experiences and practices towards home-education varied from one LEA to another (p. 250). Some officers were found to imply that 'permission' had to be sought from the LEA, while others were well versed in the law but still sought to monitor the education provided (p. 302). Further, some LEAs and officers seemed unaware of the limitations of the law relating to home-education (p. 334). All are issues that are reflected in the findings of this study.

Petrie (1992) noted that the unpredictable and undefined meanings of words such: as full-time, efficient, and socialisation leads to ongoing confusion for LEAs, and allows for personal interpretation by officers (p. 56). In the conclusion Petrie

suggested that the responsible Government department should ensure dissemination of home-education policy and specifically the law to LEAs and their officers. Also, officials should be provided with provision of EHE training, courses, and conferences (p. 334-335).

Despite the passage of time the issues identified then are still the issues of today. Petrie's doctoral research was undertaken 25 years ago, at a time when local authorities were organised quite differently and in many ways the context today is very different. In 1992 EHE was very much a 'fringe' activity with the number of EHE-children in UK estimated at 2,900 (Petrie, 1992, p. 251). Now the minimum estimate is 30,000 plus, meaning that EHE is no longer a 'fringe activity'. The growth in the numbers of home-educators has placed EHE in the spotlight accompanied by increasing expressions of suspicion. Petrie (1995, 1998, 2001) and Taylor and Petrie, (2000) continued researching conflict between LAs and home-educators: identifying that LA EHE-officers hold school paradigm of education. More generally, in society home-education status as an alternative is sited in a comparison with school-education (Pattison, 2015); a finding similarly reflected in later Chapters of this thesis.

## **Expressions of Concern - relating to the practice of EHE**

Consistent themes of concern are expressed concerning *perceived* risks to children who are home-educated (e.g. Monk, 2004; Badman 2009; Brandon *et al*, 2013; NSPCC, 2014; Hansard, 2017, 2017a, 2017b, 2017c). Specifically concerns regarding:



unknown numbers of EHE-children; the lack of registration; the inability to monitor education; parents versus childrens' rights and the child's voice; safeguarding and welfare / seeing the child.

### **Unknown number of EHE-children**

Concern about the lack of knowledge about number of unknown EHE-children is frequently raised (e.g. by Monk, 2004; p. 570; Hopwood *et al.*, 2007; Badman, 2009; Conroy, 2010; Sellgren, 2010; Jennens, 2011; Bainham and Gilmore, 2013, p. 915; Hansard, 2017; Ryder, 2017). Data on numbers of children educated at home are not collected by the Department for Education (Hansard, 2017). Further, it is almost impossible to reliably determine the numbers of EHE-children as a '*substantial number are simply unknown*' to local authorities (Hopwood *et al.*, 2007; Badman, 2009, para. 1.3.; Conroy, 2010; Jennens, 2011; Stafford, 2012; Bainham and Gilmore, 2013, p. 915; Pattison, 2015). Taylor and Petrie (2000) suggested that LAs might only know of 25% of EHE-children; while Rothermel (2002) suggested that up to two-thirds of EHE-children could be unknown due to never having attended school or simply by moving authorities.

The ADCS (2016, 2016a) noted that as the DfE does not collect data on numbers so there is no clear national picture. The only reliable figures come from 'known' EHE-children who typically attended school and have been deregistered by their parents. Further, it is difficult to ascertain the number of known EHE-children due to the differing local recording practices of individual LAs (Rothermel, 2002; Fortune-Wood,

2005b; McIntyre-Bhatty, 2007; Pattison, 2015). But several attempts have been made to collate known numbers and these do indicate an upward rise in ‘known’ numbers during the last decade, see Table 1 (p. 73).

Citation	Year	Numbers gathered by	Numbers
Hopwood <i>et al.</i> , 2007	2007	Research from 9 LAs	21,026 extrapolated from 9 LAs
Nicholson (2015)	2013	FOI all English LAs	23,247
Nicholson (2015)	2014	FOI all English LAs	27,292
LGA (2016)	2015	BBC (2015) FOI investigation	37,000
ADCS (2016; 2016a)	2016	Survey during annual school census of half of English LAs giving a figure of 15,638	31,000
ADCS (2017)	2017	Survey during annual school census 118 LAs responded and recorded a total of 35,487	45,500 ADCS extrapolated figure
Wood and Featherstone (2017)	2017	FOI all English LAs	44,000

**Table 1: effort to collate numbers of known EHE-children**

Establishing the total number of EHE-children, when there is an ‘unknown number not knowns’, is nigh impossible. From within the home-education community consistent estimates suggest that there are between 50% and 100% more children that are unknown to LAs. If this is a true reflection then the ‘likely’ number is currently somewhere between 66,000 and 88,000 children (Nicholson, 2015; Wood and Featherstone, 2017).

Hopwood *et al.*, (2007) in a DfES commissioned study, identified the lack of Legislation requiring registration of EHE-children as ‘allowing’ an environment for under-recording with widely disparate variable estimates of ‘unknowns’. The researchers called for compulsory registration: so that a *‘true picture of the number of EHE-children would be gained’*. The study concluded that unless compulsory registration there would be little point in conducting further research into home-education as it would fail to be reliable.

In recent Governments there has been an unwillingness to enact changes. In part this reticence can be attributed to the experience of the then Labour Governments 2010 defeat of Children, Schools and Families Act, Schedule 1 which proposed changes to EHE Legislation (Stafford 2012, Lees and Nicholson, 2017). However, any perceived reticence of the Government to intervene has not prevented continued calls for ‘information gathering’. For instance, Freeman (2016,) in reporting on OFSTEDs Single Inspection Framework, called for LAs to collect information internally and via interagency cooperation. Specifically, information on vulnerable children, to be included in this category would be EHE-children; and specifically, children who are at risk of sexual exploitation, gang exploitation and radicalisation; and missing children from home, care, or education.

Concern that EHE-children are not ‘registered’ is related to ‘extreme anxiety’ of not knowing the true number of EHE-children (Monk, 2004; Badman, 2009; Dickens, 2015; Freeman, 2016; LGA, 2016). The public and State have a legitimate interest in

childrens' education, parents who EHE are not merely undertaking a statutory obligation within the private sphere but also performing a 'public function' therefore "*compulsory registration is a logical, legitimate and compelling step.*" (Monk, 2003, 2009). The lack of registration is viewed as a hindrance to LAs in meeting their statutory duty to 'identify children who are not on a school roll and are not receiving a suitable education' (Monk, 2004; Bainham and Gilmore, 2013, p. 915). This creates a tension for LAs who have a duty to identify 'children not in education' (Education and Inspection Act, 2006) yet have not been given the power to assess if education is taking place (DfCSF, 2013: 5). Home-educators feel that LAs act without legal authority when they attempt to identify children not in education, while LAs rue their inability to confirm home-education is taking place blaming their ill-defined and/or conflicting duties (Pattison, 2015).

### **Lack of registration prevents EHE oversight**

Dickens (2015,) then Chairperson of the Parliamentary Education Select Committee, expressed amazement that EHE-children "*are not registered as being home-educated. It's an absolute scandal that should not be allowed.*" This view reflects calls for compulsory registration to assist councils to monitor children's education and thwart their ability to disappear from the oversight of the very processes intended to ensure their welfare and safety (Badman, 2009; LGA, 2016; Monk 2016, p. 3).

## **Conflict between parents' rights and the child's rights**

Explicitly, there is concern about a lack of 'correct balance' between the rights of parents and children, specifically in respect of balance to ensure a child is safe from harm (Monk, 2004; OFSTED, 2010a, para. 3.1). Additionally, there is concern that the child's voice being stifled by that of parents (Brandon *et al.*, 2013; NSPCC, 2014b, p. 1-2; HC Deb 28 November 2017; Soley, 2017, 2018). As discussed previously, parents have a right to ensure their beliefs (religious or philosophical) are respected, but this is not an absolute right (p. 26). There is no empirical evidence that suggests parents' choice to EHE violates the child's right to education (Sperling, 2015 p. 186). However, stakeholder critics of home-education see the State, not the parent, as the arbitrator and protector of children's rights. Whereby, the State has a duty to ensure children's rights are not quashed by the rights of parents (Monk, 2004, p. 581; Sperling, 2015 p. 186). As seen in Chapter 2, Monk states EHE-child's right to effective education (enshrined in the ECHR, 1950) gives the LA leave to "*ensure fair access to educational opportunity and this shall apply to all children of compulsory school age*" (Monk, 2009, p. 187, referencing the Education and Inspection Act 2006 (S. 1 (2) a).) so long LAs consider parents' rights to belief (2015, p. 168).

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## **Safeguarding – ensuring a home-educated child is safe from harms'**

Safeguarding the EHE-child is a widely expressed anxiety voiced not only by LAs and officers, but stakeholder professionals, governmental, local government, and non-governmental organisations, and can be reflected in media reporting. For instance,

NSPCC (2014a, 2014b) described EHE-children as *'invisible and isolated'* in their analysis of seven Serious Case Reviews (SCR) where EHE was a factor, but not the causal factor, leading to calls for increased oversight of EHE-children (OFSTED, 2011; Brandon *et al.*, 2013; NSPCC, 2014a, 2014b; Flood, 2016). OFSTED (2011) looked at 67 SCRs, three of which mentioned EHE, and determined in each case that home-education was a contributing factor. Safeguarding concerns cause visceral responses and overarching anxiety (Conroy, 2010, p. 326). This anxiety encompasses and impacts on issues of registration, monitoring, access to home and/or child, socialisation, and suitable and efficient education. Such concerns around perceived 'risk' predominates the narrative of home-education, despite the lack of statistical evidence or rigorous research to support such opinion (Charles-Warner, 2015).

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The triennial report of serious case reviews 2011 to 2014 commissioned by DfE notes *'unmonitored home-education in inappropriate circumstances' increases childrens' susceptibility to harm*. The authors looked at 4 SCRs where EHE was a factor in the child's life, identifying commonalities:

- Social isolation of the child and/or family;
- Parental deception, concealment, or disengagement from professionals;
- Professional uncertainty including legal powers and authority; and
- Community unawareness of the child's situation.

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The report accepted that EHE is often a valid parental choice and can be successful. But there are situations where EHE does not meet the child's needs, enables neglect

or emotional abuse because the child can be 'removed from public oversight'. EHE *per se* was not the cause for concern, rather the potential for isolation from peers, teachers and agencies that could provide a protective function thereby, facilitating abuse or neglect to continue undetected for prolonged periods. However, parental cooperation with education officers, alongside a demonstration of educational progress would serve as a protective function and, therefore, there is a need to consider powers for LA oversight (Sidebotham *et al.*, 2016, p. 92-94).

The Serious Case Reviews referred to by the OFSTED (2011,) NSPCC (2014a, 2014b,) and DfE (Sidebotham *et al.*, 2016) do reveal failure to understand the legal distinction between CME, and EHE and a common pattern of professional missed opportunities. Those children who were deleted from a school roll were generally known to Social Services before they were removed (Evans, 2015; Charles-Warner, 2015). Commonly there was a failure to understand and/or apply existing Legislation (OFSTED, 2011; Sidebotham *et al.*, 2016). This would suggest that much of the anxiety expressed about EHE and safeguarding arises through an inadequate grasp by professionals of relevant Legislation, existing powers, and ability to use these effectively and appropriately. Whereby, home-education becomes a useful scapegoat for professional failures (Fortune-Wood, 2010; Charles-Warner, 2015).

Nonetheless, Monk (2009) argues that in the context of child protection home-education is a real and concerning issue. Monk suggests even if an EHE related SCRs is not explicitly critical of home-education it still underscores that it must still be

viewed in the wider context of welfare concerns. For instance, EHE can create an environment for disengagement from e.g. health and developmental services. Therefore, LAs need powers to pro-actively monitor all aspects of EHE-childrens' lives to ensure that a child is not only being educated but their needs are being met and they are not risk of harm (p. 5). This view has garnered general support including from the 'Association of Elective Home-education Professionals' who wish to see increased safeguarding of EHE-children they described as 'invisible' and 'at risk' (EO, 2015b; Charles-Warner, 2016).

There is a general lack of understanding and/or misunderstanding of home-education which can impact negatively on home-educators. Increasingly LAs, health professionals and schools are referring families to child protective services purely on the basis that they have deregistered or are EHE (Mukwamba-Sendall, 2012; Education Otherwise, 2015a; Charles-Warner, 2016; Wood and Featherstone, 2017). Social-workers are often unaware that EHE is a legal option and view the practice with suspicion (Mukwamba-Sendall, 2012; Lees, 2014, p. 60). Education Otherwise in a written response to Welsh Review into EHE, but a response equally applicable to England, noted that LAs already have powers to investigate and act on genuine safeguarding concerns regardless of education setting (under S. 47 of the Children Act 1989) and that EHE should not be viewed as a 'special case' when it comes to such concerns (Forrester *et al.*, 2017, p. 90). Education Otherwise view reflects Government Guidance and advice that children educated at home by their parents is '*not in itself a cause for concern about the child's welfare*'. Home-education or



refusal to meet the LA or allow access to the home or child is not a reason to contact Children's Services (Social Services) (DfCSF, 2010; EHEGLA, 2013; Bishop, 2015).

The issue of Serious Case Reviews (SCRs) where home-education has been a factor in the child's life and is used as evidence that the practice of home-education has potential for safeguarding concerns. SCRs occur when a child is seriously maltreated or dies to assess if harm could have been preventable (Allen, 2011; Mukwamba-Sendall, 2012; Charles-Warner, 2016). The NSPCC hold responsibility for the SCR Repository; they prepare thematic briefings to review and disseminate the findings and recommendations of the SCRs. The primary audience for the briefings are professionals working with children and practitioners involved with the safeguarding.

The NSPCC commissioned report entitled Neglect and Serious Case Reviews (Brandon *et al.*, 2013) acknowledged that responsibility for a child's education rests with the parents and that education is compulsory but school is not. However, parents' desires for 'their right to home-educate' come with a potential risk to children's education, health and welfare (p. 48). The report portrays children who are not attending school as vulnerable as they are hidden from view. The report criticises the *'lack of a strong, mandatory framework to monitor, assess or inspect the quality of home-education provision and the child's welfare'*. It criticises the lack of a formalised method for EHE-children to voice their views, or to give feedback on their experiences of being home-educated citing 'infringement of Article 12' (respect for the views of the child) of the UNCRC. It criticises the lack of a statutory requirement

for LAs to maintain a register of pupils who are EHE; and lack of authority to insist on regular contact or home visits.

In 2014 the NSPCC produced two Reports: one commissioned by the Association of Local Safeguarding Children Board Chairs (NSPCC, 2014a) and the second was an NSPCC briefing paper (NSPCC, 2014b). These documents considered seven English Serious Case Reviews where EHE was a factor in the child's life (McMenemy, 2008; Butcher 2008; Enfield LSCB 2009; Barking and Dagenham LSCB 2010; Family W Unnamed LCSB, 2013, 2013a; Haley 2014; Harrington 2014). The SCRs dealt a range of harms: neglect and/or physical, emotional, or sexual abuse, suicide, and fabricated illness. In each case the NSPCC reports contend that EHE was a 'key factor' finding that: isolation and invisibility was a significant issue; there was no compulsion to ensure that EHE-childrens voices were heard; or to ensure their right of access to friends, family, or professional agencies. The reports concluded a major safeguarding flaw lay in the lack of powers to ensure the EHE-child can be seen, confirm a suitable education and appropriate care without the 'express consent' of parents; determining that Legislation focuses on parental rights at the expense of childrens' (NSPCC, 2014b, p. 1-2).

Specifically, the NSPCC Report (2014b) was critical of '*dominant personalities*' of EHE parents, who are '*well informed, articulate, hostile, or resistant to professional involvement, and can intimidate professionals.*' While parents '*use EHE to avoid scrutiny by limiting or denying access*': thereby strengthening '*power inequity which*

*subsumed the rights and welfare of EHE-children'* (p. 2). The lack of EHE access to and oversight afforded by the school nursing service was a detrimental factor (2014b, p. 3; Flood, 2016). This study shows that such anxieties are similarly expressed by LAs, professionals, politicians and organisations. Crucially the NSPCC acknowledged that the professionals involved in SCRs *'failed to appreciate their own and each other's roles and responsibilities in respect to safeguarding'* (2014b, p. 2-3). This admission is reflective of views held by home-educators (Mukwamba-Sendall, 2012; Charles-Warner, 2015; Evans, 2015; Education Otherwise, 2015b). It is also reflective in the narrative of this thesis; specifically issues of policy implementation and training, but also communities of practices professionals inhabit.

The NSPCC generated Reports (Brandon *et al.*, 2013, NSPCC, 2014a, 2014b) served to add to the overall anxiety of professionals and contributed to calls for policy changes to allow improved oversight through increased powers (e.g. Monk, 2015; ADCS 2016; Soley, 2017). These Reports asserted that current EHE Legislation and Guidance is inadequate. That home-education can be used by a minority of parents as a cover for neglect or abuse because of the LAs lack of authority and power to monitor, inspect or otherwise ensure children are safe and well. The authors confuse EHE-children with CME e.g. Khyra Ishaq, parents did not remove her from the school roll, and she therefore was CME. There is also evidence of conflation of child welfare /child protection issues which is most concerning and displays a lack of knowledge of education Legislation and policy. This is seen in their statement that LAs lack powers to ensure a child is getting *'suitable education or is being cared for'* (NSPCC, 2014b, p.

1-2) which are two discrete issues: education, and welfare. These concerns covered by existing Legislation (i.e. Children Act 1989) and in considerable government Guidance (e.g. DSCF 2009a; EHEGLA, 2013; CME, 2015). LAs need to use powers they already have appropriately, rather than call for increased and/or new powers (Evans, 2015; Education Otherwise, 2015; Charles-Warner 2016; Wood and Featherstone, 2017).

Further criticism levied at NSPCC generated Reports (Brandon *et al.*, 2013; NCPCC, 2014a, 2014b) lies in their claim that the '*EHE-child is isolated and invisible*'. Had the NSPCC worked from the full SCRs, rather than summaries (NSPCC, 2016,) it would have been apparent that these children were far from invisible. The children clearly were visible to 'professionals' over extended periods: prior to and while they were 'home-educated' (Charles-Warner, 2016). The seven SCRs displayed ongoing, uniform, and serious failings by 'professionals' e.g. LA officials: not only in education and child welfare, but also other LAs services, GPs and allied 'medical' professionals and the Police. In each case, there is evidence that professionals missed opportunities to intervene (Mukwamba-Sendall, 2012; Evans, 2015; Education Otherwise, 2015; Charles-Warner, 2016). Yet the NSPCC skimmed over professional failings, which were acknowledged only in a call for adequate training for all professionals into signs of abuse (NSPCC, 2014a, p. 4).

Publication of the NSPCC Reports (2014a, 2014b) drew commendation from home-educators and advocates due to feelings of disquiet from EHE-parents at being

viewed as a potential risk to their children. Additionally, there was disquiet from arising from the view that the Reports were written without thorough research, had factual inaccuracies, and provided inadequate evidence (Education Otherwise, 2015; Evans, 2015). An online petition, created by Evans (2015,) called for the reports withdrawal attracting 5,000+ signatures in 48 hours. The ongoing criticism lead the NSPCC to invite several EHE-advocates and professionals, myself included, to meet with their CEO and senior management in January 2016. The NSPCC admitted during a meeting that the reports were written from Executive Summaries of the individual SCR Reviews. They accepted that this meant they had not undertaken a thorough analysis of the full SCRs, nor did they consider/include any relevant Court judgements (NSPCC, 2016). Undoubtedly, the use of summaries does not aid understanding of the SCRs within their full and wider context and this negatively impacted on the Report's content and emphasis. The adoption of this approach to writing a critical report on home-education is as worrisome as it is unsound. It is a method which evidences a lack of independent empirical analysis given it simply regurgitates concerns and findings within a previous NSPCC commissioned report [Brandon *et al.*, 2013] published the year previously (Education Otherwise, 2015; Evans, 2015). Following the meeting and their admission that the SCR Reports were written from the Executive summaries, the NSPCC Briefing Paper (2014b) were withdrawn, but without the requested retraction.

The NSPCC reports (Brandon *et al.*, 2013; NSPCC, 2014a, 2014b) and resultant furore are indicative of the difficulties in assessing the validity or otherwise of claimed

safeguarding risks. However, it further highlights the need for academically rigorous research. Charles-Warner's (2016) study conducted "*to garner facts rather than misconceptions.*" The 152 English Local Authorities were contacted via the Freedom of Information Act 2002 requesting the number of unique referrals to Social Services in the preceding year, and the number of new Child Protection plans issued for compulsory 'school aged' children (5-16-year olds) whether the child was EHE or at school. Charles-Warner then reviewed the full report for each of the seven SCRs cited by the NSPCC generated Reports (Brandon *et al.*, 2013; NSPCC 2014a, 2014b) where EHE was identified as a 'causal factor' in the harm. Charles-Warner's study established that EHE-children are far from hidden or isolated. In the analysis of responses to the FOIs, it became apparent that EHE-children aged 5-16, are twice as likely to be referred to Social Services as either pre-school children, aged 0-4 years, or their schooled peers. Analysis established that the 'perception of risk' is unreliable, as EHE-children were twice as likely to be referred to Social Services, but they were markedly less likely to be placed on a child protection plan. Regarding the perception of risk, Charles-Warner (2016) reviewed both the full SCR report and related court documents and established that in each case there was pre-existing professional involvement. This research is unique as it addresses the issue of safeguarding based on available statistical data. It suggests "*a lack of research using statistical evidence contributes to misconceptions of EHE-children being children at risk*" and the current anxiety is unproven and misplaced. Charles-Warner concluded that it is essential that further and better resourced research be undertaken before any increase in professional oversight or powers.

## Politicisation and problematising of EHE

In recent years the UK debate about EHE has developed a progressively politicised narrative of State oversight. It is a narrative where parents of schooled children are prosecuted for taking term-time holidays, but other parents can home-educate with no legal oversight. It is a situation which is a farcical (Bainman and Gilmore, 2013, p. 915; ADCS, 2016,) as EHE-policy does not allow for home-education to be sufficiently well policed (Davies, 2016).

In considering the wider experience of UK education, children became increasingly viewed as *“a unified, homogenous, undifferentiated ... single, essentialised category”*, which deems all childrens’ needs as indistinguishable under ‘New’ Labour’s election to government (Dobrowolsky, 2002, p. 67; Lister, 2006). In 2004 Legislation reflective of State interventionism saw local authority separate functions of education and child Social Services become united under *“Children’s Services”* (Children Act, 2004). This ‘merger’ potentially contributed to the rise in concerns regarding regulation, duties of parents and/or the State and anxieties about socialisation and academic merit impacting on home-education (Petrie, 1992; Monk, 2003, p. 162; Fortune-Wood, 2012; Mukwamba-Sendall, 2012; Eddis, 2015). The growth in the rhetoric of hostility towards EHE certainly coincided with these changes, while the then Labour Government’s antipathy towards EHE was further shored-up through misreporting of Victoria Climbié and Khyra Ishaq as EHE and the subsequent negative media reporting. The effect such concerns has therefore resulted in a climate whereby home-education becomes an increasingly risky

endeavour (Fortune-Wood, 2012, p. 29-30). The rise in home-education is seen as a rejection of the school paradigm of education (Bhopal and Myers, 2016, p. 7). Although legal, not considered by professionals or wider society to be equivalent to schooling, it is 'tolerated' but increasingly viewed as a problem of risks (Monk, 2004, p. 597). Risks associated with oversight, child welfare, abuse, or neglect; educational achievement or worries of socialisation (McIntyre-Bhatty, 2007, p. 243). The concept of risk becomes an organised response to cope with 'threats' and anxieties of societal concern (Beck, 1992). Yet paradoxically, the available evidence indicates EHE-children are at not greater risk or vulnerability than their schooled peers (Rothermel, 2002; Monk, 2004; D'Arcy, 2014; Charles-Warner, 2016).

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## Heading towards the Review of Elective Home-education

*'Parents have a greater investment' in their children's education and social development (McIntyre-Bhatty, 2007 p. 244).*

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Nonetheless, stakeholder and societal unease about potential risks from parents' home-educating has seen increasing calls for a comprehensive review of EHE. This call was initially answered in 2009 with the commissioning of the Badman Review following two Serious Case Reviews which referenced EHE. Firstly, the home-educated 'Spry' fostered or adopted children abused by their 'mother' despite regular contact with LA officers and social-workers (Gloucestershire SCB, 2008).

Secondly: the death of Khyra Ishaq, a child missing education, yet incorrectly and



repeatedly portrayed as home-educated by commentators, professionals, politicians, and the media (Monk, 2009; King, 2009; Ball, 2009, 2010; BBC, 2010a, 2010b; Gammel and Cockcroft, 2010; Metro, 2010; Radford, 2010; NSPCC, 2014a, 2014b). It is notable that despite not meeting the criteria of EHE (i.e. removed from the school roll in accordance with Statute) the flawed perception that Khyra was home-educated is still repeated today (Edwards, 2015; Soley, 2017; and the officer interviews in Chapter 7).

### **The 2009 Badman Review into Elective Home-education**

The Review by Graham Badman was announced in January 2009 and conducted over a six-month period. The Review was an attempt by government to drive policy changes, in part as a response to concerns of LAs and organisations such as the NSPCC, but also due to their own State interventionist agenda. The Review was without real foundation, as its commissioning was based on unsubstantiated allegations, namely: EHE can be a cover for abuse; conflating home-education with welfare in this way meant the commissioning of the Review was biased (Stafford, 2012, p. 363). However, the Report's recommendations were strongly supported by the Labour Government. The recommendations formed Schedule 1 of the Children, Schools and Families Bill, 2010 (Schedule 1) although they were subsequently defeated in Parliament. Many of the Report's recommendations continue to have influence, with LA and other stakeholders still calling for the implementation of some of the recommendations, for instance, increased oversights and powers (Nelson, 2010; Mukwamba-Sendall, 2012).

The Review into home-education, commissioned by the Secretary of State was necessary, because “*there have been high profile cases of EHE-children who have been very badly neglected*” (Balls, 2009, 2010). Therefore, the review would:

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- Investigate the practice of LAs in relation to home-educators,
- Ascertain if LAs were providing effective and suitable support,
- Scrutinise whether home-education is used as a cover for child neglect or abuse, including issues such as forced marriage, domestic servitude, or child trafficking, and
- Address concerns that EHE was ‘hidden’, unregistered and unmonitored (Badman, 2009, p. 46; Stafford, 2012, p. 363).

The ‘reviewer’ (Badman) was given the freedom to conduct the review as thought appropriate, appointing ten ‘experts’ (DfCSF, 2010, Ev.3). However, none of the experts had specialist knowledge on home-education leading Education Otherwise, and home-educators to denigrate the Review from the start (Education Otherwise, 2010). Despite this criticism the Review sought the opinions of those with an interest in home-education via

- Stakeholder questionnaires: sent out to all LAs in England, which had a 60 % return rate.
- Interviews with home-educating parents and children, mainly conducted during visits to local home-education groups.
- A general invitation for ‘interested parties’ to submit or present evidence to the Review.

The responses from 'interested parties' was wide-ranging encompassing individuals, professionals, professional bodies, diverse organisations, the wider public and home-educators (para. 2.2). It also attracted the largest response to any Government consultation with 5,211 responses received, 2,222 coming from home-educating parents' (DCSF, 2010c).

### **The Badman Report into Elective Home-education (2009)**

The Report was published six months after its commission, juxtaposing care, safeguarding and protection alongside notions of risk, harm, and fear of abuse (Forrester and Taylor, 2011, p. 17). The introduction included a statement that the author "*was in accord*" with the views expressed by LAs: that the current Legislation and guideline are inconsistent and ineffectual conferring "*responsibility without power*" (Badman, 2009, para. 1.4). Badman acknowledged that "*parents are prime educators of children*" but contended that current Legislation led to an "*inequality of rights*" with the rights of the parent overshadowing those of the child (para. 3.12). However, Badman made it clear that there would be no restriction on the right to EHE (para. 3.11;) in this Badman was being pragmatic, restricting rights would be 'counter to UK democracy' and result in substantial opposition (Lees, 2014, p. 103).

### **The Reports recommendations**

There were 28 recommendations which, if implemented, would have significantly transformed home-education in England. The recommendations included

mandatory national registration, powers for inspection, home visits, and monitoring. Additionally, LAs must have the power, via speedily passed Legislation, to ascertain all children who are or who become EHE and required to submit the associated data to a 'yet to be established' national EHE register. Annual and renewable registration must be introduced which would require parents to provide a yearly educational plan to be considered for continuance of EHE which must be 'suitable' i.e. broad, balanced, and relevant. LAs must see, seek, and assess the wishes and feelings of the EHE-child. Parents would only have fulfilled their duty in respect of providing a suitable education if the child was on the 'home-education register' and had been 'seen and assessed' by the LA (Badman, 2009; Bainman and Gilmore, 2013, p. 915).

## **Specific Safeguarding Recommendations**

Chapter 8 of the Report dealt explicitly with safeguarding, with Badman's recommendations reflecting the views and responses of EHE critics, e.g. LAs, professionals and various organisations including the NSPCC. The views reflected echo the views of local authorities and LA officers within Chapters 6 and 7 of this study. Therefore, these specific recommendations merit brief summation; they cover five areas of concern and formed the Report's recommendations 20-24.

- **Right of access to home and child:** LA EHE-officers should have a right of access to the child's home, and authority to speak to the child alone to ascertain views and that the child is safe and well.

- **Local Safeguarding Children Boards (LSCB):** must annually report on safeguarding provision and any necessary action taken regarding EHE-children. Locally recorded figures will go to a newly formed 'National Safeguarding Delivery Unit' which will collate returns to identify prevalence child protection issues.
- **Training:** all officers involved in monitoring and support of EHE must be suitably trained, qualified, and experienced in identifying children at risk and referring to social care services where necessary.
- **Multidisciplinary approach:** all LA services (adult Social Services, housing departments etc). and outside agencies such as the NHS and Police, must inform EHE services of any "*properly evidenced concerns*" e.g. drug or alcohol abuse, domestic violence, previous history of offences towards children or "*anything else*" which may impact on the adult's ability to home-educate.
- **Refusal of registration:** LA should be able to refuse a registration or revoke registration if safeguarding concerns are present.

### **Reaction to the Review process and to the Report recommendations**

Despite the Reports failure to provide empirical evidence to support the 'findings' (HC 39-II, 2009,) it was accepted in full on the day of publication by Ed Balls, Secretary of State for Children, Schools and Families (Balls, 2009a). The Secretary of State felt the report made a 'compelling case for substantial changes to the arrangements for supporting and monitoring home-education' (Balls 2009a; Stafford 2012; Pattison, 2012). However, the immediate, unreserved, and full acceptance of

the Report and its recommendations gave legitimacy to the belief that EHE could conceal abuse or might lead to educational neglect (Lees, 2014, p. 42).

The acceptance of the Report caused fierce debate and strong criticism from home-educators and academics (HC 39-II, 2009; Nelson, 2010; Stafford, 2012, p. 367). The Review process and the Reports' findings served to bring together UK home-educators who networked to an extent never seen before. Progress towards implementing the Report's recommendations (within the forthcoming Children, Schools and Families Bill, 2009/2010,) was forcibly challenged by home-educators who came together to condemn it in its entirety (Forrester and Taylor, 2011 p. 8). As Badman noted in the Report, the issue of safeguarding had provoked an extremely vociferous reaction from home-educators, furious at the implication which portrayed them as potential abusers who used EHE as a cover for abuse (2009, para. 8.1). The speed the review process garnered widespread criticism, The House of Commons 'Children, Schools, and Family Select Committee' noted the process as "*slapdash, panic riven and nakedly and naively populist*" (2009a, para. 32). It was also viewed as flawed in seeking preventive welfare measures without any research to ascertain if there is genuine basis for concern (Education Otherwise, 2010). Critics felt the wording and direction of review questions were skewed towards increased State intervention and its safeguarding agenda in challenging traditional assumptions of parents' duty of care (Children, Schools, and Family Select Committee, 2009, 2009a; Education Otherwise, 2010; Forrester and Taylor, 2011, p. 15).

Home-educators responded to the Report and the Government's proposals by undertaking a concerted campaign. Despite not having a national group representative of all home-educators (Pattison, 2012) and historically being *'independent, generally disunited, and organisationally weak'* home-educators united (Stafford, 2012). Home-educators effectively used social media (online forums) to network, to share information, to campaign and to organise concerted action: petitions, meeting MPs, marches, and protests. Home-educators submitted 120 constituent petitions to 70 constituency MPs. Such petitions must clearly ask the House of Commons to take some action: the petitions called for rejection of the Report, its findings, and for an Inquiry (Parliament UK, 2017c). In light of criticism the Children, Schools and Families Select Committee convened an inquiry into the Review's conduct and the Report's recommendations.

### **Children, Schools and Families Select Committee Inquiry**

The Inquiry considered conduct of the Review. For instance, the limited questionnaire for home-educators compared to the extensive questionnaire sent to local authorities, finding that this skewed the focus to a presumption that home-education needed increased State control. Or criticising the content and wording of the questionnaires: some questions were found to be misleading and/or misrepresented relevant Legislation and Guidelines (Children, Schools and Families Select Committee, 2009, para. 33).

Following the establishment of the Inquiry, Badman elected to conduct a further survey of LAs later admitting to the Select Committee that this was because of criticism of the previous survey and in ‘anticipation’ of the Select Committees Inquiry (Badman, 2009a). This action is remarkable and unparalleled in the history of Government Reviews and Inquiries (Stafford, 2012, p. 365). This post Report survey was seen to be indicative of preconceived assumptions seen in the Review, and a cynical attempt to provide additional facts to shore up the Report’s flawed recommendations.

*‘... perhaps the most conclusive evidence ... is now that he [Badman] has to justify them [the recommendations] before this committee, he has sent out an urgent plea for additional data. If he had the data available to justify his conclusion, why is he looking for more? If he did not have it, why did he reach such a conclusion?’* (Hardy and Hardy, 2010, para. 5.3).

While the Inquiry was ongoing the Labour Government called a General Election for May 2010. As convention allows, the Labour Government sought to push the Children, Schools and Families Bill (2009-2010,) including relevant home-education sections of Clause 26 and Schedule 1 through in the pre-election “wash-up” period (Parliament UK, 2010). The “wash-up” period enables some Bills to complete their passage with co-operation of the Opposition (Parliament UK, 2017b). However, as part of the negotiation with the Opposition and to pass the Bill into Law, the Government surrendered some key provisions, including those pertaining to home-education which had failed to get agreement. In this “*there is an element of*



*serendipity about the Reviews recommendations not being carried forwards”*

(Stafford, 2012, p. 68).

### **Inquiry Report (2012)**

Following the passing of the Children, Schools and Families Act (2010) without the inclusion of home-education changes, and the General Election, the Select Committee concluded and issued the Inquiry Report: ‘Support for Home Education’ in 2012 (HC 559-1, 2012). It drew several conclusions:

- LAs do act outside the law and most have ultra vires statements on their websites (para. 10-12).
- There is a level of inconsistency in individual LA’s practice. The Report recommended the formation of a professional body and annual conference for EHE-officers with the aim of spreading best practice (para. 16-21).
- Elective Home Education Guidance to Local Authorities (2007) was not clear enough in respect of ‘suitable and efficient education’, however, Case-law did give appropriate Guidance on this and recommended that review of the EHEGLA is appropriate (para. s 13-15). A revised EHEGLA was published in 2013.

### **OFSTED Report (2010a)**

This was published following the Badman Report and whilst the Inquiry in the Reviews conduct was ongoing. The report found that: withdrawing children from school to can prevent oversight, lead to their isolation, and deny their voice.

Culpability was attached to the unintended outcomes of Legislation which fails to give home-education professionals the authority to monitor education or safeguard the EHE-child. The focus must be placed on the child and their rights rather than the wishes or rights of the parents and regard for family privacy should not be prioritised over the welfare of the child. EHE-children must have comparable protection to their schooled peers (2010b, para. 33-38). Graham Stuart (MP) Chair of the Commons Education Select Committee and of the Inquiry condemned OFSTEDs report as "*an unpleasant hangover of the last government: a manifesto for more State power at the expense of dedicated home-educators and their children*" (Stuart, 2010; Forrester and Taylor, 2011 p. 9).

## **Continuance of calls to review home-education**

Calls have continued to revise Statute and/or policy towards home-education and is evidenced by the frequency of Reports during the last few years: NSPCC (2015;) Sidebotham *et al.*, (2016) for the DfE; Casey Report (2016;) LGA (2016;) Wood Report, (2016;) NCB (2017;) ACDS (2017). These Reports are symptomatic of the longevity of concerns raised in the Badman Report (2009). The Reports identify potential for risk of harms to the EHE-child and call for authority and powers to enforce oversight, e.g. to register and to monitor education and welfare. There has also been increasing conflation of EHE with illegal schools and radicalisation. Such reports, sitting alongside calls from policy implementers (LAs and officers,) and others critical of EHE continues to pressurise State policymakers (Government and/or DfE) to consider and/or implement policy changes.

## **A new issue: illegal schools and radicalisation**

It has been suggested that some are using the freedoms afforded to genuine home-educators as a cover to run illegal schools (Edwards, 2015; Jeffreys, 2015; Bussey, 2016; LGA, 2016; Ryder *et al.*, 2017, p. 17). With calls for a review of the provisions for home-education to prevent these legal ‘schools’ from avoiding registration as an educational establishment (LGA, 2016; Wilshaw, 2016). This concern was considered in two 2016 Government commissioned reviews: The Wood Report (2016) and The Casey Report (2016). Although their remit was not explicitly home-education, both made recommendations in respect of EHE confirming a conflation with illegal schools and radicalisation.

## **Further reports adding to calls to review home-education**

### **Wood Report (2016)**

A Government commissioned report into Local Safeguarding Children Boards. The Report expressed unease about “*the lack of effective statutory provision about children in unregistered school settings or receiving home-education.*” The Report recommended that current Guidance on home-education should be reviewed to enable LAs to satisfy their safeguarding duties (para. 102 and 103). However, the Government’s response to the Report did not explicitly mention home-education (DfE, 2016).

## **Casey Report (2016)**

The Government commissioned a review into community cohesion, integration, and opportunity within isolated, deprived and typically immigrant communities. The review examined issues of safeguarding children in “*segregated, supplementary, and unregistered, illegal faith schools*” (para. 1.59). The report noted that the educational settings of some children are unknown to local authorities as parents used the ‘quite lax regulation to home-educate’ so as to place children in these unregistered and illegal schools (para. 1.60). The review called for stronger safeguards, to mitigate risk of (immigrant) children falling prey to “*forced marriage, child sexual exploitation, female genital mutilation, and radicalisation*” (para. 7.67) and ‘light regulation’ of home-education to reduce risk of harm and ensure a child’s right to a good, suitable education (para. 7.69). The Government responded that it would: “*consider the findings in this review ... and will bring forward proposals in due course*” (Javid, 2016).

## **The impact of the Wood Report (2016) and Casey Report (2016)**

Following the publication of these Reports the Local Government Association (LGA) called for more powers to deal with families who are exploiting home-education laws by sending their children to the illegal and unregistered schools; empathically linking illegal schools to the teaching of extremist views (LGA, 2016). Failure to safeguard and promote the welfare of children encompasses ‘failing to protect them from the harm’ caused by an unsuitable education of radicalisation or extremism (DfE, 2015). Anxiety about the ‘risk of radicalisation,’ which forms part of Government's wider

Prevent Agenda, is now apparent in EHE safeguarding agenda (Monk, 2016). The Prevent Duty Guidance specifically addresses home-education: affirming EHE-children attend a range of out-of-school settings, which include unregulated supplementary schools, and tuition centres. LAs have a duty to take steps to understand such provision and take suitable and balanced steps to safeguard children attending such settings to ensure children are not at risk of being drawn into extremism or terrorism (HM Government 2015a, p. 8). The claim that EHE could lead to radicalisation was tested via Freedom of Information Act. The 152 English LAs were asked to provide numbers of any 'known' home-educated child who had been radicalised: six authorities declined to answer while all other authorities responded that they had no known cases (Charles-Warner, 2014; Wood and Featherstone, 2017). Nonetheless, while the conflation of home-education and welfare persists there is now the additional component of radicalisation.

## **Stakeholder Critics**

There are a range of stakeholder critics apart from Monk (2003, 2004, 2009, 2015, 2016,) and the previously discussed reports e.g. NSPCC, OFSTED and the media.

Other expressions of concern have been made by:

### **Local Government Association (LGA)**

Following the publication of the Casey Review (2016) into community cohesion, integration and the potential for isolation and radicalisation which proffered that a lack of oversight meant a child could allegedly be home-educated, while attending an

illegal school. The LGA (2016) concurred and noted that LAs, despite having a “statutory duty” to ensure education and safeguarding their powers, are inadequate. The LGA have called for registration of all EHE-children so that they cannot disappear from “oversight of services designed to keep them safe” and for the right to enter homes to carry out checks (LGA, 2016, 2018).

### **Association for Directors of Children Services (ADCS)**

ADCS has issued several Reports (2016, 2016a, 2017) arising from surveys of 152 English LAs during 2016 and 2017. The Reports enabled LA staff to highlight their concerns about EHE and specifically noted concerns about:

- The increasingly growth in numbers of EHE-children.
- The absence of a registration hindering the execution of LA statutory duties to ‘identify children not receiving a suitable full-time education’ and to safeguard children in their area.
- The inability of officers to insist on seeing and speaking to a child.

The ADCS opined “*many of Badman’s recommendations remain pertinent to this day and should be adopted.*” They called for compulsory registration EHE-children with their LA, and for the necessary resources to establish systems and safeguards to ensure the home-educated child receives a good standard of education, has a suitable learning environment, and that they are safe (2016, p. 1; 2017, p. 1).

## National Children's Bureau (NCB)

In March 2017 the NCB published their commissioned report (Ryder et al. 2017). The report detailed a small-scale study of interviews with 17 families recruited from three LA's Children Missing Education (CME) registers. Like the ADCS Reports (2016, 2017) the NCB report provides insight into LA's views on EHE. Additionally, the report noted confusion over LAs, schools, professionals and others differing understanding, interpretations and definitions of a home-educated child compared to a child who is missing education. The authors took the view that it was prudent to consider EHE-children as "*CME during the transition period from school to home-schooling (sic,)*" including those who had legally been deregistered from school to be '*educated otherwise*'. This viewpoint raises immediate concerns: is it legitimate to assume initially that an EHE-child lawfully deregistered or lawfully never entered on a school roll as a child missing education? Current Legislation dictates that in the absence of evidence to the contrary EHE-children must be assumed to be receiving a suitable education until evidence shows otherwise.

The Report conveyed the views of the three participating LAs who viewed inadequate home-education as the main causes of children missing education (p. 9). LAs felt concern over what constitutes a 'suitable' education, meant they struggled to ensure children received a suitable education. LAs were troubled by the unknown number of EHE-children and families who did not engage with services, linking this to children being 'hidden and potentially at risk' (p. 70). The absence of a compulsory EHE register was seen to make safeguarding especially challenging, particularly for

children who were 'unknown' due to never having attended school. They wanted registration and necessary powers to monitor, to mitigate the risk of home-education as it is a "*massive safeguarding issue*" (p. 41).

The report made specific recommendations regarding EHE to the DfE. Firstly, there needs to be consistent practices, rigorous systems, and training for LAs to enable them to safeguard EHE-children. Secondly, research into EHE numbers and the reasons for EHE, as all indications are that home-education is on the rise. Lastly, the authors cited the report 'Educational Excellence Everywhere' (2016) which proposes that schools maintain responsibility for pupils placed in [LA] alternative provision (p. 102,) but expanded the proposal by calling for schools to take on responsibility for those choosing to home-educate.

### **Members of Parliament (MPs) Parliamentary Questions**

MPs can raise concerns with Government by asking questions of Government Ministers within the House or by written questions. For instance, a search of Hansard for the period 4<sup>th</sup> June 2014 to 31 December 2014 revealed that Barry Sheerman, MP, asked 24 Parliamentary written questions on aspects of home-education. The questions concerned EHE numbers, registration, monitoring, assessment, attainment, and specifically safeguarding. However, in the written ministerial responses the Government always indicated that there were "*no plans to address such issues, at this time*" (Parliament UK, 2014). However, in 2017 there is indication that the Governments position may have changed (see p. 57).



## **A Specific concern: the training of officers**

A thread that has come through in the Reviews and Reports into home-education (Badman, 2009; NSPCC, 2014; Ryder *et al.*, 2017,) and in commentator writing (e.g. Petrie, 1995, 1998, 2001; Taylor and Petrie, 2000; the Education Committee, HC 559-1, 2012; Lees 2014; Charles-Warner, 2014, 2015,) is that LA EHE-officers are not suitably qualified and/or provided with adequate training in home-education. As will be shown by EHE-Officer job adverts (see Chapter 6,) LAs specifically seek to appoint teachers to this role, the implication being that they will have the necessary knowledge or insight without requiring further professional job-specific training. Teacher training and teacher employment is appropriate for a school model of education yet does not prepare the officer for the vastly differing world of EHE (Lees, 2014 p. 108-109). Despite concerns about training, the government's response was simply 'officers with responsibility for home-education should be properly trained' (HC 1013, 2013) which is advisory and lacks direction to ensure adequate and appropriate training is provided.

### **Summary:**

This study seeks to ascertain the level of adherence to State strategy at a local level and to identify factors which impinge on compliance at LA and officer level. To understand the pressures affecting the implementation of State policy it is necessary to consider societal concerns, specifically the anxieties expressed by LAs, professionals, governmental and non-governmental bodies, and organisations. This

enables an assessment of the influences which impact LA administration and officer implementation practices accordance or not with State intended policy.

The review of EHE literature formed two chapters. Chapter 2 scrutinised Legislation, Case-law and Guidance which forms the structure under which LAs and officers function in the role of administrator and implementer of EHE-policy. This chapter has reviewed a wider range of literature which examined the issues and concerns expressed within academic literature, EHE related reports and media commentary. Much of this literature expressed shared concerns in respect of home-education. Specifically, around potential for harm, e.g. unknown or hidden numbers of EHE-children; risk of abuse, racialisation, social isolation, inadequate education, or stifling of the child's rights or voice. The potential for harm is likely to be a powerful influence on LA administration and officer implementation practices of State EHE-strategy. For instance, 'potential' creates a climate of fear, whereby, LA and/or individual officers or professionals fear being blamed if a harm comes to fruition (Stanford, 2010).

Therefore, the fear of 'potential of harm' impacts perceptions of EHE becoming a driver for LAs and officer to administer and implement a locally restructured defensive EHE-policy and practice which is divergent from that formulated by the State. It is a fear that has led to calls for LAs to be given increased authority and powers to monitor, to see the child, access the home, to implement compulsory registration. Whilst such calls are counter to current State strategy as detailed in

EHEGLA (2013) they echoed through the literature in this chapter and are reflected in the LA findings (Chapter 6) and officer interviews (Chapter 7).

## CHAPTER 4: CONCEPTUAL FRAMING

“Street-level bureaucrats’ play a crucial part in reacting to, interpreting, and sometimes effectively changing policy at the point of implementation. We need to understand and take account of these processes in a more sophisticated way than we currently do” (Trowler, 1997, p. 20).

This study seeks to understand the extent to which local authorities (LAs) and their officers adhere to State Legislation and Guidelines in respect of elective home-education (EHE). It considers the importance of integrity in implementation, specifically, if State EHE-strategy is interpreted and implemented in a manner divergent from its original intention (outlined in EHEGLA, 2013). Firstly, through examining expressions of LA administration for variance or conflict with intended national policy. Secondly, the study probes the role of EHE-officers,’ who are the implementers of policy, to ascertain issues that impact their mind-set and practice towards home-education.

This chapter forms a discussion about agency, power, and social policy: and engaging in a narrative about the construction and implementation of policy. This is a narrative which is relevant to determining the extent to which LAs and their officers adhere to or interpret State Legislation and the processes and influences at play.

Policy creation is principally goal orientated, designed to deal with specific issues or concerns in the most efficient and effective manner (Smith and Larimer, 2017). Policy creation is no more than a political response, either arising from specific need or more generally a 'need to be seen to be doing something' (Hill and Hupe, 2002, p. 139). It is this latter interpretation that finds resonance within this study. The principal goal of policy implementation is transitioning determined policy into practice. The premise is that implementation means the application of policy consciously put into effect. Therefore, the definition of 'implementation' is a specified set of activities and is designed to put policy into practice and is purposeful in seeking an intended outcome (Fixsen *et al.*, 2005, p. 4-5).

This small-scale study tracks the execution of national policy, through its implementation, delivery and outcome at local level. In so doing the study draws on the conceptual underpinnings of 'Policy Implementation Theory' and specifically draws on 3 theoretical perspectives offered by:

- **Lipsky** (1969, 1971, 1980, 2010) Street-level bureaucrats, the implementers of policy: applied to officer practice as the critical player on outcomes in the implementation of EHE-policy;
- **Reynolds and Saunders** (1987) Implementation Staircase model allows for the conceptualisation of EHE-policy implementation as travelling through specific steps or stages;

- **Wenger** (1996, 2008, 2010) Communities of Practice (CoP) whereby professionals (and others) 'belong to CoPs with shared interest, perspectives, interpretations, and goals'.

It is not possible, within the limits of this PhD thesis, to discuss the scope and depth of each theoretical perspective: I will provide an overview as it pertains to my study. Each theoretical perspective scrutinised to bring about a fusion that demonstrates how each has helped to position my study, advance my research, illuminate my data analysis, and inform my discussion. This is a fusion arising from the need to explain the complexities and interplay of the various steps of EHE-policy implementation:

- national legislators' policy formation;
- LAs administration of national policy: locally interpreted and/or defined;
- LAs delegation to SLB-officer implementers: implement State strategy and locally interpreted and/or defined policy, with potential for further reinterpretation or redefinition;
- Outcomes: implementation as experienced by client group.

Whilst relevant, the focus of this study is not on the creation of policy by Government, but rather the process of interpretation and implementation by those tasked to oversee the policy: specifically, LAs and officers. The study considers the influences and effects on policy practice, and whether the outcome is as the policy creators intended or becomes something quite different. Also examined is the

notion that if the policy implemented is different from that intended, it can create a 'precedence of practice' and push State strategy change.

## **Underpinnings: 'Policy Implementation Theory'**

As seen in Chapter 2, Government policies are enacted through Legislation and statutory Guidelines (Hill and Hupe, 2002; Wilson and Game, 2011; Smith and Larimer, 2017). State policy deals with situationally specific issues, be it political, social, economic, and/or organisational (Khan and Khandaker, 2016, p. 539). Policies are fundamentally a theoretical paradigm, often related to the exercising of power, created remotely from the people who will implement or be subject to it (Moe and Gilmour, 1995; Wilson and Game, 2011). Pressman and Wildavsky, in their seminal work 'Implementation' (1973,) developed their theory of policy implementation during the 1970s. It was an approach primarily concerned with identifying barriers to successful policy implementation (Khan and Khandaker, 2016, p. 540;) specifically, achieving mandated Statute goals (Dahill-Brown and Lavery, 2012).

Policy creation is a process of determining objectives, deciding on how to achieve these as outcomes and/or allocating necessary resources (Pressman and Wildavsky, 1973; Codd, 1988, p. 235; Trowler, 2002; Khan and Khandaker, 2016).

Implementation is a sequence of '*consequential steps, progress, interaction, and negotiations,*' occurring not only between those formulating policies but also those who actually implement policy (Chand, 2011, p. 2). Implementation lies between the process of policy formation and policy outcome, turning strategy into action (Smith

and Larimer, 2017). The implementation stage is a transitional step, resting between formation of policy and the outcome of policy. This intermediate stage is where those tasked with the implementation can bring their own predilections to bear on the process, through the rules and procedures they adopt, impacting implementation outcomes as experienced by policy recipients (Chard, 2011; Wilson and Game, 2011).

Policy should be appropriately implemented, or its value diminishes and eventually the policy fails. The inherent flaw in implementation is that policymakers assume, once they have created the policy, that the expected outcomes will just happen (Trowler, 2002). Successful implementation and the achievement of expected outcomes is dependent on makers of policy ensuring that the implementation process is at the core when formulating policy (Pressman and Wildavsky, 1973; Van Meter and Van Horn, 1975). The success of policy is dependent on clear processes (including legislative) and the transmission of intended policy goals and objectives to those tasked with implementation (Chandler, 2009; Wilson and Game, 2011). Policy formed without framing how it will be implemented at this crucial formation stage engenders a climate whereby implementers are left free to interpret and define policy, thereby they fail to fully comply with policy aims (Pressman and Wildavsky, 1973). Two aspects shape compliance: the level of organisational oversight and the level of agreement over aims and objectives. Implementation is most likely to achieve expected outcomes when there is '*goal consensus*' (Van Meter and Van Horn, 1975, p. 458-460). If implementers are not invested in the policy, and/or in



agreement with the policy aims and expected outcomes, goal consensus diminishes. Implementers will not only be less committed but prone to interpreting intended policy within their practice so that it becomes more reflective of their own values. Therefore, policymakers must give clear direction and ensure compliance; yet this is frequently omitted leaving too much room for interpretation (Pressman and Wildavsky, 1973; Khan and Khandaker, 2016).

Van Meter and Van Horn (1975) outlined six implementation variables which intercede between policy and practice and can impinge on the success or otherwise of enacting policy. Namely,

- Clear policy statements and objectives' over all goals;
- Sufficient resources facilitate policy implementation;
- Effective communication and oversight to limit divergence from intended policy;
- Any factors with individual organisations which may impact on the ability or willingness to implement policy;
- Economic, social, and political conditions also affect performance; and
- The implementer: their understanding of the policy, how they feel about the policy and the strength of any personal viewpoint.

Khan and Khandaker (2016) similarly note factors which can impact on successful implementation including: imprecise or misunderstood aims and objectives; lack of universal or harmonised organisation; absence of consistency; inter/ intra

organisational apathy (p. 541). Poor consistency and organisation in implementing policy at the 'bottom' of the implementation chain enables differing interpretations, approaches and unexpected or unwarranted consequences. Policy which is based in Statute, can get 'lost in translation' as Legislation by its very nature is complex. As seen in Chapter 2, various Acts of Parliament and statutory Guidance create EHE-policy, these can appear conflicting and potentially can be misinterpreted during implementation, thereby impacting the legislators' intended policy outcomes. Policy enactment can be incorrectly managed and/or inappropriately delivered, whereby intended policy outcomes become compromised by those tasked with implementation (Van Meter and Van Horn, 1975, p. 449; Khan and Khandaker, 2016; Smith and Larimer, 2017). Additionally, the failure to identify recipients of intended policy who may be of an unknown number or may be simply uncooperative negates the successful implementation of policy; as does inadequately resourced policy, including inappropriately trained staff and/or poor or officious communication from implementers to target recipients (Khan and Khandaker, 2016, p. 542).

Implementation of EHE-policy is often discordant and markedly divergent.

Implementation, seen as a discrete aspect of policy formation, allows for a deeper understanding of the issues that can arise. Resolution of discordance could lie in defining the process of policy formation to include consulting with stakeholders: implementers, subjects of policy and others who have an interest in the policy area. Thereby mitigating uncertain outcomes as to the opinions of those who have different investments, viewpoints, interpretations, or concerns can raise these early

in the formation of the policy and before implementation. (Pressman and Wildavsky, 1973; Deleon and Deleon, 2002, p. 3; Smith and Larimer, 2017). Using the subject of this thesis, home-education, as an example, there are differing and competing 'investments', conflicts and concerns: the LA with concerns about statutory duties: education or safeguarding; the officer with concerns about meeting employer expectations and getting the job done; the home-educator with concerns about being allowed to educate unhindered. Those who have an investment in a viewpoint find commonality in mutual positions or opinions, or within a community of shared perspective or practice. Failing to consider the issue of 'standpoint' at the formulation stage, differences in investment and perspective, will impact implementation, be it through 'interpretation' by implementers (LAs and/or officers) or resistance from the targets of the policy (home-educators).

Classically policy formation and implementation are seen to be transmitted from the top downwards, from the creators to the individuals who would carry out the policy (Pressman and Wildavsky, 1973; Van Meter and Van Horn, 1975). However, this is a limited view and Lipsky's (1969, 1971, 1980, 2010) Street-level bureaucrats (SLB) paradigm allows the expansion of the top-down policy implementation narrative to one which considers the possibility of bottom-up policy formation.

### **Theoretical Perspective 1: Street-level Bureaucrats (Lipsky, 1971, 1980, 2010).**

While this study considers the role of LAs in EHE-policy implementation, the successful application of policy is highly dependent on the officers tasked with

implementation. The role of the EHE-Officer meets Lipsky's (1969) definition that implementers of policy are the low-level employees who the recipients of policy experience as the 'public face' of government or authority. The Street-level bureaucrats' paradigm (Lipsky, 1971, 1980, 2010) provides an explanation into the role played by LA officers as the delegated official who implements EHE-policy. The SLB model allows exploration of the officer role in the act of interpreting, defining and thereby generating 'new' bottom-up policy which impacts on top-down created policies expected delivery and outcomes. Lipsky provides a framework to assess the tri-fold conflict that arises in the implementer officer role: as servant of the State, as an employee of the LA, and as a professional, so illuminating the conflict that can arise between these roles and its impact on the relationship with home-educators.

Lipsky's SLB model provides a relevant explanation for how top-down policy can seem inverted by those bringing the policy to the intended recipients. SLB-officers must 'get the job done,' whilst making sense of competing directives: rules and procedures of national Legislation; local policy; and their own 'world view' (Wastell *et al.*, 2009). SLBs work in demanding, overstretched and under-resourced 'helping profession' services, for instance social-workers, police, or housing and education officers (Lipsky, 1980, 2010). A characteristic of SLBs is that they are professionals who face the competing challenges of having a role with conflicting expectations, and therefore, they have difficulty in measuring their own job performance. Typically, they experience consistent disgruntlement that the 'policies' they implement are not working (Lipsky, 2010). They lack resources: which "are

chronically inadequate relative to tasks workers are asked to perform" (Lipsky, 1980: 27). Lipsky emphasised the role of 'caseload' in the work of SLB-officers. Caseloads divided into active and inactive categories reflective of allocation of scarce resources, particularly the scarcest of resources, time (1980/2010, p. 36). Caseload decisions are not mere categorisations, but a realistic appraisal of appropriate action given competing demands. Time is allocated to a case which in officer opinion merits or requires attention; often this is because the case appears 'serious' or indicates another need (Lipsky, 1984, p. 36) such as a new case requiring oversight. SLBs therefore are not only implementers but allocators, the public face of bureaucracy who directly engage with the client group, provide services, or distribute resources (Somerville, 2015, p. 1).

SLB-officers are subject to unclear, confusing, or incompatible expectations, as well as society's prevailing economic, political, and social climate. Officers can interpret and respond to such issues by deciding how they put policy into practice. Central is the concept that the implementation of policy comes down to the people who implement it at 'street level'. SLB-officer work is typically unobserved, and this can engender situations where an officer can depart from what policy originators or their direct employer intended. In their role SLBs implementers are afforded autonomy: the ability to assume extensive discretionary independence in the process of implementation (Lipsky, 1969, 1971, 1980, 2010). The theoretical perspective afforded by Lipsky's provides a framework to understand the officer role and impact in the implementation policy. This highlights a distinctive element of policy

implementation: whereby the execution of policy the ability to exercise discretion is pivotal. Discretion is exercised by an individual; it is not the purview of the governing principal of bureaucracies (Martin, 1993; Kaufman *et al.*, 1998). It is the ability to exercise discretion which gives implementers '*significant accountability should things go awry*' (Land and Rattray, 2014, p. 15). The exercising of discretion is pivotal to understanding practice decisions and the success or failure of intended policy outcomes.

SLB practice is "*built on relatively high degrees of discretion and relative autonomy from organisational authority*" whereby 'work arounds' are grounded in exercising of discretion or 'professional judgement'" (Lipsky, 1980, p. 13). Discretion gives SLBs relative freedom over the: content of services (task discretion ;) the regularity and means of interacting with users (rule discretion ;) and the aims (value discretion) (Taylor and Kelly, 2006, p. 631; also cited in Rice, 2017, p. 3). SLBs typically adopt strategies which reflect the imperative to achieve employers' outcomes, even if this conflicts with top-down policy directives and the method of implementation is of less importance (Land and Rattray, 2014). The method of implementation is less important (Somerville, 2015) and SLBs will simplify procedures to cope with the competing demands placed on them, with the recipient of 'services' subordinated to the achievement of required or attainable goals' (Jewell 2007, p. 22). The inherently discretionary nature of SLB work impacts on the level or standard of 'service' the recipient receives (Weatherley and Lipsky, 1977; Lipsky, 1980, 2010). Discretion is the human factor at play: it is subject to latent subjectivity, swayed by personal

feelings, perceptions, or opinions (Lipsky, 2010, p. 14). Discretion is affected by biographical, professional, and personal life experiences which impacts SLB professional proclivities, views, and duties (Dobson, 2015, p. 11).

Policies based on a firm political basis are likely to engender thoughtful policy design and resources; removing opportunity to redefine policy (inadvertently or otherwise) or to exercise discretion in such a way that it changes intended outcomes. But policies based on uncertain political aims or unresolved issues lead to ambiguous policy and unintended outcomes. Given the diversity of implementation contexts that can arise, the issue of what SLBs 'should do' and 'what they actually do', can be conflicting. The fundamental issue for implementers depends very much on the concerns transmitted to them by the policy creators (Mayers and Vorsanger, 2007). At the simplest level, SLB-officers need to know policy requirements, job description, and intended outcomes; dependent on the clarity SLBs can be clear about policy and their role. Typically policy is obtuse, contradictory and lacks clarity. Therefore, SLB-officers develop routines of working, practices of expediency, routinisation and categorisation which allows them to deal with constraints, contradictions, and control of 'client caseload' (Weatherley & Lipsky, 1977; Lipsky, 2010, p. 117-128). SLBs seek to 'implement, deliver, interpret, mediate, negotiate, refuse, resist and subvert' governmental and/or policy systems in which they function (Dobson, 2015, p. 10). When uncertainty exists about how to implement policy, the high-level of discretion that SLBs exercise can enable 'outside influences' to impact on their decision making. SLB frequently make trade-offs to maintain their professional

norms and standards: they may find policy conflicts with their professional training and networks or communities of practice (Lipsky, 1980, 2010; Wenger, 1980, 2010; Tummers, 2012).

The nature of SLBs' work means they might experience difficulties identifying with the policy they implement. SLBs discretionary freedom arises at the point of implementation, at that stage there is potential for SLB-officers to define and create elements of 'new' policy. In so doing the originators of the intended policy realistically loses control its day-to-day implementation (Newton, 2010, p. 48). This is a challenge for originators of policy who risk alienating SLBs if they curtail officer discretionary decisions, even if these contradict existing policy including Legislation or statutory policy Guidance. Discretion can be a 'safety valve' (Lipsky, 1980, 1984, 2010; Tummers, 2012) which averts SLBs from: withholding cooperation; or devising strategies that bolster their role; or curb feelings of negativity, alienation, and apathy towards their job (Lipsky, 1980, p. 17).

In the context of State policy administered at local level by stakeholder organisations or authorities, the challenge for managerial level officials is to interpret, disseminate and administer policy in a way that does not undermine SLB professional standing or judgement (Prottas, 1978; Lipsky, 1980, 1984, 2010). Policy conflict will occur when one or more of the implementation tiers, policy originators, managers or SLB-officers hold divergent views regardless of the relevance to specific or shared concerns practices aims and desired outcomes (Hudson, 2006).



The practices of SLB-officers arise in organisational or bureaucratic behavioural action (Lipsky, 2010, p. 13). They are the public face of State administration and navigate the relationship between State and citizen-client. Thus, SLBs actions are perceived by the recipients as representing policies as laid down by the State (Lipsky, 2010, p. xix). The potential impact of officer practice decisions, and their exercising of discretion, via implied authority, can thus be immense (Lipsky, 1969). In their day-to-day practices SLBs effectively create policy as opposed to implementing the policy generated in some remote governmental office (Lipsky, 2010, p. xiii; Trowler, 1997, p. 20).

SLBs role as generators of 'new' policy lies not only in their ability to exercise discretion. The ambiguity of policy language contributes to bureaucratic policymaking, as legislators pragmatically concede policy implementation to SLBs to 'drive policy forwards' (May, *et al.*, 2013, p. 111). Bureaucratic policy arises when SLBs draw on outside influences (e.g. professional background or community) in exercising discretion allowing these external factors to effect policy implementation. Ambiguity in policy also constrains universal and standardised implementation of policy as local circumstance and influences can impact implementation. Therefore, challenging the originators of policy (or at LA level senior management) to impose their expectations for implementation outcomes on SLBs (Matland, 1995, p. 159).

SLBs function in circumstances that require reaction to the human component of any given situation (Lipsky, 2010, p. 15). Public service policy implementation has a

critical role of social control: especially those policies involving the delivery of statutory or advisory services (Lipsky, 1984). While SLB-officers do not formulate statutory objectives, nor write the Legislation to accomplish them, they do act as gatekeepers (Lipsky, 2010, p. 221). By interpreting and defining policy, and by exercising discretion, SLBs undeniably make policy as their implementation practice becomes revised policy through the routines they establish ... effectively these become the public policies they carry out (Lipsky, 1980: p. xii). Overtime this revised policy can become unquestioned accepted practice.

SLB-officers are exercisers of power and decision making, thus part of "*the policymaking community*" (Lipsky, 2010, p. 13). In the English context, policy (in the form of Legislation and Guidance) arises from within central government; is delegated to the administration of LAs; and implemented via LA officers. At each stage there is the potential for the policy to be altered. Within this implementation progression the levels of bureaucracy frequently conflict, lacking consensus, and/or mutual support (Lipsky, 2010, p. 17). Therefore, in examining the implementation process and potential for unintended outcomes it would be necessary to look at the entire policy environment, not just the role of SLBs (p. 222). Whilst acknowledging this caveat, it is beyond the bounds of this small-scale PhD study, designed to consider the role of LAs and EHE-officers in home-education policy generation.

SLBs-officers can be viewed as the personification of two of bureaucracy's most criticised facets: inept inefficiency, and authoritarian oppression. The existence of

this stereotype results in moral dilemmas and conflicting policy criteria for SLB-officers (Evans, 2006, 2010). Policy is ‘nothing but paper’ until SLBs have delivered the policy to the intended target audience. Yet whilst having considerable discretion in their role SLBs typically do not read or understand the fine nuances of the law (Winter, 2002, p. 2) leading to charges of ineptness. Nevertheless, wider society tends to assume that SLB-officers have legal authority whether power is afforded to them or not. SLBs can also misunderstand the level of their authority or simply imply they have powers where none exist. Unchallenged or simply accepted assumed authority impacts intended policy outcomes (Lipsky, 1980).

### **A Precedence of Practice**

Legally, as seen in Chapter 2, LA policy and SLB-officer practice cannot supersede national policy, or any Guidance which emanates from the executive. As unlawful policy becomes accepted as normal, it suppresses State policy (Legislation or Guidance) deviating from that intended by governmental policy originators. A climate with an acceptance of elevated levels of noncompliance with lawful policy provides a push for the State to change Statute with calls from e.g. LAs, officers and stakeholder governmental and local governmental organisations and bodies.

The interpretation of policy implementation, as seen in SLB-officer practice, allows for ‘backdoor’ policy revision and/or a bottom-up push for more formal policy change. Whilst not directly creating a legal precedent, when enough people accept or follow (local) unlawful policy and procedures it creates a practice precedent.

Acceptance of practice precedence when tested by the Court has a threshold of what reasonable person would consider acceptable to expect. Therefore, locally defined, but outside of the law practice could be adjudicated to be acceptable to a 'reasonable person'. The counter argument to that is a reasonable person would expect the LA to follow the national Statute which legislatively takes precedent over local policy. However, with the duplicity of the 'accepted,' a reasonable person may well view such reinterpretation as valid (Williams, 2002). Until a Court decides on an issue of local policy or practice precedence any such practice or local policy remains outside the law.

## **A Synthesis of Approaches**

I approached this study with a sense of dual directionality in the implementation of policy, whereby policy can move down and up a 'staircase of implementation' during implementation, progression, and execution (Saunders, 2011). This led me to adopt the theoretical model of an Implementation Staircase (Reynolds and Saunders, 1987) based within implementation theory alongside Lipsky's (1984, 2010) SLB model, to explain the apparent duality of direction. EHE-policy is top-down policy; it arises from government, and is filtered down for administration via LAs, for implementation by SLB-officers. As an EHE-practitioner and advocate I had witnessed SLB-officers implementing varying unintended policy and practices, noting variable locally defined LA procedures contrary to national policy. This activity creates a precedence of practice and an environment for bottom-up pressure on government to review current policy.

Policy implementation literature similarly noted two approaches: top-down which is appropriate to clear-cut policies, and bottom-up which have a greater potential for innate uncertainty. The disparity between these approaches results in ambiguity and conflict. Therefore, Maitland (1995) proposed the construction of a more efficient hybrid implementation model '*ambiguity–conflict matrix*' which combines the two approaches, enabling both the examination of implementation progression and assessment of the effect on outcomes. The system characteristically initiates policies with ambiguous or conflicting goals which is a continuous feature of EHE policy making and implementation. Policy moves across the spectrum and there is no '*significant or specific point at which a slight move up or down causes a fundamental change from approach to implementation to another*' (p. 159). A synthesis of the two approaches (top-down and bottom-up) to policy formation and implementation, gives recognition to policy change having the ability to flow in dual directionality providing a clearer, more responsive model (Matland, 1995; Russell, 2015; Khan and Khandaker, 2016, p. 540). Bottom-up practice is essential to success or failure of any policy implementation, having both merit and influence, while still permitting top-down policy to maintain status, governance, and control (Russell, 2015, p. 17).

To succinctly address the way the implementation of policy and practice can be a 'two-way street,' Maitland's thesis adopts the notion that a 'bridge' can be made to span issues arising between top-down and bottom-up: using the convenient conceptualisation of an 'Implementation Staircase' (Reynolds and Saunders, 1987). The concept of an 'implementation staircase' provides a straightforward visual aid

melding well with Matland's (1995) notion of ambiguity–conflict and dual directionality of the ebb and flow of pressures on policy implementation and creation.

## **Theoretical Perspective 2: Implementation Staircase (Reynolds and Saunders, 1987).**

Whilst policy content and intended outcomes are important, it is the process of policy implementation which provides the opportunity for intentions and outcomes to go awry. The progression of implementation with potential for interpretation or reinterpretation is intertwined with practices that can gradually build impetus towards the adjustment of policy. Government policymakers are only able to make broad recommendations about how policies 'might be' implemented by issuing Guidance (Williams, 2002). Given the delegated nature of government in England, whereby LAs administer State defined policy strategies at local level and delegate implementation to their 'SLB' officers, policy becomes susceptible to redefinition during these 'transitions'. Each stage during the progression to implementation outcomes offers opportunity to reframe policy from that the policymakers intended.

National EHE-policy is prone to inconsistency at implementation (HC 559-1, 2012; Stuart, 2014; LGA, 2016). Policy delegated to LAs to administer implementation can be defined by higher-ranking LA bureaucrats before the SLB-officer implements and then further reframes policy within their practice. The English system of local

administration enables each LA to decide how they will implement central policy (Williams, 2002). There are a 152 English LAs given the scenario just described theoretically there can be 152 variations of the same national policy. Within an LA individual SLB-officers, drawing on professional discretion, can further interpret national EHE-policy and locally defined policy and practices according to their own understanding and perspective. The 'implementation staircase' allows for the acknowledgement that policy may be interpreted at each level of its implementation progression. This can create a bottom-up push towards policy change. The metaphor of a staircase allows top-down and specifically bottom-up implementation evolution to be conceptualised.

The Implementation Staircase model provides a practical means and 'simple' explanation of implementation progression, evaluating how policy evolves through various stages (Sin, 2012). These 'stages' becomes steps on a staircase. The symbol of a staircase conceptualises the importance of stages where new policy can be 'created' within policy implementation. The staircase depicts the roles and influences by positioning on a staircase those involved in implementing policy from conception through to actuality (Sin, 2012; Wade, 2016). Each step is occupied, from the top down, by government originators, LA administration, and SLB-implementer to recipients of policy. Trowler (2002) noted that "*there is a loosely coupled relationship between policy initiatives at the upper level of the implementation staircase and outcomes on the ground*" (p. 3). Once the policy has left the originator each step of the implementation staircase can impact policy outcomes and/or create policy

changes which will potentially push upwards (Bamber *et al.*, 2011,) as each step inviting negotiation, compromise, and conflict (p. 5). Accordingly, at each stage on the implementation staircase there are opportunities for interpretation and revision, which engenders a plethora of inadvertent or intentional outcomes (Saunders and Sin, 2015).

Taking EHE as the example, at each step on the staircase the 'step occupiers' could perceive policy in differing ways. The DfE will view the policy differently than a LA head of Children's Service, or a Team Manager or the officer implementing the policy daily. At each step on the staircase, role holder implementers will have various, but distinctive concerns, modifications, and agendas. LAs have local concerns, define policy with these concerns in mind and transmit their stance to their team managers and officers, potentially influencing the practice of the SLB-officers. However, SLB officers are not submissive participants but dynamic contributors who can influence and change outcome through their practice and use of discretion. To use an analogy each modification sees the 'policy-ball bouncing up and down the staircase' in often unanticipated respects as each step of the staircase engages with and interprets or reinterprets policy (Bamber *et al.*, 2011, p. 12). The policy originators intended that policy is unchanged, but the outcomes can diverge from that originally intended. The discrepancy between expected outcomes and the unplanned consequences develop along the staircase forming an "*implementation gap*" (Newton, 2001, p. 47; Bamber *et al.*, 2011, p. 13). Any gap which arises in the transmission of policy "*can be understood and acted upon divergently by stakeholders*" as it travels up and down



the staircase (Saunders, 2011, p. 9). A gap that can fluctuate with the number of stages or steps and/or the number of individuals the policy passes through (Wade, 2016). The implementation staircase adopted in this study illustrates the progress of policy implementation as related to EHE with five discernible steps:

1. Central government: formation of policy
2. LA: Heads of Service/Councillors = high-ranking officers
3. LA: Departmental managers/team leaders = middle ranking officers
4. EHE-officers lower-ranking or SLBs
5. Home-educators, local EHE groups

Analysis of the evidence presented in this thesis show two 'floating' steps, one occupied by 'interested stakeholders' who seek to influence EHE-policy locally and nationally, the other is occupied by home-education organisations and EHE-advocates (see Figure 1, p. 128)

The staircase analogy signposts that intended policy can change during its progress to implementation. It is simplistic for policy originators to expect that policy will remain unchanged on its journey towards implementation and that the intended outcome will be achieved. Instead, implementation gaps develop due modifications to intended policy (Sin, 2012). The very process of enactment policy is affected by the constructed understanding of those tasked with its administration and implementation. Therefore, modifications to policy can occur at any stage along the implementation staircase, be it unintended or planned (Bamber, *et al.*, 2009, p. 12-13).

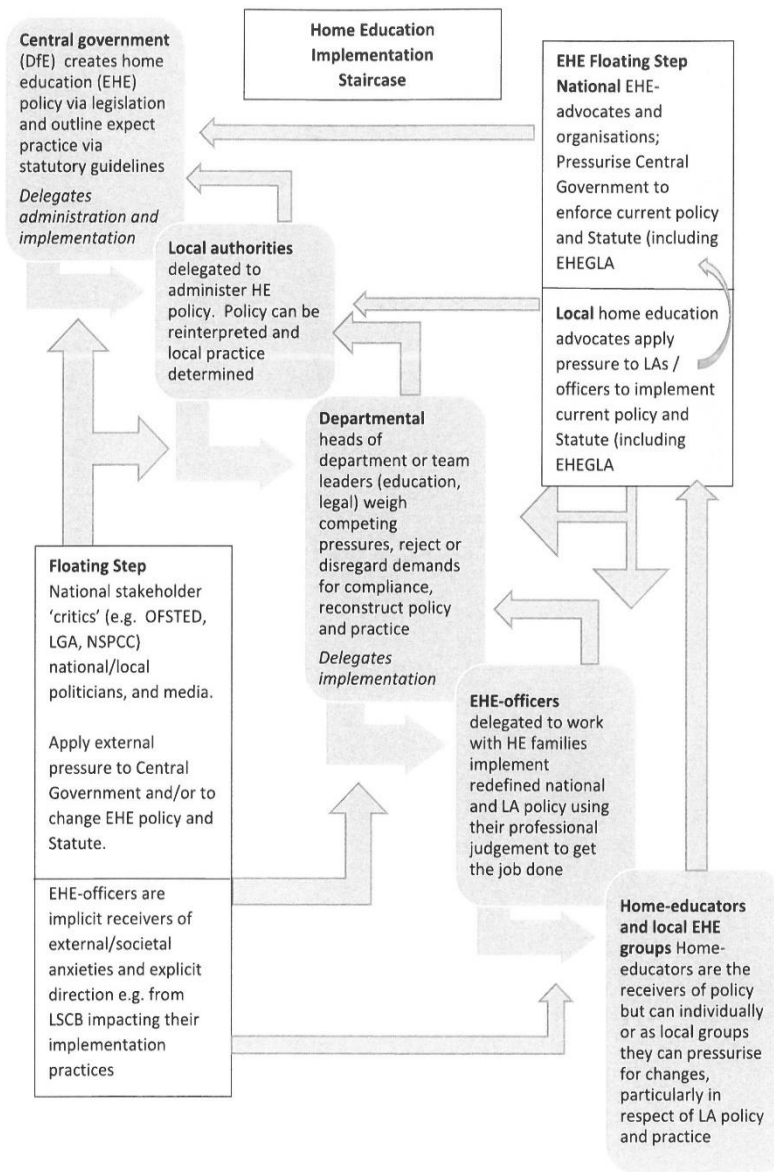


Figure 1 Implementation Staircase (adapted Reynolds and Saunders, 1987)

Figure 1: The EHE Implementation Staircase (adapted from Reynolds and Saunders 1987)

Implementers' perceptions of home-education can be individual and influenced by a variety of factors, for instance: experience of education; previous employment, knowledge of alternative educational styles; or recent media reporting. There is an additional influence lying in affiliation to professional attachments and identity, which instils a sense of community that is likely to perpetuate the group perspective (Eddis, 2015, p. 100). Therefore, while the individual SLB-officer perception is relevant, their professional identity via attachment to specialised groups or community is highly influential. For instance, EHE-officers are frequently teacher-practitioners holding the professional identity of and relationships to other teaching professionals. Such identity and relationships can influence views which potentially conflict both with policymakers and recipients. Attachment to professional identity is usefully contextualised by drawing on Wenger (1998) 'communities of practice' (CoP) model.

Lipsky provided an understanding of EHE-officers as SLB, delegated by their employing LA to implement policy in respect of home-education. The data collected for this thesis will demonstrate that officers are, in the main, former teachers actively recruited by LAs into this role. It is postulated that officers do not shed the skin of 'teacher' but bring this identity forwards into their role as EHE-officers. Therefore, in considering the impact of teacher identity on EHE-Officer practice the work of Wenger (1999, 2000) additionally informs this study. This is appropriate as the impact of officer associations or CoP, which share common practice, knowledge, enterprise, and culture formed during professional training or previous employment,

which can be of continuing relevance. This study considers if EHE-officers are influenced by the former professional identity of 'teacher', do they maintain a level of affiliation to teacher CoPs and is there evidence of EHE-Officer CoP.

### **Theoretical Perspective 3: Communities of Practice (Wenger 1998, 2006, 2010).**

Communities of practice (CoP) model grew out of Lave and Wenger's (1991) work on 'situated learning and legitimate peripheral participation' within the teacher-learner environment. Learning is seen as a normal function of activity enabling newcomers to learn through participation, initially at the periphery of the community, to become experienced practitioners. The acquisition learning is no longer simply seen as a taught or cognitive skill. Learning requires active participation and mutual facilitation where it becomes a meaningful social practice within a setting: a community of [shared] practice (Pattison, 2016, p. 73-77). Mutually created and sustained, CoPs are diverse, variable in size and have an explicit focus e.g. teaching or social work (Lave and Wenger, 1991). CoPs enable collective maintenance of community knowledge and memory: allowing participants to practice within them, without the necessity to know everything. Individuals within the CoP act as mutual resources to one another; enabling exchange of information, ideas, and practices and a support mechanism of reassurance (Wenger, 1998, p. 47).

*“Communities of practice develop. around things that matter to people ... practice reflects the members' own understanding of what is important ... even when a community's actions conform an external mandate”* (Wenger, 1998, p. 4). CoP have three essential elements on which they form the basis of unity and fostering professional identity and practice.

1. Joint enterprise - what it is about: members or participants engaged in shared enterprise (p. 77).
2. Mutual engagement - how it functions: committed individuals who informally build relationships through shared experiences or intentions, their contributions affecting and refining the CoP. (p. 73).
3. Shared repertoire - what competencies it constructs: the common culture of the community, e.g. shared training, jargon, routines, or styles of working (p. 82).
4. Members are drawn to the community that reflects their shared interests, as a place to share and create knowledge. Leaders arising from within the community, gaining authority from their experience and knowledge (de Lima and Zorrilla, 2017).

LAs frequently employ teacher-practitioners into the role of EHE-Officer (see Chapters 6 and 7). The thesis proposes that officers with a teaching background have attachment to CoPs with a shared purpose of addressing habitual problems of the practice of teacher or educator. CoPs which afforded an environment for exploration of shared *‘practical, pedagogical, and disciplinary knowledge’*

encompassing not only the identification of what it means to be a teacher, but also education, children, classrooms, schools (NCTE, 2011; Schlager *et al.*, 2002). EHE-officers do not abandon their identity of 'teacher' but the lessons and understandings formed within CoPs accompany officers into their new role.

The CoP model has also been applied to EHE research in respect of the diverse online networks and real-world communities' home-educators form. EHE-CoPs arise in the need for mutual support, sharing resources and information, or activism at times of 'threat' (Barson, 2004; Safran, 2008, 2009, 2012; Fensham-Smith, 2017).

### **Summary:**

The purpose of this study is to ascertain factors which impact on the implementation and adherence to nationally created home-education policy. The study draws upon the distinct but complementary concepts: Street Level Bureaucrats; Implementation Staircase; and Communities of Practice, to provide a conceptual framework to explain the issues and factors EHE-policy implementation.

These three distinct but complementary concepts will illuminate how the process of implementing State policy results in unintended outcomes. Whereby, the origin of EHE-policy arises in national government, is forwarded to LAs to administer implementation and onwards to SLB-officer implementers (*top-down policy*). At each step on the *implementation staircase* there is potential to interpret, misinterpret or redefine policy which impacts on the policy originators intended outcomes. LAs, as

administrators of EHE-policy and specifically their officers, the *SLB* implementers of policy, have a crucial role in this process. The local policies and practices they adopt directly impact the experiences and outcomes of those subject to the policy. Such 'change' to policy over time can become accepted practice precedence, stimulating a *bottom-up* push for changes to Statute: Legislation, case law and/or Guidance. Further outside stakeholders can pressurise policy originators, policy administrators and/or policy implementers, thereby, providing an additional external push for policy change. Lastly the role of the EHE officer is crucial; they are the *street level bureaucrats* who implement policy. As SLBs the EHE-Officer exercises professional discretion, while frequently being teacher-practitioners they retain the identity and understandings formed within teaching *communities of practice*, both elements directly impacting outcomes.

These theoretical approaches, drawn together to frame my overall conceptual framework, informs the analysis – as will be seen in Chapters 6 and 7. However, I now move on to describe and discuss how I designed and carried out the data collection.

## CHAPTER 5: METHOD OF DATA COLLECTION

This thesis examines the implementation of State Legislation and Guidelines in respect of home-education by local authorities (LAs) and their delegated officers as implementer 'street level bureaucrats'. Crucially examining whether LAs and officers' implement State policy strategies as intended, or do they fashion an interpreted local policy, thereby, impacting on intended State outcomes.

The previous chapters reviewed relevant literature and theoretical concepts to provide a framework to evaluate the data collected for this study, This chapter considers the method, research design and analysis procedures adopted. Specific details outlined are: a description of the research design and procedures; methods of data collection; approach to data analysis; my role as researcher; and trustworthiness and ethics.

A qualitative method is applied to provide a "*realistic approach to make sense of, or to interpret, phenomena in terms of the meaning people bring to them*" (Shaw and Gould, 2001, p. 7, citing Miles and Huberman, 1994; Denzin and Lincoln, 2005, p. 3).

This approach aligns with the aims of this study: to gain insight into the formation of the intentions and the consequences of LAs administration and officer implementation of State defined EHE-policy at a local level.



Data for this study comes from a range of sources: a review of literature, LA generated data, and officer and advocate interviews. Various methods of data collection were used: questionnaire, document analysis and interviews. Therefore, to allow interrogation and corroboration of data, and to ensure uniformity across data sources and methods, the study applies a '*methodological triangulation*' (Miles et al., 2013, p. 299). This enables identification of differing dimensions or discrepancies, thereby, safeguarding the validity of research (Paton, 2002; Creswell, 2013, p. 251). Triangulation is not simply a tool for ensuring validity; it provides '*rigour, breadth, complexity and depth of enquiry*', which enables the data to 'crystallise' in a montage of multifaceted, rounded, and comprehensive themes (Denzin and Lincoln, 2005, p. 5-6). The process allows consideration of a variety of data, contemplation of several viewpoints, and conceptualisation in a variety of ways (Mason, 2002).

Data compared, evaluated, and analysed through triangulation, provides reliability and trustworthiness to analysis by identifying corroborating evidence to verify themes. Whilst, the sources and method of collection of the data were several, the means of analysis used to interrogate all data is the same - Thematic Analysis (TA). An audit trail, maintained throughout the research process, has provided cohesion and dependability to the analysis, and to the presentation of the findings (Creswell, 2013, p. 246; Yin, 2014).

The data was gathered in a three-phase exploratory process with each stage drawing on discrete data sources that employed differing methods of data collection. The

data sources and methods of data collection have been chosen to be complementary but providing differing focuses to enable a deeper understanding. The adoption of triangulation to analysis allows the identification of themes within and across data sets, and the detection of inconsistencies for further examination (Miles et al., 2013, p. 299-300). The data findings are discussed in Chapter 6 and 7. Chapter 6 considers LA administration and covers the first two phases of data collection. Phase 1: questionnaire submitted via the Freedom of Information Act 2002. Phase 2: documentary evidence gathered from: LA webpages, LA generated letters, and job advertisements for EHE-Officer roles. **Chapter 7** reports on Phase 3: of the study, the qualitative semi-structured interviews with LA officers and EHE advocates.

## **PHASE 1: FOI Questionnaire and Responses**

The questionnaire administered via the Freedom of Information Act, 2000, was submitted to 53 LAs and completed during the spring of 2014. Below is a summary of the decision-making process: to use FOI Act for the dissemination of the questionnaire; the design and piloting of the questionnaire, the process undertaken to sample LAs; and the processes to be used to analyse the results.

The decision to utilise a questionnaire for the first stage of data collection lay in its ability to reach a substantial number of participants without the presence of the researcher (Cohen *et al.*, 2011). Data drawn from responses to a questionnaire can provide support for a central argument, contextual information, and suggest avenues for further research (Bourke *et al.*, 2012). The use of the questionnaire format would

enable distribution across a spread of English LAs to elicit data concerning LA administration of EHE-policy implementation processes and practices. Information was additionally requested in respect of the LA teams and officers delegated to oversee EHE-policy implementation, and numbers and demographics of EHE-children (see Appendix 1).

The initial intention was to mail a paper questionnaire of wide-ranging questions to all 152 English LAs with responsibility for education. However, a mailed paper questionnaire has a high probability of non-responses (Mallinson, 1998; May, 2001; Dawson, 2009; Cohen *et al.*, 2011). Scott and Marshall (2009) consider a non-completion rate of above 40% as being significant enough to nullify the returned data, given the non-responses would be equal to, or more than, the number of returns. I felt in the case of a doctoral study the non-response rate from LAs could be much higher.

Therefore, to resolve the potential for non-response the study drew on the provisions of Freedom of Information Act (2000). The Act gives a general right of access, on request, to information held by public bodies: e.g. government departments and public authorities, including LAs. Requests must be: in writing, by letter, email, or online form; and acknowledged and answered (usually) within 20 working days (FOI, 2000). The Act designed to make government bureaucracies more transparent has also enabled academic research (Worthy and Hazell, 2013). The Act circumvented the issue of non-response by LAs. Ordinarily public bodies are

prohibited from ignoring or refusing requests, except in limited prescribed circumstances where the cost of providing the information exceeds £450 (FOI Act, 2000, S.12;) or in circumstance where there is a risk of identifying individuals (Data Protection Act, 1998, S.40). The Act offered an efficient device to access information with certainty of a response; a real consideration to researchers without a considerable funding stream (Bourke *et al.*, 2012; UCL, 2012; Worthy and Hazell, 2013).

FOI Act enabled collection of a wide spread of data pertinent to understanding the LA administration and conduct in respect of local EHE-policy implementation. The responses provide a 'first-hand' account being, typically, provided by the responsible officer for EHE from each LA. The assuredness of response enabled a decision to reduce the LAs surveyed to a smaller more manageable number (53 out of 152 English LAs).

A representative cross-section sample must be undertaken to ensure a demonstrative balance of LAs. Therefore, in devising the sampling framework there was a conscious effort to select a reflective cross-section of LAs (Cohen *et al.*, 2000, p. 98; Bryman, 2008, p187). The approach to sampling was neither random nor haphazard. The sampling framework applied two criteria to ensure fair representation and balance

- Authority type: London borough; Borough; Metropolitan; County; Unitary; and

- Balance of: geographical spread; population size; population diversity; urban or rural locale.

The application of this framework allowed for the selection of 55 LAs for submission of the questionnaire via the auspices of FOI Act.

The FOI questionnaire interrogated three distinct areas of LA administration and specific data relating to EHE-children.

- **Local Authority policy and practices:** employment status of officers, outsourcing of service, annual budget, LA policy and procedures when a child becomes known, who makes the approach and how, training, and involvement of local home-educators;
- **Local Authority Teams:** number of teams, team title, multidisciplinary or not, other areas of work; and
- **Officers with an EHE caseload:** number of officers, job titles, contracted hours on EHE, type and range of caseload, length in role, previous employment, personal experience of EHE; and
- **Home-educated Children:** current total number, number from the Gypsy, Roma and Traveller (GRT) community, number with special educational needs, number with statements, number considered children in need, number referred to social services, number of serious case reviews.

These areas were identified during the review of literature in Chapters 2 and 3 are also reflective of my personal experience of home-education. The phase one questionnaire was designed to elicit rich sources of data, and also had a secondary

purpose: to hone focus, provide a framework, and highlight avenues to exploration during the subsequent two phases of data collection.

The questionnaire is a mixture of closed and open-ended questions. Closed questions were constructed to elicit specific information requiring a numeric or a 'few words' response and could be analysed 'quantitatively'. Other questions were 'open-ended' to allow the responder the opportunity to give a fulsome reply and to detail issues they felt were pertinent. However, the open-ended responses would be descriptive narrative requiring qualitative analysis (Sapford and Jupp, 2006) and therefore, needed careful analysis via detection of key words and phrases so as to identify and record any commonalities or divergent themes within the responses.

The draft questionnaire was extensive and counter to the caution that FOIs are frequently refused in circumstances where they seek a wide sweep of information or pose many questions (Bourke *et al.*, 2012). I approached my local FOI officer for advice as to the wording, formatting, length, and viability of the overall request. Having seen the draft questionnaire they responded that "*the questions are suitable for submission, without amendment*", and sought agreement to formally process the draft to confirm this. They advised that their process 'is like other authorities' whereby the request [questionnaire] is forwarded to the relevant [EHE] manager to complete and would be returned to the FOI officer for the formal response to be issued (Lancashire CC, FOI officer, 2013). The completed FOI returned with all but one question answered. The question related to the number of EHE-children known

to child social services, denial was on cost grounds due to *'the information being on a separate database'*. The FOI officer recommended to keep including it 'as it could be answered by some LAs'. The quality of the pilot responses was assessed and analysed to identify flaws, confusions, or necessary amendments to the questionnaire, and was submitted to 54 LAs without amendment (See Appendix 1).

However, there was an inherent risk, that being an extensive questionnaire some LAs might reject requests on grounds of cost or hours needed to undertake the work involved (Freedom of Information Act, 2000: S.12). This could be an issue in respect of: larger urban LAs with multiple EHE teams, or substantial numbers of EHE-children; LAs who hold information on several discrete data bases; or small LAs where the task was considered onerous due to staffing levels. A sizeable number of rejections would suggest a need for revision of the FOI questions. Therefore, the requests were staggered with an initial submission of ten requests followed by a month gap to allow return of responses. Out of the initial ten requests made, there was one refusal on cost grounds with an explanation that their databases are not *"joined up and would require excessive work"* (London Borough of Bromley, FOI Officer, 2013). Given the successful return rate of 90% remaining submissions were made fortnightly batches of 15 requests to stagger the returns and aid the collation of responses. However, the rate of return did not reflect the order of distribution, despite the 20-day turnaround requirement (FOI Act 2002; Bourke *et al.*, 2012) many exceed this, some markedly. On reflection, this might be due to the extensive sweep of the questionnaire.

Of the 55 FOI questionnaires submitted two were denied on the grounds of cost with the opportunity to resubmit with fewer questions. Given the two LAs were a large London borough and a small rural county, and that overall response rate was above 90%, there was no need for a revised submission. Additionally, ten LAs refused to answer the question about previous officer occupation which they deemed ‘personal information’. Nine LAs denied the question relating to safeguarding on cost grounds, as this information stored by another department or database. Three small LAs with few EHE-children refused to answer the entirety of section 4 as it might ‘identify a child’. Nonetheless, the overall response rate was acceptable for the purposes of this small study and generated a large amount of data: 20 questions returned from 53 LAs produced 1,060 question-responses for analysis.

However, challenges arose from not only the sizeable body of data but in the non-standardised format of these responses. The returned FOI responses had a cursory perusal to get an overview; it quickly became apparent that they were in a varied format. The non-standardisation in the responses originated in LA web-based format for FOI submission, which required a simple list of questions and/or prevented the uploading of a questionnaire schedule. The LAs process of submission prevented the indication of a desired format for responses which gave the LAs great scope on how they formatted their responses. For instance, a question, which on the face of it required a simple numerical response “*how many officers within the LA currently hold an EHE caseload?*” generated a variety of approaches and data from: simply providing the number of officers; to providing a detailed description of each



individual officer's working patterns e.g. full time, or a variety of part-time hours or 'works 0.7 general caseload and 0.3 EHE caseload'. The responses were markedly non-standardised and presented a challenge to classifying, explaining, and evaluating, which necessitated more groundwork in preparing the responses for analysis (Punch, 2010). While providing a wealth of information, such data needs careful consideration to identify themes, categories, patterns of similarities and differences within the responses (Cohen *et al.*, 2007).

Moving the data from a type of chaos to one of order required sorting the data into a coherent manageable format. The names of the LAs were alphabetically added to 20 separate spreadsheets each relating to a specific question. The LA's response was entered verbatim to form a specific dataset relating to a single question. The collation of the data in this manner allowed analysis of data in an organised method to locate, recognise, or scrutinise emergent themes, while also enabling an on-going reflective focus on the data (Edwards and Talbot, 1999).

This study is qualitative but there is an element of quantitative data within the research. This was necessary for providing crucial contextual background specifically in respect of LA data sets discussed in Chapter 6. The FOI questionnaire requested some numerical data (see Appendix 1 S. 4,) and the analysis of the data specifically looked at LA websites gathering the numerical frequency of activities which brought LAs into conflict with State policy and Guidance (see Table 7, p. 190-191). Creswell (2007) notes that when "*neither qualitative nor quantitative methods will suffice*" to

fully answer the research question, then the blending these methods can give a greater insight (Creswell, 2003; Creswell and Clark, 2007). Silverman (2010, p. 8) notes “... *think of quantitative and qualitative approaches as complementary parts of the systematic, empirical search for knowledge.*” Although this study is qualitative, adopting quantitative tools when appropriate gives potential to gain insight that is both:

- Inductive (moves from specific instances towards generalised conclusion;) and
- Deductive (movement from generalised principles specific conclusion) (Cohen *et al.*, 2011).

Adopting this mix of approaches offers insight into the competing issues that form the basis of this study, providing more complete representation of the extent to which LAs and officers adhere to or redefine national EHE-policy, the impact on local policy and practice, and on intended outcomes.

## **PHASE 2: LA Literature**

LA literature consists of: LA webpages or hyperlinked ‘handbooks’; LA produced letters to home-educators; LA EHE-Officer job advertisements (job descriptions and person specification).

## **Webpages**

A comprehensive review of 145 English LAs with an EHE-online presence was undertaken. The collected data encompassed EHE-policy published directly on LA webpages, or hyperlinked document. The data was subjected to a search of key words or terms which had been identified within the literature review (Chapters 2 and 3) and from the preceding analysis of the FOI responses. The terms searched typically related to 'beyond powers' activity which could be indicative of LAs [and officers'] interpretation of State strategy and its intended outcomes. The webpage or hyperlinked documents were studied, and each occurrence of the key word, statement or phrase was numerically recorded onto an Excel spreadsheet. This provided an overall occurrence rate for each incident (see Table 7).

## **Letters**

Letters provided another source of data drawing on a100 examples of LA letters sent to parents of EHE children and forwarded to me for this study. These letters from different LAs and cover a range of issues: initial contact letters, annual review contact letters, request of more information letters and/or S. 437 (notice to satisfy) letters. The content of the letters was scrutinised by adopting a key word or term search for compliance to Legislation and to the EHEGLA (2013).

## **Job advertisements**

During the interviews (see Chapter 7) the officers referenced their job description as being directive to their role expectations and practice. This inspired a search for LA

job advertisements for EHE-Officer roles posted during the period 2013-2017; these were sourced from web searches for 'historical' advertisements and 'Google Scholar alerts', whereby I added and saved search terms so new jobs were emailed to me. Whilst 12 advertisements were collected: it is probable the search failed to pick up all advertisements during this four-year period. Therefore, whilst not considered to be a comprehensive overview these few advertisements do provide an informative snapshot into three component elements: the advert, associated job description and person specification. The adverts were scrutinised in respect of commonalities e.g. requirement of teaching qualification or specifications of the role which are contrary to Legislation and Guidance (EHEGLA, 2013) e.g. assessment or monitoring.

Phases 1 and 2 (specifically the FOI analysis,) whilst forming a rich data stream, had a secondary aim of informing Phase 3: the design of the interview schedule for home-education officers and advocates in Chapter 7.

### **PHASE 3: officer and advocate interviews**

Following the collection of data arising within LAs, the study achieved a small number of in-depth interviews with LA EHE-officers and EHE-advocates. The usefulness of the interview lies in its capacity to be a "*two-person conversation initiated by the interviewer for the specific purpose of obtaining peoples' views and perceptions on a topic of mutual interest*" (Cohen *et al.*, 2007, p. 269). Interviewing is a person-centred exercise enabling deeper insight into the mind of participants; the

study sought to examine officer and advocate perspectives on EHE-policy implementation and practices at local level.

The qualitative semi-structured interview approach adopted explored the interviewees' opinion on issues identified during earlier phases of the study. A semi-structured approach provided flexibility to adapt during the interview or to depart from a tight script of questions. Used judiciously this flexibility allowed the clarification of questions or enabled the interviewee to raise a new area of concern or interest. This fluid approach enabled the interviewee a voice to be heard, provided insight into how they perceived the world, and afforded the interview legitimacy. It is an approach that is amenable to exploring 'difficult' questions which require a more open style (Bryman, 2008 p. 471,) for instance, the exploration of EHEs perceived welfare and safeguarding concerns.

My preference was for face to face meetings, but I was aware that adopting a semi-structured approach as a tool would lend itself to interviews by Skype or telephone. This was a further consideration as the use of remote communication would allow the inclusion of geographically distant, cost prohibitive, participants. It also resolved situations where participants wished to avoid working hours, or simply preferred to use another medium.

The design of semi-structured officer and advocate interview schedules (see Appendix 4, S. 3 and 4,) elicited an understanding of their perspectives on issues

arising from earlier phases of this study. The schedule would be a 'road map' to ensure consistency with all questions asked of each interviewee. However, there would be freedom to explore any additional issues raised during the interview.

The officer questions sought to draw out officer perceptions and (mis)conceptions.

Specifically, to:

- Identify officer's awareness of 'possible' conflict between State Legislation and local policy;
- To identify any areas of concern, for example,
  - evidence of officers acting beyond their powers and/or outside LAs duties;
  - Concerns of regulation e.g. registration, notification, monitoring, assessment, visits and seeing the child; and
  - Conflation of EHE and welfare/safeguarding; and
- To identify any 'changes' they feel would be beneficial.

The advocates' interviews followed the officers, to provide counterbalance by giving a home-educator perspective. For consistency, the advocate schedule closely followed the officer schedule and explored the same issues, but with the additional focus of whether they saw such concerns as valid. The interviews were recorded with consent to enable verbatim transcription.

There are some inherent dangers with using a semi-structured approach. By being able to ask open ended questions which could provide new insights there was the

potential for the interview to go off-topic, but this could be resolved by exercising careful vigilance to steer the interview back to the prescribed path where necessary. Unlike structured interviews or quantitative data, this approach is harder to standardise making it trickier to code, process and analyse consistently. This is not an insurmountable difficulty if the interviewer ensures a return to and the completion of the planned interview schedule (Denzin and Lincoln, 2005; Johnson and Christensen, 2008; Miles *et al.*, 2013; Creswell, 2013). The approach can be time consuming; not only for the interviewer but also for the interviewee who must find time in their busy schedule to commit to the interview: the researcher is dependent on the goodwill of others (Mason, 2002; Punch, 2005).

### **Recruitment of interviewees**

This is a small-scale study, informed by several data streams, including interviews with EHE-officers and EHE-advocates.

**Officers:** The intention was to interview a minimum of 12 EHE-officers. 73 letters of invitation were sent to named officers employed by LAs included in the FOI Request. Additionally, all North West LAs not included in the FOI requests, due to their proximity to the researcher. This elicited 19 expressions of interest, 17 of which agreed to be interviewed and negotiations regarding time and place commenced.

During the first two 'pilot' interviews a complication arose which led to the withdrawal of 13 officers. Graham Stuart MP, then Chair of both the Education Select Committee, and the All-Party Parliamentary Group on Home-education, made public

several letters (Stuart, 2014, 2014a). The letters admonished Tri-Boroughs (three London LAs who had combined education service delivery: Westminster; Hammersmith and Fulham; and Kensington and Chelsea) activity in respect of EHE. Specifically, *'apparent misrepresentations of the law ... fundamentally misstates the powers and responsibilities of local authorities'* (Stuart, 2014). Elizabeth Truss MP, Parliamentary Under-Secretary of State for Education and Childcare, similarly admonished Tri-Boroughs (Truss, 2014). Shortly afterwards, Stuart wrote to Thurrock Council raising

*'serious concerns about the multiple breaches of the Government Guidelines for Local Authorities on Elective Home-education' ... [that it] imposes unwarranted and ultra vires series of restrictions upon the right of parents to educate their children as they see best'* (Stuart, 2014b).

These letters cited several law breaches by the LAs and their officers: e.g. demands for ongoing assessment visits; acting oppressively when parents decline 'assistance'. The public dissemination of these letters detailing breaches common to other LAs, led to 13 officers giving notification in the following week that they were now withdrawing from the arranged interviews. The reasons for withdrawal did not necessarily refer to the letters but cited 'departmental reorganisation, holidays', illness, and inability to reschedule'. However, some officers did specifically refer to 'recent negative publicity, feeling attacked, under the spotlight and/or manager refusal'. Thus, I achieved just four of the originally agreed interviews, later gaining two additional officers. Of the six interviews achieved three interviews took place within the officers' workplace, two in a neutral location and one by telephone.



**Advocates:** four EHE-advocates were directly approached for interview: all have personal experience of home-educating over an extended period from 10 to 30 years. Given advocates are a small number within the diverse home-education 'community of individuals' their views may not be wholly representative. Nonetheless, their inclusion adds counterbalancing depth in respect of: current EHE-Statute and its local administration; officer implementation practices and responses to stakeholder identified concerns. The advocate interview schedule (see Appendix 4, p. 388) schedule followed the pattern of the officer schedule (see Appendix 4, p. 384) but was appropriately rephrased to gain the advocates perspective. The interviews commenced after four officer interviews and were concurrent with the last two officer interviews. The timing allowed the advocates to respond to issues that arose in officer interviews. Three interviews took place within advocate homes and the fourth, due to availability, by telephone.

**Interview housekeeping:** The officer interviewees were approached by letter (see Appendix 4, p. 380) and the advocates by email. The approaches included explanation as to the purpose of the study, interview format, expected commitment, use of recording equipment and ethical and contact information. The interviewee was assured that their agreement did not prevent later withdrawal, and they were assured of confidentiality. At the time of interview this information was reiterated. Additionally, they were told they could stop at any time and assurance was given that they could also withdraw their involvement at any time during the next two weeks. The interviewees were asked to give permission to record the interview,

advised that it would be transcribed verbatim and offered a transcript. Written confirmation of their willingness to participate was requested and obtained.

The interviews were completed without any issues arising. As soon as practical I made contemporaneous notes of salient points or 'themes' that had come through during the interview and any impressions formed at that time.

## **The Road to Analysis: Thematic Approach**

The aim of the study is to identify the key subjects or influences which impact the implementation of national EHE-policy at local level. The analysis of data sources within the study, including the analysis of the FOIs, is [predominantly] by a qualitative approach. The study draws on thematic analysis (TA) as a tool for framing the process by which to identify patterned meaning across a dataset or between datasets (Guest *et al.*, 2012).

TA is 'simply' a tool for detection, analysis and recording themes arising from within the data (Braun and Clarke, 2008). The adoption of TA allows for identification, examination and detailing the key themes within this study. It provided a methodical foundation whereby identification of patterns of similarities in occurrences of responses allowed themes to emerge from within the study's data. The identification of themes aids an understanding of narrative in EHE-policy implementation and practice. TA enables analysis to go beyond the descriptive summation of 'themes'

towards providing an explanation (Guest *et al.*, 2012). Themes help to explain conceptual implications for the study's conclusions and locate their relevance to and within the theoretical framework (Braun and Clarke, 2008).

A thematic approach has three main elements:

- Data condensation or reduction (editing, classifying, and summarising the data;)
- Data display (organisation, compression, and assembly of information;) and
- Drawing and verifying conclusions (interlaced and concurrent with reduction and display).

Elements of the process can be concurrent, but not necessarily sequential, with movement between elements and data sets, and thus allows identification of tentative conclusions early in analysis (Miles *et al.*, 2013, p. 12-14). This approach is inductive: dependent on the involvement and interpretation of the researcher, seeking to clearly and reliably detect and scrutinise themes arising in textual data (Guest *et al.*, 2012, p. 15).

Analysis for this study has drawn on the content of text: looking at 'what is said' rather than 'how it is said'. This allowed the identification of themes via 'recursive abstraction', using repeated summation of text within datasets, whereby each summation undergoes further distillations until the result is a compact précis (Polkinghorne and Arnold; 2014). This process is time consuming, but it allowed

familiarisation with the data, with each summation allowing further engagement whilst facilitating identification of themes to arise from the data.

However, application of TA required caution to avoid poor initial summation which could result in themes or conclusions that are several times removed from the original data (Qun and Bach, 2014). Risk reduction can be achieved by adopting a non-linear process with ongoing movement back and forth between datasets and data subsets. Each 'movement' was documented, checking and rechecking the previous summations, whereby inclusions and exclusions can be identified and tracked.

### **Freedom of Information analysis**

The analysis adopted a simple but effective approach where each individual FOI question was collated into an individual dataset with a dedicated spreadsheet.

When the question required a quantitative response, the number of values were recorded on a spreadsheet and transferred into a graph.

However, most of the questions were more enquiring or 'open-ended' and subjected to thematic analysis to enable the identification of key themes. The responses, collated by question, were read several times to discern patterns, and reoccurring words or phrases. These were noted and used as a 'key word or phrase search' to record the frequency throughout the spreadsheet. Each key word or phrase was itself analysed to attribute it to the appropriate theme e.g. safeguarding where key

words/phrases identified were: safeguarding; safe and well checks; welfare; neglect; child protection; S. 17 and/or S. 47.

### **Approach to Analysis of LA Generated Literature**

Three types of LA generated literature were gathered and analysed according to 'type:' webpages or hyperlinked webpage document; LA letters; or LA EHE-Officer job descriptions.

**LA webpages or hyperlinked web document:** were recorded on a spreadsheet individual LAs were named on the vertical axis and eight 'expected' common theme headings, informed by the literature review and FOI data, were noted along the horizontal axis. Each webpage or document was scanned read for content with pertinent sub-themes added, then read thoroughly for frequency and/or occurrence of these themes or sub-themes with incidents recorded using a simple 'tick'. Overall the themes occurring within the webpages resonated with themes arising in the literature review, FIO questionnaire responses and later with interview data: safeguarding; socialisation; monitoring, assessment, visits, registration, evidence, suitability of education, duties of parents, and reference to Legislation.

**LA letters:** these were subjected to a similar process: they were scanned and sorted for type: initial contact, annual review, request of information, notice to satisfy; a dedicated spreadsheet was created. Each letter was scan read for compliance to the

EHEGLA (2013) and thoroughly reread with each occurrence of a non-compliance recorded using a simple 'tick'. Key themes emerged of non-compliance regarding implied need to visits, safeguarding role, need to satisfy/assess educational suitability and registration and/or monitoring.

**LA job advertisements:** following a similar approach a small number of LA job advertisements were analysed. These advertisements form three sectional parts: the advert, job description and person specification. Each individual job advertisement was examined to identify key components or themes which varied per sectional part:

Section	Key theme
Job advert	e.g. job title, full or part time employment
Job description	e.g. what the role requires: visits, monitoring, safe and well checks
Person Specification	e.g. employment background, qualifications; knowledge of education law

**Table 2: Job advertisement sections and key themes**

### **Interview Analysis**

The interviews of officers and advocates similarly drew on thematic analysis (TA) to recognise patterns within the interview data and between the different interviews.

TA permits the 'voices' of different interviewees to come through, enabling categorisation of differences, similarities and/or disagreements in their individual

interview narrative (Guest *et al.*, 2012). Below is a discussion of the process to produce a distillation reflective of each theme; the resulting thematic analysis forms Chapter 7.

The interview voice recordings were transcribed verbatim into a Word document. During transcription the name of the interviewee were anonymised, and a pseudonym provided, local authority and/or location removed, and any other identifying aspects were 'generalised'. Each document was saved under the given pseudonym. The six officer interviews were transcribed in order. This process allowed for identification of some preliminary 'themes' which were used to inform the advocate interview schedule. Each transcript was scan-read and tentative themes noted. Each transcript underwent a thorough examination, and key phrases and words were noted. The transcripts were then reread and underwent a keyword or phrase search within Word, with occurrences recorded enabling identification of cross-interview themes. This process was repeated, with the interviews in reverse order, to further identify and extract themes.

**Use of interviewee quotes:** especially insightful sentences or phrases which were identified during the thematic analysis were highlighted and retained as spoken. The retention of the interviewee voice is pivotal in Chapter 7 [Findings of the Officer and Advocate Interviews] where the use of direct quotes enables their voices to illuminate the findings. Used verbatim, the quotes have provided an invaluable perspective

delivering directly the attitudes, opinions and interpretations of the interviewees in respect of EHE policy and its implementation.

## **Thematic-comparative analysis**

Whilst the approach adopted was thematic it was also comparative. The FOI responses, LA documents and interviews were subject to comparative analysis to identify commonalities. Each phase of the study engaged in reflection but also reflection with previous and subsequent phases: each phase built or informing the next. Once the last phase was completed a further review of the entirety of the research analysis was undertaken. The TA process crystallised the responses and recognised commonalities. The identified themes echoed across the study from the literature review, through the analysis of LA data, (FOI and LA generated literature) and within the interviews.

## **Ethical Considerations: Self in the Research.**

I came to this research project with more than a mere intellectual interest in the topic; I have a personal experience and interest in home-education. I home-educated my own children, I acted as a contact at local level for home-educators and I am currently a trustee and 'Chair' of the national home-education support charity 'Education Otherwise'. I am also a registered Social Worker.



This background raises issues concerning my independence as a researcher and potential criticism that I not only have a 'vested' interest in EHE but also in research outcomes. Qualitative research has a history of accepting that researchers bring their life experience to their research, as 'insiders' they become a path into the investigation (Maxwell, 2013). Therefore *'the personal experience of the researcher is an integral part of the research process'* (Ezzy, 2002: 153). Insider research is not without precedent being an approach that has been successful for researchers (e.g. Sykes, 1997; Rothermel, 2000, 2002; Coglán and Hollian, 2007; Safran, 2008). As an 'insider' my experience as a home-educator and EHE-advocate will undoubtedly impact on my perceptions in conducting this study. However, Glesne and Peshkin (1992) recognised that in removing bias and taking the researcher 'out of the research' you limit a major source of perceptiveness and counterbalance. Thus, having personal experience of home-education I am gifted with insights and understanding of EHE. Additionally, as a registered Social Worker I have insight into the 'stigma' that can be attached to home-educators, specifically safeguarding: which is a frequently expressed concern about the practice of EHE. I also have the insight of a Street Level Bureaucrat (SLB) professional (Lipsky, 1980, 2010). Therefore, with due care, this insider knowledge should help illuminate the interplay of the role of the local authority, and the professional in the implementation of national EHE-policy at the local level.

The contribution of the 'self' in qualitative research highlights the importance of ethics in utilising this research method and the interplay of subjectivities between

the researcher and researched (Shaw and Gould, 2001). The researcher has moved from covert observance towards a more open and honest research practice, typified by accountability to and empathy towards those studied (Glesne and Peshkin, 1992). For me this is central as I have always been open and honest about my own background as a home-educator, a home-education advocate, and as a Social Worker, and thus would continue to be 'open' to those involved in my research.

The issue of my personal objectivity is undeniably an important consideration at all stages of the research. Therefore, I adopted a method based on Schön's (1983, 1987, 1991) notion of the '*reflective practitioner*' whereby I seek to be self-critically aware. Fook (2002) describes two distinct, but not mutually exclusive facets, to reflective practice. Firstly, the notion of reflectivity, relating to the process of reflecting upon practice: the practical values and theories which inform ones' everyday actions (Schön, 1983, 1987, 1991). Secondly, the notion of reflexivity, relating to the process of examining one's personal effect on the research process (Taylor and White, 2000; Archer, 2007; Askeland and Fook, 2009). Warin (2011) discusses the need to be ethically mindful, linking ethics and reflexivity, whereby reflexivity is a device enabling transparency within the research process and conclusions enabling interdependent, simultaneous and mindful awareness (p. 809).

The researcher must give careful thought as to who they are as a "*subjective being*" (Burrell and Morgan, 1979). In avoiding a purely positivist or social scientific approach to the research (Moffat *et al.*, 2005,) I must consider my own assumptions,

preconceptions, and their effect on the research. My method of collection or interpretation of data requires '*careful retracing, reconstruction and ownership*' of the process undertaken (Mason, 2002, p. 194). Therefore, adopting reflectivity and reflexivity, which are the ethical dimensions within social work (D'Cruz *et al.*, 2007; Banks, 2012,) enabled me to be candid and effective. The adoption of reflective practice i.e. thinking about or reflecting on what one does, in unison with mindfully assuming reflexivity preserved my personal responsibility to the research. I engaged this process of internal dialogue and reflective interaction with the material, including collection of data and specifically interviews; and during analysis of all datasets: literature review, interviews and LA data.

In adopting the dual faceted approach of reflectivity and reflexivity (Fook, 2002) I acknowledge the effects of the research on the researched and my own part in this. I also recognise that 'objectivity' can be affected by my own subjective life story which I bring into the research situation. I accept the need to consciously acknowledge and disclose this, while seeking to understand my part in, or influence on, the research. The duality of approach is applicable to all accounts, descriptions, analysis, or criticisms within this study. I make the process explicit, and I sought to uncover hidden or tacit understanding that may colour my own perceptions and influence my interpretation of the research data. These considered self-reflections meant, for example, that I was alert to the danger of failing to give my interviewees their own voice, of imposing my own perceptions into the research (Creswell, 2013, p. 256;) to

counter this I sought to let their words speak from within the data and discussion of findings.

## **Other Ethical Considerations**

I had to reflect on and respond to ethical considerations beyond my own internal compass, experiences, and values in respect of home-education. As a registered Social Worker, I must abide by the professional principles and the codes of ethics of my professional bodies (British Association of Social Work, 2014; Health and Care Professionals Council, 2017). I must also abide by the code of ethics of my institution and British Educational Research Association (2011). Early in this study I requested and obtained ethical approval to involve human participants: specifically, LA EHE-officers and EHE-advocates, from the Faculty Ethical Research Team.

This study comprises two main threads: FOI requests made to LAs alongside a review of LA produced literature; and a small number of interviews. Recognition of ethical considerations is paramount in interviews as the research involves human participants (Hertz, 1996; Yin, 2014). This study did not involve the participation of 'vulnerable' individuals: interview participants were educational professionals or experienced EHE-advocates. Nonetheless I had a duty of care to ensure the protection of the interviewees from undue harm or repercussion arising from their participation. The interviewees were fully informed when approached about my background, the nature and scope of the research and their participation was voluntary (Social Research Association, 2003, p. 14). Before commencing the interviews, I reaffirmed the purpose of the study, my own background and confirmed

they were happy to have their interview recorded (Appendix 4, p. 383). I gave them a written copy and requested they sign their consent to confirm their understanding and agreement. An essential ethical consideration was to protect the privacy of participants, especially when analysing and reporting on the data. Interview transcriptions were anonymised, and pseudonyms applied. Given the small world of home-education I created genderless, composite biographies for the advocates, which are reflective of experienced home-educators to prevent identification.

I took care to protect participants prior to, during and after the completion of this study to explicitly protect all data that was personal to the interviewee and might lead to identification. To safeguard data, I stored all information in an encrypted and pass-worded file on my password accessed desktop PC. I backed this data on the university server in a personal pass-worded file store. Physical documents, interview transcripts, consent forms and the voice recorder were stored in a locked file cabinet. This data will be stored for a minimum of three years, and remains secured within an encrypted and pass-worded file. I have taken care to maintain ethical standards of a researcher and my professional bodies. I have aimed to display these ethical considerations by adopting clear and appropriate language in my writing to aid a reflective unbiased approach to this study.

## **Summary**

This chapter has described methods adopted to illuminate the principal aims of this study: to ascertain factors which impact on the implementation and adherence to

nationally created home-education policy. The study considers the influences and perceptions which impact LA policy administration and officer-implementer practice: the generation of local policy divergent from nationally derived policy and its intended outcomes.

To explain the processes which impact the local administration and implementation of national EHE-policy, the research design adopted plays a crucial role. The selection of sources, methods of collection and means of analysis including the rationale for their use are the recipe to illuminate and answer the concerns of this study. These ingredients must be appropriate, reasonable and defensible. The study adopted a three-phase approach, utilising three methods of data collection, and each phase targeted specific evidence:

Phase	Source	Method / data	Rationale	Aim
1	LA	FOI questionnaire	*rapid collection of wide ranging data *insight into the LA policy	Insight into LA administration of EHE-policy and practice
2	LA generated literature	Textual analysis	Insight into the LA policy	Insight into LA administration of EHE-policy and practice:
3	Officers	Interview	To hear the voice of policy implementers	Their perceptions of EHE-policy and their practice
3	Advocates	Interview	To hear the voice of policy recipients	Their perceptions of EHE-policy and practice

**Table 3: Study phases overview**

Each of these three phases was subject to thematic analysis to draw out the factors which impacts local adherence of national EHE-policy and its intended outcomes.

This chapter encompassed a range of methods of data collection adopted in this study and the rationale for drawing on them. It provided an explanation of the process of the thematic analysis and data triangulation. My role as the researcher with insider experience of EHE and the potential for researcher bias was explored along with measures to limit partiality through applying reflectivity and reflexivity within the research. Lastly ethical considerations were discussed. These methods and considerations form the rationale towards trustworthiness in this small-scale study. The following Chapters deal with the findings from the data gathered to inform this study: local authorities (Chapter 6 ; ) interviews with officers and advocates (Chapter 7;) and discussion of the study's overall findings in Chapter 8.

## **CHAPTER 6: FINDINGS – LOCAL AUTHORITIES DATA (FREEDOM OF INFORMATION QUESTIONNAIRE, LA LITERATURE: WEBPAGES, LETTERS AND EHE OFFICER JOB ADVERTISEMENTS).**

This study seeks to understand the extent to which local authorities (administrators of policy) and their officers (implementers of policy) administer and implement national EHE-policy through Legislation, Case-law and Guidance as intended by the policy-originators. This chapter examines the administration and implementation policies and practices of LAs and seeks to identify divergence from intended State strategy and outcomes. The subsequent Chapter will examine the role of LAs and officers, through drawing on the findings from LA data, to inform the interviews of officers and advocates.

The devolved nature of local administration in England requires several steps to progress from policy creation to implementation: State strategy formation, local administration, and officer implementation. At each stage State policy becomes susceptible to interpretation. Using the analogy of the game of ‘Chinese whispers,’ the policy can change during the passage through tiers of bureaucracy, so what was started with may become something unintended. This chapter considers the role of local authorities in this process. LAs are the embodiment of the bureaucrats who work for them: the officials, employees and people who control and manage.

Distinguished by specialisation of functions within many departments and teams, LAs typically administer State strategy through management and the provision of



services. This chapter reflects on the notion that the ‘interpretations’ of the body-bureaucrat, who are the ‘controlling mind’ of the LA, will come through their administration of State policy at local level.

This chapter contains two areas of LA enquiry; each area allows the ‘voice’ of the LA (body-bureaucrat) to come through providing insight into their administration of policy and practice towards EHE.

- Freedom of Information questionnaire: responses from a third of English LAs.
- LA documentary evidence: webpages or hyperlink documents, LA letters sent to parents, and LA job descriptions.

## **Freedom of Information Data-set**

The data presented in this chapter is drawn from LA responses to a questionnaire (see Appendix 1,) which scrutinises the extent of LA administrative observance or divergence from national policy, specifically the Elective Home Education Guidelines for Local Authorities (EHEGLA) (2013). The data findings are presented using a combination of graph and text.

The questionnaire submitted via the Freedom of Information Act 2000 to 55 LAs had a 90% response rate. As noted on p. 140, FOI requests tend to go to the relevant manager for competition (Lancashire CC, FOI officer, 2013). I attended an FOI conference in Liverpool March 2014 attended by the Information Commissioner,

Christopher Graham (2014) who confirmed that responses to FOI requests typically come from the appropriate team manager. Therefore, it is reasonable to assume that the EHE-responsible manager provided the response. That being the case, the 'voice' coming through can be considered as that of the LA 'body-bureaucrat'.

### **LA Policy and Practice**

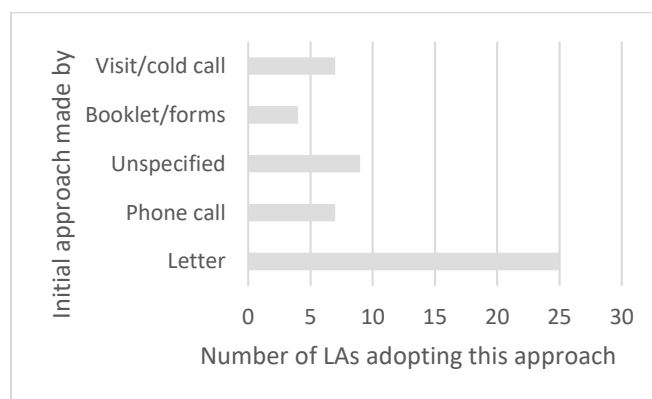
The FOI questionnaire sought information about LA policies and practices towards home-education, and their contact with and approach to home-educators.

Specifically, in respect of LA procedures for: initial contact, visits, welfare checks, registration, assessment, and monitoring. Whilst these are areas where home-educators have anecdotally raised concerns, these are also areas of concern cited by professionals, child centred organisations, politicians, and EHE-commentators as evidenced in Chapters 2 and 3 (literature review).

**Employment status of EHE officers** (questions 1-3): 49 of the 53 LAs employed officers, 3 LAs officers were self-employed, one having contracted-out the EHE service to an external company. LA annual budgets for EHE varied from £3,000pa to £250,000pa. This deserves further enquiry, but in respect of this small-scale study was not explored further due to time and remit constraints.

**Initial Contact** (question 4): The LAs were asked about approaches adopted when they first become aware of a child who 'may be home-educated?' The Elective Home-education Guidelines for Local Authorities (EHEGLA, 2013) recommend that

this ‘*contact should normally be made in writing ... to request further information*’ (para. 3.5). Therefore, initial contact should be a written enquiry, not an appointment letter, nor made by a telephone call or unannounced visit. However, the responses indicated this is an area of inconsistency and discord. As Figure 2 shows nine LAs gave an unspecified response indicating ‘contact will be made’ but providing no detail. However, two thirds (66%) of LAs initial approach would be in written form.

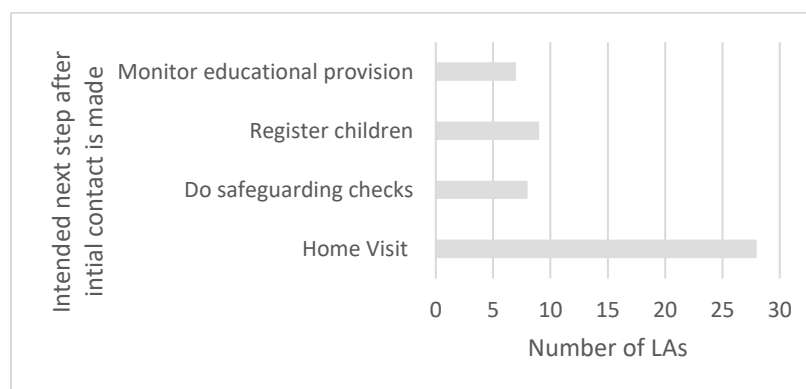


**Figure 2: How each LA intends to make initial contact**

Of these, 25 LAs explicitly stated the approach would be by letter. Four LAs reference information packs and/or forms with no mention of a covering letter and/or appointment; this approach is compliant with the EHEGLA (2013) which State ‘*local authorities should provide written information*’ (para. 3.7). Seven LAs reported they would telephone: if unsuccessful two mentioned they would then write, but three would make an unannounced visit. However, seven LAs stated their normal practice was unannounced visits; such visits are contrary to Guidance.

**Means of future contact** (question 5): LAs were asked about their approach to ongoing contact after the initial approach. The responses revealed that LA

'intentions' are indicative of a lack of adherence to the Department of Education directive in the EHEGLA (2013). For example: these Guidelines State LAs have '*no duty or power to conduct home visits*' (para. 3.6,) '*do safeguarding checks*' (para. 4.7,) or to '*register children or monitor educational provision*' (para. 2.7).



**Figure 3: LAs intended next step after initial approach**

The responses reveal a picture of inconsistency in LA approaches but a display a consistency in *ultra vires* (beyond authority) behaviour. This consistent-inconsistency as evidenced in the text of responses revealed that:

**Home visits/meetings:** 28 LAs had indicated their initial approach would be in written format or by telephone; this initial contact typically includes an appointment for a visit/meeting with the expectation of visiting the family at home. For instance, the following LA remarks are typical:

- '*A letter is sent to parent... and a visit time suggested*'
- '*We make contact to arrange an initial home visit*'
- '*We include an appointment to meet with the caregiver and child*'

However, as noted in Chapter 2 officers have no right of expectation or entry into the family home.

**Welfare checks:** eight LAs stated their next step would be to instigate child protection, while seven LAs stated they would make a referral should their initial approaches fail. A typical response is:

*‘Officers make lateral checks with Childrens’ Social Services and the school to confirm that there are no safeguarding concerns for the child’.*

*‘Officers make informal referral to Children Social Care Services if welfare concerns emerge or parents refuse a visit’.*

This runs counter to the statement made by Gove (2012) that the conflation of home-education and welfare is ordinarily unacceptable and inappropriate. This conflation is indicative of LAs seeing welfare of EHE-children as part of their ‘general duties’ despite existing powers (see Chapter 2) not bestowing the ability to see and question EHE-children to undertake welfare checks (EHEGLA, 2013, para. 2.15).

**Monitoring:** similarly, EHEGLA (2013) states LAs have *‘no statutory duties in relation to monitoring the quality of home-education on a routine basis’* (para. 2.7). Yet seven LAs refer to ‘regular monitoring’ or ‘assessment of’ educational provision. Typically, they State that the LA:

- *‘Will monitor the education provided’* or;
- *‘Staff will visit the family once per year to monitor how education is being provided,’* or;

- *‘Although the LA has no powers to monitor ... we do actively monitor ... for the assessment of educational provision’*

The latter statement reflects the disorder that arises in LA administration of EHE-policy: we have no authority – but we do it anyway.

### **LA engagement with home-educators** (question 7): the EHEGLA (2013)

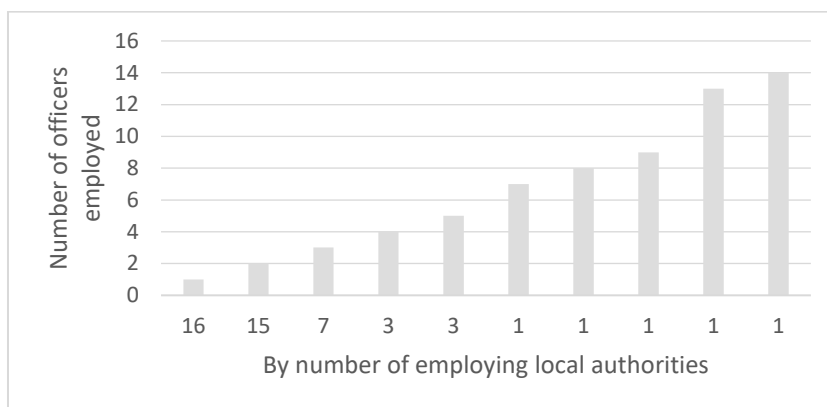
recommend that LAs seek to actively engage with local home-educators by consultation, meetings, or workshops, (para. 4.1 and 4.2). There was a confused picture: 20 LAs responded that they do seek to engage. However, ten LA referenced ‘monitoring practices’ whereby they consulted parents and/or allowed them to comment on the LAs assessment/report of their EHE provision. 21 LAs reported they do not engage or consult local home-educators. Overall, 31 LAs indicated a misunderstanding or disregard of the EHEGLA direction to consult (para. 4.2). This lack of effort to build ‘positive relations’ in decisions about EHE-policy and practice is concerning and is explored elsewhere in this study.

### **Administration of EHE-caseload**

The FOI questionnaire interrogated factors relating to LA employed officers carrying an EHE-caseload.

**Numbers of officers employed** (question 10): as Figure 4 shows there is wide variance in the number of officers who hold an EHE caseload. 31 LAs employ one to two officers. Typically, these LAs are geographically ‘small’ LAs e.g. city or unitary

council. At the other end of the scale, eight large county and metropolitan LAs employ five or more officers in the role, with two employing over 10 officers.



**Figure 4: Number of officers employed by each LA with an EHE caseload**

These officers are in the main attached to teams (see Table 4, p. 177,) and there was a correlation between the number of officers within an LA and the holding of a more diverse non-EHE caseload (see Table 5, p. 178).

**Officer attachment: team and officer titles, multidisciplinary teams/mixed caseload** (questions 8, 9, 11 and 12): the following questions arose from awareness of ‘alarm’ expressed by parents within home-education support networks about ‘titles’ used by LA teams and officers who contacted them. Home-educators had additionally expressed alarm that the undertaking of additional types of caseload within a team or by the officer resulted in problematising home-education by association. Both factors can engender negative associations for home-educators.

**Team titles** (question 8): The LAs responded with a wide range of team titles but for brevity they are categorised into one of the descriptors below. The LA responses indicate that LAs find it hard to locate home-education within their team framework. Further team titles are frequently predicated by school, attendance, welfare, and/or the name indicates a presumption of vulnerability.

Team names attached to LA EHE provision	Number of LAs
School Admissions and pupil service	5
Special teaching service	1
Education Welfare Service or EWS 'behavioural support'	7
Learning: Access/Support/Achievement/Skills	6
School/Learning Improvement	2
School Attendance/School Inclusion	5
Elective Home Education team/service	11
EOTAS (Education other than at school)	1
Special Educational Needs team/service	2
Additional Educational Needs: Special Educational Needs and Children Missing Education	2
Welfare/Achievement of Vulnerable Groups (including. Gypsy, Roma, and Traveller)	2
Self-employed officers or lone officer not in a team	5

**Table 4: Team names attached to LA EHE provision**

**Multidisciplinary team caseload** (question 9): LAs were asked about any additional category of caseload carried by a team in which an EHE is located and/or the EHE-Officer is based as potentially this could have influence on perceptions towards EHE (see table 5, p. 178)



<b>Other caseloads held within the team: - EHE with:</b>	<b>Number of LAs</b>
Children Missing Education	8
Children Missing Education and Special Educational Needs	3
Children Missing Education and attendance	1
Special Educational Needs	4
Special Educational Needs or medical needs	1
Educational Psychology, Special Educational Needs, medical needs	2
Other 'nonconformist'/'vulnerable' children/groups	7
Children Missing Education, Gypsy, Roma, and Traveller, Special Educational Needs	1
Children Missing Education, non-attendance, and court proceedings	2
Inclusion and Child Protection	2
Children Missing Education, attendance, performance	5
Home tuition Service	1
Full case range	2
EHE only: not in a multidisciplinary team	11

**Table 5: Other caseloads held within the team.**

The responses indicate that there is a lack of homogeneity concerning the placement of home-education. Only 11 LAs had an exclusive home-education team: for five LAs this correlated with employment of self-employed officers or a single officer. More frequently EHE is allocated to teams where the other casework is inappropriate to the practice of home-education. 40 of LAs placed the EHE-Officer within multidisciplinary teams working with categories of children considered 'problematic'

and/or ‘vulnerable:’ that is children with medical or special educational needs, attendance issues (CME, exclusions, and non-attendance).

**Officer Job titles** (question 11): The majority of LAs reported an ‘EHE-officer’ job title which referred to EHE. However, as Figure 5 shows, the responses revealed that some officers have job titles inconsistent with home-education for example: teacher, attendance, monitoring, or school inspector, which are indicative of ‘school’ and/or wrongly suggest that LAs have a duty to monitor or inspect EHE. Having the officer responsible for EHE-policy implementation titled SEN, CME, Additional Needs or Educational Welfare Officer, and in two cases “Educational Psychologist” can be inappropriate as these titles convey connotations that EHE is a cause for concern, see Figure 5. Note: some LAs can have EHE case holding officers with different job titles.

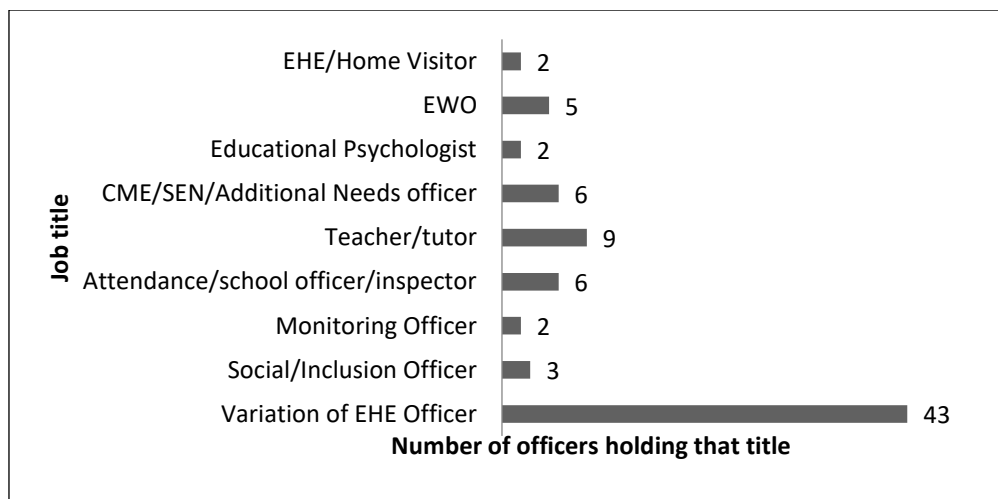
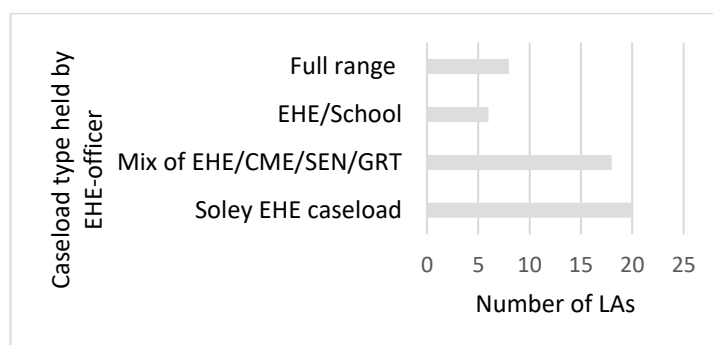


Figure 5: Job titles used by officers with an EHE caseload

**Type of caseload an officer carries beside EHE** (question 12): additional types of caseloads carried by EHE caseload officers. The responses indicated diverse

practices with 32 LAs responding that their EHE-officers additionally carried a mixed caseload. Eight carried a ‘full caseload’ which is a combination of Children Missing Education (CME,) Special Education Needs (SEN,) Gypsy, Roma, and Traveller (GRT,) and school. Six LAs combined EHE with a school-based caseload; while 18 LAs’ EHE-officers also undertook one or more of the following: CME, SEN and GRT cases see Figure 6.



**Figure 6: Range of EHE-Officer caseloads in each LA**

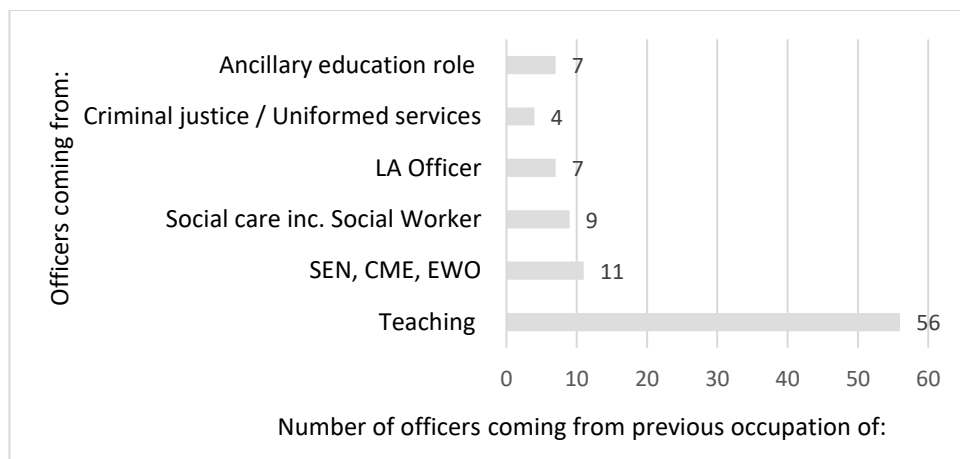
Later chapters discuss the impact of LA practices in respect of team and job titles with multidisciplinary or mixed-caseload as a factor which increases the risks of problematising home-education.

### **FOI Responses: EHE-officers**

**Officer background** (questions 6, 13 to 15): reflecting my own observations as a home-educator and social worker Lees (2014) noted that EHE-officers are frequently former teachers and, therefore, the questionnaire explored the EHE-officers’ employment background. Ten of the 52 LAs refused to respond to these questions,

citing S40 FOI Act; whereby they deemed it to be personal information about the officer. The responses concerning EHE-officers' previous roles as teacher and additional roles has ongoing relevance in this study. Chapter 4 reasoned that EHE-officers, specifically those who were teachers, will bring into their officer practice knowledge previously acquired in their former employment: e.g. school-based CoP along with a school paradigm of education. Later in this chapter there is consideration of EHE-Officer job adverts targeted at teachers, while Chapter 7 will look further at the issue of EHE-officers with a teaching background.

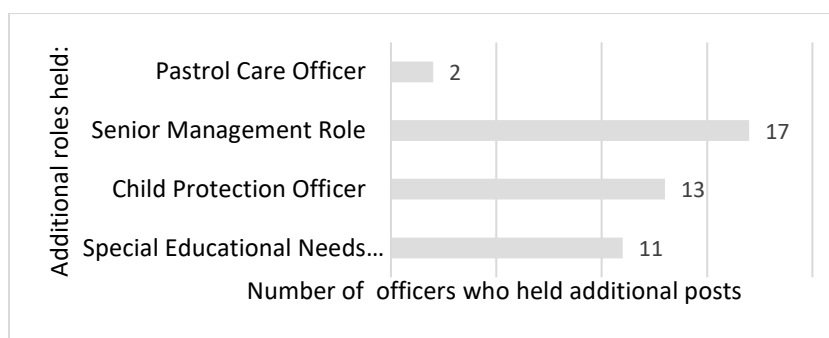
**Previous employment** (Question 13): the responding LAs provided previous employment for 93 officers, which revealed that 67% had a school/teaching background, see Figure 7.



**Figure 7: Officers previous job role**

Note: Additional roles - OFSTED, School Governor, School Secretary  
 The responses did identify other areas of previous employment for EHE-officers. A third of officers had come from an internal appointment within the LA or had been appointed from social care, criminal justice, or uniformed services.

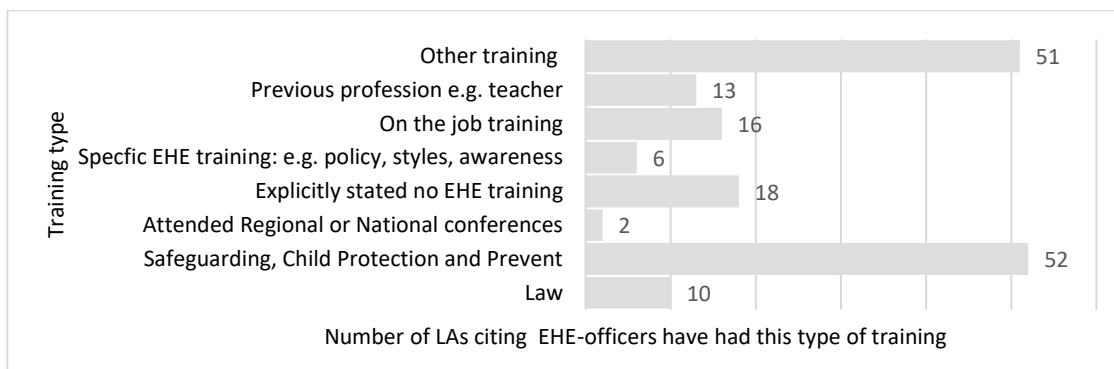
**Additionally, held roles when teaching** (question 14): in respect of former teacher employees the LAs were asked about any additional school positions held beyond a teaching role. Responses revealed that 37 out of the 56 teacher-practitioner officers had held 43 additional roles. The disparity between numbers of roles arises as some officers held two additional concurrent roles e.g. Head and Safeguarding Officers see Figure 8.



**Figure 8: Additional roles held by officers who came from teaching**

**Note:** senior management role includes head teachers, deputy head teacher, heads of departments or school governors.

**Officer training** (question 6): Chapter 3 highlighted a concern that officers lack training in respect of home-education (Petrie, 1995, 1998, p. 131, 2001; Taylor and Petrie, 2000; Badman, 2010; the Education Committee, HC 559-1, 2012; NSPCC, 2014; Lees, 2014). LAs were specifically asked to ‘give details of training provided’ to officers with home-education caseload and their responses detailed the variety of training undertaken, see Figure 9 (p. 180).



**Figure 9: Areas of training undertaken by officers.**

As can be seen, 52 LAs identified that their officers undertook safeguarding training, the one omission being a self-employed ‘casual officer’. However, by comparison only six LAs had provided specific training on EHE. The emphasis on safeguarding, alongside the dearth of EHE-training is impactful on the LA administration and officer implementation of national-policy, as a driver to both local administration and implementation practices arises in anxiety in and/or problematisation of home-education. A lack of relevant EHE-training and a surfeit of safeguarding training potentially problematises EHE further, whilst officers with the identity of teacher, who lack appropriate EHE-training, inform their practice from teacher ‘communities of practice’ which may be unsuitable to EHE. 52 LAs responded to the question about officer training, their responses indicate that they provide a variety of different training but displayed a lack of consistency in all but the provision of Safeguarding training.

**Specific EHE training:** Six LAs responded that they had provided EHE-training and 10 different LAs stated they had provided EHE legislative training. Thus 16 LAs had provided a form of EHE related training; however 18 LAs explicitly stated they

provided no form of EHE-training. 16 LAs stated EHE-training was provided 'on the job'. It is unclear what this means but given responses from interviewed officers in the next chapter it can be presumed that this is 'in practice support and tutoring from colleagues.'

**Safeguarding/Prevent training:** all LAs provided annual safeguarding/child protection training, and Prevent training, with some LAs additionally referencing officers undertaking training in Child Sexual Exploitation, Fabricated and induced illness, and Female Genital Mutilation.

**Other training:** 51 LAs also referenced other training opportunities including: Lone Working, Self-defence, De-escalation of Aggression, Court and giving evidence, Health and Safety, Data Protection Act (DPA) and Equal Opportunities. The nature and impact of training undertaken by officers is a central issue to the administration of EHE-policy and officer practice. While training, or lack of training, has the potential to skew officers' views of and practice towards EHE: this will be explored further in the interviews of officers and advocates within Chapter 7.

**EHE-children** (questions 15-20) This section covers questions 15-20 into LA concerns about the welfare of EHE-children and is potentially crucial to LAs and officers' adherence to or deviation from national policy. Chapter 3 highlights the potential to problematise home-education and to view EHE-children as having increased risk

harm. Therefore, LAs were asked questions pertaining to child protection concerns or assumed 'vulnerable' groups of EHE-children, specifically:

**Numbers of known:**

- Home-educated children; and
- Gypsy, Roma, and Traveller (GRT;) and
- Special educational needs (SEN,) and

**Child protection (CP): number of EHE-children**

- Referred by LA officers to Children's Social Services;
- Identified under the Children Act 1989, S. 17. as children in need; and
- Number identified under the Children Act 1989, S. 47. as having child protection plan.

Table 6, p186, is an amalgamation of the responses as reported by approximately a third (53 out of 152) of English LAs and relate to the calendar year of 2012. The responses provide a 'snapshot' number of known EHE-children of 10,372, when exponentially tripled this provides an approximate figure of around 31,000 children

The responses, detailed in table 6 (p. 183) reveal that while 83% of EHE-children did not present an identifiable 'concern', 17% are in categories which 'could' signpost some additional difficulty or problem: 10% belonging to the GRT community and 5% were SEN. 2% of EHE- children were known to Children's Social Services: either referred by EHE-officers (which may result in no further action) or being subject to



<b>Number of known EHE children in 2012 (calendar year)</b>	<b>Number of children</b>	<b>% of EHE-children</b>
Identified as Special Educational Needs	547	5%
Identified as Gypsy, Roma and Traveller	1046	10%
Identified as a child in need (S.17)	113	1%
Child protection plan (S.47)	40	0.4%
Referred to Children's Social Services by education-officers	60	0.6%
Not identified as having an issue	8562	83%
<b>Total number recorded as EHE</b>	<b>10372</b>	<b>100%</b>

**Table 6: Number of EHE-children by category**

S. 17 or S. 47 of Children Act 1989. These responses purely provide a glimpse into the numbers of EHE-children with child protection concerns or those identified as belonging to assumed 'vulnerable' groups during 2012. It is not definitive, and it is an area crying out for further in-depth examination. However, it does indicate that around 13% of EHE-children were identified by LAs as having some concern as to vulnerability which potentially impacts on LA administration and officer implementation of national EHE-policy locally.

### **Summary FOI Data Findings**

The FOIs data collection examined issues central to the administrative structure of LAs in respect of home-education. The key facts to take from this data are:

- The lack of national homogeneity in local administration of EHE-policy and practice;
- LAs administer policy counter to the direction of Guidance, for instance they make unannounced visits, and seek to: visit and monitor, and conflate EHE and welfare;
- EHE-children are potentially cast as a vulnerable group and/or home-education is problematised;
- Training is inadequate and likely negatively influences local policy and practice:
  - There is a surfeit of safeguarding training and training not directly relevant to home-education; and
  - There is a stark absence of appropriate training in home-education.
- The high recruitment of former teachers will potentially impact on their views and practice towards EHE.

## **Phase 2: LA Documentary Evidence**

The evidence provided from the review of literature in Chapters 2 and 3, and from the FOI response findings in this chapter ascertained that adherence to State policy is variable. Specifically, the existence of inconsistency in locally devised policy between LAs. To gain further insight the study reviewed LA documentary sources for compliance or not with Statute, specifically the EHEGLA (2013). This documentary review considered 145 English LAs' who have EHE web-based literature; a range of LA generated letters to parents, and a small number of EHE-Officer job advertisements.

Such literature not only provides additional insight into LA policy administration but gives some insight into officers' practice as evidenced, for example in any correspondence.

## **LA Webpages**

LA webpages fall within the directive of the EHEGLA (2013) which states that LAs should provide "*written information about their EHE-policy and practice*" and made available to parents on LA websites. However, it is the subsequent wording that is the issue of concern for this study, whether that information meets the threshold of being "*clear, accurate and reflects the legal position, roles, and responsibilities of the LA and parents.*" Kensington and Chelsea (2014) offer the view that the: "*purpose of local policy literature is to support LA officers in carrying out their statutory responsibilities,*" (para. 2.5). No matter the perspective, the expectation of the DfE (2011,) reflected in the EHEGLA (2013,) is that LA information will comply with current State Legislation and Guidelines, as should the administrative procedures of LAs and the implementation practices officers.

The All-Party Parliamentary Group (APPG) on EHE recognised that LA websites and literature ranged from good to poor, identifying inconsistencies with Legislation, and a tendency to purport duties or powers that LAs and officers do not hold. The APPG therefore directed LAs to review information on their websites and elsewhere (Education Committee, 2012). However, as of March 2017, it is apparent that some LAs have not followed this direction, including: Kensington and Chelsea (2014,)

Southend on Sea (2014,) Portsmouth (2014,) and Plymouth (2014). These authorities' websites and/or hyperlinked literature contain policy, practices, and duties that are still inconsistent with Legislation and EHEGLA (2013). They specifically imply that parents must apply to or inform the LA of their intention to home-educate; that they have a duty to conduct home visits; monitor or assess the suitability of education; and a specific obligation towards the welfare of EHE-children. Such literature purporting authority that does not exist potentially amounts to abuse of power practices (Education Committee, 2012).

From personal experience, parents within home-education support networks, including Education Otherwise, have stated that their LA webpage was often their first source of information when thinking about home-education. Compliance of these pages to Statute, specifically the EHEGLA (2013,) is essential if parents are to fully and correctly understand their obligations and rights when making the decision to home-educate. The review of English LAs' webpages revealed the widespread inclusion of invalid or excessive claims of LA authority or power which deviated markedly from State strategy defined in Statute and the EHEGLA (2013) as detailed in Chapter 2. Table 7, p. 187-188 records these 'ultra vires' claims found on the webpages or hyperlinked documents, analysed using the thematic approach described in Chapter 5.

Theme	Local Authority EHE webpages: non-compliant statements	No. of LAs
<b>LA responsibilities</b>  Safeguarding	Refers explicitly to safeguarding being a key LA duty. Specifically refers to children ‘murdered’ while they were home-educated. States the LA will undertake a routine “Common Assessment Framework” with all new families. LA must reassure itself about EHE-children’s safety and welfare. Will undertake routine checks.	48
<b>Imply permission to EHE is required</b>	States all parents need LA permission to EHE (note, this only applies if the child currently attends a special school,) or, States LA will only allow withdrawal from a special school after Children's Services undertake a safeguarding visit	7
<b>Special Educational Needs (SEN)</b>	Parents must convince LA that they can EHE their SEN child. State they will monitor home-educated SEN children and their educational provision.	24
<b>Visits</b>	States that they arrange to visit. States that they will visit.	68
<b>Assessment and monitoring</b>	State the officer will arrange to meet the family or to talk to parents so as to assess work and learning. States will assess “appropriate progress.” States LA duty to assess EHE. States LA has a duty to monitor EHE. States LA has a duty to ensure EHE-children are educated. States that the LA will judge or assess, or evaluate educational provision States that the LAs has duty or right to monitor education. States EHE provision will be inspected.	98
<b>Suitable education</b>	Parent must demonstrate that the provision of an EHE programme will help the child to learn & that child develops as per age, aptitude and ability. States home-education should be active, practical, and participative. LA must satisfy itself that EHE-children are receiving suitable education.	32
<b>Evidence</b>	States LA expect to see evidence of serious intent by parents. State LA will ask for evidence of education e.g. to see the child’s work. State that if LA evidence of education is not appropriate they will take legal action.	28

	<p>State that a written programme of work will be a good starting point for discussion between the LA and parents.</p> <p>States the LA is looking for details of educational and future aims and for evidence of how the child is helped to achieve those aims.</p> <p>States the LA will refuse parental reports as these have limitations from an education and safeguarding perspective.</p>	
<b>Registration</b>	<p>Webpage provides an online registration form – requires at a minimum: name, address, email, phone number, name of child and school.</p> <p>Webpage provides an online enquiry form – requires at a minimum: name, address, email and/or phone number.</p> <p>LA will provide parents with an application/proposal form.</p> <p>Provides incorrect deregistration information – instructs that parents must inform the LA of their decision to EHE.</p>	58
<b>Parents’ duties and responsibilities</b>	<p>Describe “what is parents’ actual duty” by referring to Education Act 1996, S. 7.</p> <p>Parents be must be serious &amp; systematic in their approach.</p> <p>Duty of parent to consider before embarking on EHE the time, study space, resources, etc. required.</p> <p>LAs state it is good practice for parents to arrange for their child to sit exams.</p> <p>Parents have a duty to ensure the ‘socialisation’ of child.</p>	104
<b>Other errors/issues</b>	<p>Website provided a copy of old EHE Guidance (DfES 2005)</p> <p>States parents must pay for 14-16 college placements (note: this is centrally funded by DfE).</p> <p>States all GCSEs have coursework which needs authenticating: makes no reference to IGCSE which have no coursework element</p> <p>Claim that ‘EHE law is confused or imprecise or unclear’</p>	<p>3</p> <p>10</p> <p>15</p> <p>4</p>

**Table 7: Evidence of non-compliance with National Statute, specifically, the EHEGLA (2013) within LA webpages.**

## **LAs, generally, do not comply with national Statute and Guidance.**

Web-based literature analysis shows a propensity to be non-compliant with national Statute and Guidance (e.g. Barking and Dagenham, 2011, 2017; Coventry, 2017; Derbyshire, 2011, 2017; Halton, 2017a; Stockton-on-Tees, 2008, 2018). Typically, webpages claimed duties not prescribed in Legislation. As seen in Chapter 2, LAs do not have a duty to monitor, assess, visit a child, or undertake routine welfare checks.

Yet Table 7 (p. 190-191). shows LA webpages variously claimed a legal requirement to monitor, to ensure efficient, full-time education and the need to assess and/or complete a written report on educational suitability and/or attainment. LAs not only emphasised their policy for annual visits to assess and review education but stressed a 'requirement' to undertake safeguarding visits. As discussed in Chapter 2 safeguarding is a general reactive duty, however this approach amounts to a proactive stance towards welfare. For instance, 48 LAs directly referenced home visits as being necessary to meet their safeguarding duties (including, Stockton-on-Tees, 2008, p. 8; Derbyshire, 2011, p. 20). Some LAs explicitly referred to classifying EHE-children as 'at risk' if parents failed to engage and/or accept visits (e.g. Stockton-on-Tees, 2008; Manchester, 2016; Buckingham, 2017,) whilst one LA stated visits were required as there is "*potential for neglect or abuse to go unnoticed ... as children have been murdered by parents or carers who had opted for home-education*" (Barking and Dagenham, 2011, p. 3-4).

## Analysis of one non-compliant LAs Web Based Literature

Manchester City Council (MCC) EHE-policy (2016) provides a specific example of non-compliance with State defined EHE-policy as outlined within Statute and the EHEGLA (2013). It serves as a good example of how 'out of step' with Statute and EHEGLA (2013) some LAs are. It is one example, but it is far from isolated. Their policy states that:

- The head teacher should inform the LA prior to removing the child from the school's register, and only remove the child from their roll 2 working days after receipt of the parent's written notification (para. 3.2).

**This is incorrect:** the child should be deleted immediately from the admission register on receipt of written notification from the parent that the pupil is receiving education otherwise than at school (Education (Pupil Registration) Act 1995, S. 9(1)(c)).

- They have a statutory duty to maintain a register of all children known to be home-educated (para. 4.1).

**This is incorrect:** no duty or Legislation exists. However, S.436A of the Education Act 1996 imposes a duty on LAs to "*identify (as far as it is possible to do so) children not at school and not receiving suitable education other than at school*", but they have no statutory duty to maintain a register of EHE-children.

- They use the Education Act 2002 S. 175 (1) to support their claim that they have a statutory duty to safeguard and promote the welfare of children (para. 4.3). As part of this duty they expect to see the child and the home (para. 5.4) and if this



is refused, the LA has reasonable cause for concern about the child's welfare, and a referral will be made to social care (para. 6.11).

**This is misleading:** S. 175 (1) of the Education Act 2002 is a general duty to be 'aware' of safeguarding in the normal course of an officers' day-to-day work. It provides no extra powers to the LA and does not give them the right to insist on seeing children or to visit the home simply because of EHE. Referring a child to social care simply on the grounds they are EHE is over-reaching their authority (DfCSF, 2010; EHEGLA, 2013; Bishop, 2015).

- The LA officer will attempt to contact parents to arrange the first visit by telephone and/or by sending up to 3 letters within 20 working days of the initial notification (para. 5.6).

**This is misleading:** the EHEGLA (2013) make it clear that visits are optional and this must be apparent in any letters, and that they must allow the family sufficient time to respond.

- The authority will gather any relevant information to assist a properly informed assessment that the education is suitable. This includes seeking from parents any information that explains how they are providing a suitable education. This could include a written report, telephone conversations, and the child's views, samples of the child's work, a home visit, or a meeting outside of the home (para. 5.3). They state it is necessary to assess that EHE is suitable, therefore, the LA will maintain contact with the family and arrange to visit on a regular basis, usually annually. Routine safeguarding checks will be made with Social Care and the Health authorities (para. 6.9 and 6.11).

**This is incorrect:** there is no duty on authorities to undertake routine assessment or monitoring. Unless evidence indicates a problem, the assumption in the wording of S.437 of the Education Act 1996 is "*if it appears...*" and this implies a purely reactive duty.

Despite MCC's assertions with their webpage, their EHE-policy is non-compliant and/or misleading. Of concern is MCC stated policy to refer family's to Children's Social Services (para. 5.7) if parents refuse to comply with their requirements, here MCC is proactively conflating EHE with welfare. State strategy (Legislation, Case-law, and Guidance) was intended to place reactive duties on LAs; MCC has interpreted these duties as proactive. MCC is not alone in such policy: this overview is equally applicable to the LAs cited in this section.

### **Analysis of LAs compliant with State policy**

However, some LAs were generally compliant with current Statute and the EHEGLA (2013) for instance Cumbria (2017, 2018;) Doncaster (2017;) Lancashire (2017;) and Sheffield, (2017). These authorities' literature was neutrally written, reflected State policy and tended to offer good examples of EHE materials, useful information, and external links. Some directly addressed many of the issues home-educators often encounter with other LAs, e.g. "*we will never tell you what you are doing is wrong. Our role is to offer advice and support. We will never demand to see your child/children. We will never turn up unannounced*" (Doncaster, 2017).

## LA Letters

The EHEGLA (2013) advise LAs that it is good practice to write to home-educators when making 'informal' enquiries. For this study, I gathered a wide range of LA letters sent to parents who forwarded them onto me with personal information redacted. Such letters, written by officers, signpost LA policy and practice and indicate how home-educators experience their authority, and its policy and practices which can set the tone of future relationships.

The EHEGLA (2013) advise that LAs write to home-educators when they become aware of a decision to home-educate or of a child not entered on a school roll (para. 3.5). Table 8, p. 197 provides a review of commonalities that typically appear in these initial letters. Analysis of these initial letters indicate that LAs frequently fail to inform parents of their rights e.g. to refuse visits. Initial letters commonly outline LA 'duties' that do not exist e.g. to visit, or to monitor, assess, and/or detail policies that are counter to the EHEGLA. This can cause parents to distrust LA and their officers, if they know or later come to know the national policy directive within the EHEGLA. Initial letters can be ambiguous, on one hand stating there is no legal responsibility to monitor on a regular basis, but on then proceed to say they will do just that. This gives a confusing mixed message in that there is no duty to monitor, but that they are monitoring. Analysis of the content of initial written approach, displayed in Table 8 (p. 194) shows:

<b>Cites legislation: Education Act 1996 S. 7.</b>	States the duty of the <i>'parent of every child ... shall cause him to receive efficient full-time education,'</i> and/or, States the LA has a duty to: ensure every child is receiving an education <i>'appropriate to their age aptitude and ability'</i> .
<b>States the LA must</b>	Be satisfied that education is suitable. Exercise a safeguarding duty or undertake 'safe and well' checks and/or Assess/monitor (citing Education Act 2002, S. 175). Write a report of educational provision (will classify provision: suitable, suitable with reservations, or unsuitable).
<b>Visits</b>	Includes an appointment for initial visit with EHE-officer, or EWO/CME Includes an appointment for initial visit an Education Welfare Officer or Children Missing Education Officer, states an EHE-officer visit will follow. States parents have the right to refuse visits (note, most LAs omit this information). LAs will arrange to revisit, typically six monthly/annually, or more frequently
<b>State parents</b>	Must provide 'evidence' of educational provision e.g. samples of work or report. Must complete forms. Must accept visits.
<b>Includes Forms seeking</b>	Family/household information, medical/health information, other professional involvement. A comprehensive overview of educational provision: with sections for subjects, timetables, clubs, social opportunities, resources

**Table 8: Typical comments within initial letters**

Initial letters are often accompanied by forms with the expectation that parents will complete and return. These can be intrusive in seeking a lot of personal family information. Whilst forms related to 'educational provision' are reflective of a school model of education e.g. referring to subjects and timetables and are suggestive of a lack of understanding of home-education. The educational provision forms may contain an erroneous claim that they must visit or see the child due to an alleged duty to safeguard or do 'safe and well' checks.

**Analysis of one non-compliant letter** – see Appendix 2 (p. 369-372)

The London Borough of Newham letter was sent in early February 2017 by the identifying features have been redacted. It states that it seeks to ‘encourage a constructive and positive dialogue with parents,’ however the letter generally misrepresents the extent of its power and authority within the bounds of law and Guidance.

The letter states that ‘*although parents are not required to cooperate with visits, if a child is not seen the CME officer will be notified in line with their policy*’. But EHEGLA (2013) make it clear that a child need not be seen, only that he/she should be given an opportunity to attend meetings or to express their view in some other way, but ‘*it is not required*’ (para. 3.4). Newham cites the Children Act 2004 (31, part 2, S. 10,) whereby LAs ‘*shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children*’. Yet EHE is not of itself a safeguarding issue: LAs have not been given powers to see and question children simply because they are home-educated or to establish whether they are receiving a suitable education (EHEGLA, 2013, S. 2.15). Where there are genuine grounds for concern (Children Act 1989 S. 17 and S. 47) powers would apply.

The letter implies the need for the LA to consent to home-education stating, ‘*parents wishing to home-educate must ...*’ However, the Education Act 1996 S. 7 makes it clear that the decision is the parents’ (unless the child attends a special school).

Newham infers that it has a duty *'to determine whether EHE is suitable,'* and outlines factors they will use to determine suitability such as: the family's aims, purpose and intended programme of study, but also record keeping and space to study. This is contrary to EHEGLA (2013) in several respects: families do not have to follow a programme of study, the national curriculum, or to create school at home e.g. have a timetable, dedicated work space, mark work (S. 3.13). Further, it is a matter for the parent as to how they provide information when asked to do so, not a matter for the Authority to stipulate the form that information must take: *'Parents might prefer, for example, to write a report, provide samples of work'* etc. (para. 3.6). Newham details the steps it will take if the parents have not met their *'determining factors,'* whereby they will issue a *'notice to satisfy'* with threat of court action to obtain a school attendance order (see Education Act 1996, S. 437 (1)). But Newham's arbitrary determining factors lack basis in Statute and in the EHEGLA (2013 :) their policy simply does not comply with the national Statute and Guidance.

Newham's letter (2017) is reflective of their policy (2017a) and the writers of both local policy and letters become significant, de facto, policymakers (Lipsky, 1980). The policy expressed in letters such as Newham's becomes an expression of *ultra vires* (beyond their authority) policy becoming normalised in practice to the detriment of national Statute and Guidance. Interestingly, Newham was subject to a recent court case, albeit unrelated to home-education (Ali v London Borough of Newham (2012) EWHC 2970 (Admin) where the High Court held that Newham did not have a lawful justification for departing from the relevant national Guidance. Therefore, it is

surprising that Newham's 2017 EHE-policy seeks to supersede national Statute and Guidance as conveyed in EHEGLA (2013).

### **LA EHE-officer Job Advertisements** – see Appendix 3 (p. 373-376)

As will be discussed in Chapter 7 the officers interviewed for this study referred to needing to meet the requirements of their job description. Therefore, post interview, I looked specifically at LA EHE-officer job advertisements and the accompanying job description and person specification. Only a small number of EHE-Officer jobs are advertised annually, the eight collected job advertisements cover a three-year period of 2014-2017. Eight advertisements are likely an under-representation as some posts are internally advertised and others 'disappear' from the web once the closing date has passed.

Nonetheless, examination these advertisements usefully served to give an insight into the LA expectations for the EHE-Officer role, specifically, the attached job description and person specification which are indicative of the LAs policy towards the administration of home-education. I adopted a thematic approach (see Chapter 5) to identify emergent themes and correlated these with those arising from within other datasets. The job adverts considered are West Berkshire, (2014;) Torbay (2015;) Central Bedfordshire (2016;) Coventry (2017;) Hampshire (2017;) Lincolnshire (2017;) Southwark (2017, 2017a).

## Job titles

Chapter 6 noted that some EHE-Officer job titles are inconsistent with home-education (p. 178). The job titles associated with these advertisements showed a similar tendency (see Table 9).

Elective Home Education Monitoring Officer	West Berkshire, (2014;) Torbay (2015)
Elective Home Education & Children Missing Education Tracker	Lincolnshire (2017)
Elective Home Education Co-ordinator	Coventry (2017)
EHE and CME Officer	Lincolnshire (2017)
EHE Officer	Hampshire (2017)
Children Missing Education and Elective Home Education Officer	Central Bedfordshire (2016)
Education Advisor	Southwark (2017, 2017a).

**Table 9: EHE-officer titles within job advertisements**

## Job description

The job description, referenced by the officer interviewees, details the key roles and responsibilities of the appointee. Common to the eight job advertisements were:

- Assessing suitable education,
- Monitoring and/or tracking children,
- Undertaking Visits,
- Safeguarding or safe and well checks,
- Record keeping and report writing,
- Representing the LA,



- Developing effective relationships with the EHE community,
- Willingness to undertake relevant training.

## Person Specification

This outlines the candidate requirements: e.g. qualifications, experience, knowledge and skills that the applicant is expected to have. Specifications common within the eight job advertisements included:

- **Qualifications:** A professional teaching qualification: Certificate in Education, PGCE or QTS and recent teaching experience or other professional qualification e.g. social work, or counselling
- **Knowledge of education:** what constitutes a suitable and efficient education, understanding of good teaching and learning practice, the ability analyse attainment, knowledge of Primary and Secondary school curriculum including current practice and developments, experience of setting targets and managing sustainable change.
- **Experience of working in schools:** ‘considerable experience’ of working in an education setting.
- **Teaching skills:** stipulations included evidence of successful and effective teaching in schools, including the ability to work with more vulnerable or challenging pupils and their families. One authority appended an explanation *‘the role holder maybe exposed to potentially volatile and occasionally abusive behaviour’* (Hampshire, 2017).
- **Training:** Ability to provide training for staff in schools to raise awareness of CME and/or EHE issues

- **Knowledge of education law and policy:** this was a ‘preferred but not essential requirement’ and common to all advertisements. All referred to an ‘ability to work within processes/procedures relating to education law’. Specifically cited were Children Missing Education, Special Educational Needs, School Attendance, Exclusions, and the ability to work within national, statutory performance data frameworks for education and schools’. Only two explicitly referred to knowledge of current policy, Legislation and OFSTED frameworks that apply to Elective Home-education (Coventry, 2017; Hampshire, 2017).

### **EHE-Officer job advertisement summary**

Overall the job title, job description and person specification are inappropriate to home-education. The person specification was targeted at teacher-practitioners and/or those familiar with a school paradigm of education. The job descriptions detailed requirements for the role which are beyond the scope of Statute and EHEGLA (2013). The descriptions served to direct the appointed EHE-Officer to practice in a manner which would be beyond their legal authority: to monitor, assess, conduct visits, and undertake safeguarding checks.

### **Summary**

Fundamentally public bodies, such as LAs, are an embodiment not only of the State but the bureaucrats (officers) who work within them (Lipsky, 1969, 1971, 1980). This study scrutinises the implementation of national EHE-policy and Guidance to

identifying factors which affect or negate LA and officer compliance thereby impacting intended policy outcomes. Officer-bureaucrats generate LA literature in respect of EHE, in this they interpret, make, or solidify local policy in a manner that could diverge from nationally intended policy. Evidence of LA interpreting national EHE-Statute and Guidance is apparent in their FOI responses. Further evidence of interpretation is visible in LA and EHE-officers generated literature: webpages, handbooks, letters to parents and EHE-officer job advertisements. All show clear evidence of divergence from that intended by national EHE-Statute and Guidance (EHEGLA, 2013,) as demonstrated by manifestation of LA policy purporting duties or authority which does not exist, including evidence of an overreaching conflation of EHE with safeguarding.

Analysis of the FOI responses and LA generated literature supports the theoretical lens of policy implementation discussed in Chapter 4. The FOI responses and LA literature analysis shows a general pattern of institutional policymaking. There are visible signs of interpretation of State strategy (Legislation and statutory Guidelines) which demonstrate that LAs and officers respectively administer or implement a locally defined policy which runs counter to national policy. This local policy becomes accepted practice and creates an environment to promote a 'precedence of practice'. It is a bottom-up push which changes policy practice via modifying intended State policy (Lipsky, 2010) and is visible within LA policy and officer practice. This trend enables change despite local policy lacking legal authority: its

implementation becomes locally accepted practice, effectively resulting in a bottom-up movement of policy (Reynolds and Saunders, 1987).

## CHAPTER 7: FINDINGS – OFFICER AND ADVOCATE INTERVIEWS

This study examines *'the interpretations of local authorities and the officers charged with the local implementation of State policy towards home-education'*. The preceding chapter detailed the findings from LA data: FOI responses and documentary sources, which indicates that there is an observable and discrete interpretation of national EHE-policy. This chapter comprises findings from 10 qualitative semi-structured interviews: six LA officers who hold an EHE caseload and implement EHE-policy, and four EHE-advocates interviews.

Here it might be helpful to remind the reader that the interviews were all recorded with permission and transcribed verbatim into Word. The officer and advocate names are anonymised: they have all been allocated non-gendered pseudonyms, identifying aspects of the advocates are 'generalised' but nonetheless remain characteristic (Chapter 5). The interview transcripts were subject to thematic analysis using repetitive, multilayer summation to identify thematic content (see Chapter 4). This approach looks for 'what is said' rather than 'how it is said,' to draw out and identify themes (Polkinghorne and Arnold, 2014). It permits the identification of patterns not only within an individual [interview] dataset but between datasets (Guest et al., 2012). Analysing these interviews using 'key word or phrase' search, to identify any commonality, identified 8 themes. These proved to be reflective of those identified in the literature review (Chapters 2 and 3) in the LA data (Chapter 6).

**Officer interviews:** where designed to interrogate the extent to which officers comply or not, with National Legislation and Guidelines. The interviews sought the officers' own perspective and understanding of EHE as this is significant to their practice and to policy outcomes. There is a focus on influences which impact and inform the officers' practice, including the effect of officers' background (e.g. influence of prior training, employment, and attachment to Communities of Practice).

**EHE-advocate interviews:** the inclusion of advocates was designed to afford insight into the perspective policy recipients, providing an alternative view on expressions of concern about EHE and the implementation of State strategy at local level. EHE-advocates have home-educated and are home-education exponents; in terms of this study an advocate is a person who publicly supports EHE and additionally, they advocated or campaigned on behalf of EHE and home-educators. Their advocacy developed within home-education CoPs (Barson, 2004; Safran, 2008, 2009, 2012; Fensham-Smith, 2017) They have specific expertise to support home-educators, e.g. providing advice in respect of legal or social service related EHE situations and engaging with e.g. local and national stakeholders. The interviews sought advocate views State EHE-policy, specifically, local compliance to State policy and their perception of LA and officer practices. The advocate interviews took place towards the end of the officer interviews. Whilst not substantially changed from the officer interview schedule its focus was additionally honed by the officer interview responses.

**Interview Themes:** the findings arising from the interviews identified 8 themes

1. EHE-Officer Background: qualifications, training, and employment
2. How the officers see their role, (and how the advocates see the officer role);
3. EHE oversight: including monitoring, home visits and assessment;
4. Training undertaken during the EHE-officers' current role;
5. Views on Legislation;
6. Views on safeguarding, SCR, socialisation;
7. Views on officer discretion; and
8. Views on the EHE-Officer role being a 'non-job'.

## **Theme 1: EHE-Officer Background - Qualifications, Training and Employment.**

### **Officers:**

The notion that 'EHE-officers are frequently former teachers' (Lees, 2014) was reflected in the findings of Chapter 6: where the FOI responses showed two-thirds of officers were from a school and/or teaching background, whilst EHE-Officer Job Advertisements showed an LA preference to employ teachers. Chapter 4 discussed the theoretical concept that such officers would retain the identity of a teacher, bringing to their EHE-Officer role the experiences and associations formed as teachers. Specifically, that as teachers they developed affiliations to 'teacher-practitioner CoP' whose purpose is to fortify the practice, role, and principles of 'teacher'. Teacher identity and influence of teacher-practitioner CoP continues to be central to EHE-officers as evidenced in the comments of two of the officers who

noted *“once a teacher, always a teacher”* (Chris) and *“no matter where you go or what you do, like the mafia you always belong ... never really leave”* (Charly).

**Training:** the officers were asked to detail their training and career history before being employed in the EHE-Officer role. All had trained to be teachers, and all had previously worked as teachers, with some achieving senior roles. Although they had this shared teacher experience their career projections differed, Table 10 shows (see p. 210). Three officers had completed first degrees, before undertaking teacher training. All the officers trained via one of three different routes: two undertaking a Post Graduate Certificate in Education (PGCE,) two who had qualified over twenty years ago with a Certificate in Education (Cert Ed). while two held Qualified Teacher Status (QTS). They had different lengths of service: three taught for over twenty-five years until ‘retiring’ from the role and three taught for five to six years. When teaching, four officers held school senior management roles, five had had Safeguarding training and two Special Educational Needs (SEN) training. Four officers had experienced careers outside teaching. Table 10 provides an overview of officers’ background, their qualifications, training and employment.

From Table 10 it can be postulated that the difference in training routes and/or distance from training or length of teaching service may impact on the officer’s experience of teacher-practitioner CoPs and their overall perceptions of



<b>Fictions name</b>	<b>Non-teaching Qualifications, Training or Employment</b>	<b>Teaching Qualification</b>	<b>Teaching Employment</b>	<b>Teaching service</b>	<b>Additional Teacher-practitioner Managerial Role held</b>	<b>Additional Responsibilities</b>
<b>Charly</b>	Social Care qualifications – *residential homes and family centres - over 20 years	Cert Ed.	*Supply teacher UK - primary  *Taught overseas - all age groups	4 years  2 years  6 years total		
<b>Ashley</b>	Degree – Environmental Science. *Ethnic Minority Achievement Officer	PGCE - secondary	Full time  latterly supply teaching  Primary and Secondary	20 plus  5 years  25 years total	Deputy head	Safeguarding
<b>Brook</b>	Degree English	QTS - secondary	Secondary and primary	6		SEN  Safeguarding
<b>Chris</b>	Degree – Computer Science *IT  *'admin' [office] work	PGCE - IT	Primary and secondary	26	*Head of IT.  *Deputy head – Pastoral Care /Child Protection Officer	Child Protection
<b>Eli</b>		Cert Ed.	Primary and secondary including Special Schools	25	*SENCO.  *Child Protection Officer	SEN  Child Protection
<b>Jamie</b>	*Army PT instructor 7 years *Prison Officer for young offenders 10 years	Teacher Training QTS – PE (prior to entering the army)	Secondary	5	*Lead teacher PE	Safeguarding

**Table 10 Officer Background: previous employment, length of service and training**

education, welfare and EHE. Furthermore, four officers had additional employment experience outside of teaching, namely social care, social inclusion, army and prison service, and would have knowledge formed within associated CoPs. However, both scenarios were unexplored due to constraints of time and scope.

### **Advocates:**

The advocates identified LA's recruitment preference for teachers as EHE-officers as stimulating problems. They noted that the EHE-Officer role appeals to former teachers *"almost as a stop off stage towards retirement"* (Sam) or as a *"little part time, term-time job for a teacher parent"* (Bryce). While Pat felt that appointing someone with a teacher-practitioner background who *"holds a school model of education, one based on curriculum and school-based socialisation, to be truly strange, because they're perceiving [EHE] from the wrong mind-set."* Instilled with a school paradigm of education such officers are tending towards a view of how EHE should be conducted, which is at variance to the practice of home-education. They concluded there is a need to appoint EHE-officers who are *"not overtly attached to school-education"* (Sam,) and are open minded towards home-education as a valid minority choice. Pat put it thus: *"Put a teacher in a role with home-educators and they see it as not quite right. They're innately prejudiced, unless they are a rare and very special character."*

They also felt that officers *are mistakenly seen as home-education professionals and are left to their own devices"* (Bryce). They are *"mostly untrained in EHE, their point*

*of reference is obviously teaching, and this is reflected within their conduct towards home-educators” (Sam). Officers’ “judgment and practice is an expression of their views formed within their previous role as educators, influencing how they see home-education, families, childhood, and child welfare” (Pat).*

## **Theme 2: Officer Role (and role of LAs).**

The officers discussed their own role as LA EHE-officers and the interrelationship between LA and officer where they saw their roles as one. The advocates identified and discussed the discrete nature of LA and officer roles. This is reflected in the structure of theme 2.

### **Officers**

*LA EHE Inspectors have a very difficult job. We are not just concerned with educational provision, but safety and welfare of children and are impelled by law to carry out statutory duties (Charly).*

The interviews sought to uncover what the officers felt to be important general aspects or essential features of their role. They all referenced their job description and contractible duties when describing and/or expressing views on their role; these mirrored the job descriptions and person specifications discussed in Chapter 6.

**General duties:** the officers all referred to their “duty” to ensure that all children are receiving an education AND are not missing education under the disguise of EHE, this they identified as a monitoring and/or assessment role. They viewed this as separate from the duty to ‘locate children’ who are not on school rolls and are potentially children missing education (CME) as other officers/teams would typically undertake this task. Therefore, as EHE-officers their responsibility would only start once home-education is confirmed. However, two officers, Ashley and Charly, had a dual role of CME and EHE-Officer, and this impacted on their job description and how they carried out their role. They saw a clear demarcation between their CME and EHE roles: their initial approach was to consider all children as CME whilst making all necessary checks to confirm the child’s EHE status, and only then would they ‘transition into the role of EHE-officer’.

**Liaison:** the officers saw an essential part of their role was to liaise and maintain good relations with schools and other LA services, particularly if they needed to assist children back into school. They discussed two scenarios where they viewed this as an important aspect. Firstly, new home-educators: they all aimed to arrange a visit with these families. They considered expediency was necessary as *“the reason [for EHE] may be related to just some school problem... which if sorted quickly may not require EHE but a change of school”* (Charly). Secondly, to assist longer term EHE-children who may wish to start or return to school, or those assessed as not receiving a suitable education.

**Visits:** there was agreement that it was a ‘requirement of employment to visit families,’ as an essential part of their professional role as EHE-officers. They also acknowledged, as Eli expressed *“parents don’t have to accept visits despite what the job description says.”* Contrary to the direction given within the EHEGLA (2013) to LAs, the officers all referred to their employers requiring them to visit, monitor, assess and/or record; *“visits to confirm home-education is taking place, that is it suitable, and that the child is well. So, visits, assessment and report writing is central”* (Jamie).

**Safeguarding:** the officers identified that safeguarding was a specified requirement within their job description whereby they had welfare or safeguarding duties in respect of EHE-children. Charly and Ashley recognised that despite their job description, the EHEGLA (2013) *“directs against conflation of EHE and welfare”* (Charly) and therefore, *“technically, safeguarding duty extends only as far as that placed on any professional or citizen”* (Ashley).

**Statutory duties:** all officers referred their job role as having ‘statutory duties’ to assess, monitor and/or safeguard EHE-children. Chris, reflective of the views expressed by Jamie, Brook and Eli, explained the officer role as having *“a statutory role to monitor all the students who were home-educated, [to] go out to visit them and keep track of them.”* Conversely Ashley noted their role only becomes a *“statutory duty to intervene, if we have evidence the education is not suitable”*, displaying an accurate understanding of the Legislation.

**Role of LA:** officer responses gave insight into LA's, as their employers, blurring of national policy: Legislation, and the EHEGLA (2013). Ashley and Charly displayed keen awareness of Statute, and the EHEGLA (2013) acknowledging a duty is to 'only to react to genuine identifiable concerns'. Nonetheless, under the direction of their job descriptions and LA bureaucracy all officers admitted, to varying degrees, that they pursue visits, seek to routinely monitor, assess, or undertake 'safe and well' checks, "*as these are contractual duties*" (Jamie). The officers' job descriptions are written by LA managers, who Lipsky would argue are interested in achieving results (2010, p. 18). In setting out the parameters and requirements for the officer role, as Chapter 6 revealed the LA 'body corporate' do interpret national policy, and frequently administer a revised local policy. The officers all displayed a willingness to adhere to local policy and further blur boundaries of Statute, and EHEGLA (2013) within their own practice.

### **Advocates:**

**Views on Local Authorities:** the advocates all expressed robust concern that many LAs do not adhere to the Legislation and national Guidelines in respect to EHE "*by either misinterpreting or reinterpreting*" (Pat). They noted that neighbouring LAs can be markedly different in their approach to home-education policy implementation, whilst individual LA policy can frequently alter due to staff changes or outside pressures. Both situations result in a lack of consistency for home-educators' experience of LA policy and officer practice, "*at best this variability results in upset, confusion, and mistrust*" (Alex).

The advocates expressed greatest concern regarding LA and officer non-compliance with EHE Legislation and national Guidelines. Pat noted that in a web search of all English LA EHE pages there will be *“roughly half a dozen, maybe 10 who are fully compliant with the law and with Guidelines; that’s not a very good score out of a 150 odd LAs.”* Bryce remarked *“it is scary the things LAs say, on their websites, in their letters, etc. I mean at the best they infer that parents must do things that they do not have to do at all.”* While, Sam felt that many LAs engage in *“shady practices ... they have a clear set of Guidelines [referencing the EHEGLA, 2013] but they fail to adhere to it, make up their own [policy] and present it as above-board.”*

The advocates acknowledged that there ‘are a few good LAs’. These were viewed not as perfect, but nonetheless followed State policy thereby *“almost meriting ‘gold standard’ in their policies and attitudes towards home-educators* (Sam). These were LAs which have *“taken the time and effort to consult with and listen to home-educators”* (Bryce). But overall the view was that *“the good’ LAs are outweighed by some ‘utterly’ dreadful ones”* (Pat). These are LAs who act beyond the limits of their legal authority: insisting on frequent visits or ongoing assessment of education *“who threaten social services or court action if the families do not comply with local procedures”* (Alex). The advocates expressed concern that LAs continue to *‘implement policy their way”* (Bryce;) even when that policy has been challenged, not only by advocates, but by public admonishment from the Chair of the Education Committee (Stuart, 2014, 2014a,) or by direction from the DfE to ‘follow Legislation and Guidance’ (Truss, 2014). Despite this some LAs continue to *“believe that their*

*local policy trumps national policy, often citing their own internal lawyers' approval of their policy ... so LAs are effectively telling the DfE that the DfE is wrong because their non-specialist lawyers say so" (Pat).*

**Views on Officers:** the advocates variously referred to families' aversion to a patronising, condescending 'head teacher' approach: *"perhaps it is reflective of their teacher origins, but some officers treat parents as ignorant belligerent children"* (Pat).

They all expressed concern that officers overstep their powers *"when acting as agents of the LA and with indifference or ignorance of the law and their authority"* (Bryce). During the interview they provided extensive examples of officers overstepping their authority, briefly surmised: officers frequently citing Education Act, 1996, s437 to imply they must: visit, monitor, see work or do welfare checks or threaten referrals to Children Services or 'legal action' if parents do not comply.

However, there was acknowledgment that there are some 'absolutely fantastic' officers. The advocates identified such officers as experienced and open minded to idea of successful education outside of school. As Pat noted:

*Most officers are anxious to do a good job. But their managers, job criteria and LA policy incorrectly guide them as to what their role is. Thus, many officers come to see the role primarily as a 'Safeguarding Officer' than someone who can offer EHE advice and support.*

The advocates attributed blame to a lack of training and appropriate Guidance from managers, but also noted that managers often have little understanding of EHE



themselves. Therefore, they felt it was imperative that all officers are appropriately trained: including in national policy and home-education as a diverse practice (this will be scrutinised in Theme 4, p.234).

The advocates expressed reservations on EHE-officers' typical placement within teams which deal with specific issues or problems: e.g. SEN, non-attendance or children missing education (CME) or illness. They contended that this creates an environment where EHE-officers take on board the ethos of the team, so home-education becomes seen as *"just another problem to be solved"* (Pat). Bryce noted a similar issue with officers holding a mixed caseload e.g. SEN, CME alongside EHE. Thus, placement of EHE in a 'mixed' team or with an officer holding a 'mixed' caseload, *"combined with the propensity of not understanding the practice of EHE and relevant law and Guidance, results in home-education being problematised resulting in an overbearing approach to home-educators."* (Pat).

### **Theme 3: Oversight of Home-education.**

#### **Officers:**

The interviews sought officer views on EHE oversight, including their thoughts on the introduction of compulsory measures or powers. As seen in the literature review (Chapter 3) expressions of anxieties around children being unknown and/or missing education, have led to calls for 'notification' and/or 'registration' of EHE-children. (ADCS, 2016, 2017; Badman Review, 2009; Brandon *et al.*, 2013; Ellison and

Hutchinson, 2018; LGA, 2016, 2018; Monk, 2009, 2016, 2017; NCB, 2018; NSPCC, 2014a; OFSTED, 2011).

**Unknown children:** the officers concurred that children could be ‘unknown’ and ‘potentially at risk’ due to ‘there being no requirement for families to notify the LA,’ that they are home-educating. They all expressed concern for children who had never been on a school roll or children where the ‘family had moved whereabouts unknown’. Charly spoke for all noting that “*notification is essential to know where all children are and that they are safe.*”

**Notification and Registration** - In respect of the term’s *notification and registration* the officer interviewees revealed potential for confusion and a tendency to use them interchangeably as in Brook’s comment ‘*parents should have to notify us so we can register them*’. For clarity the meanings ascribed for notification and registration in this study are:

- **Notification** as in ‘*for your information*’ (Farlex, 2017) whereby there would be an obligation on the parent to let the LA know that they are home-educating; permission to electively home-educate is not required or given.
- **Registration** implies approval or minimum qualification needs to be granted by the LA to register and, by implication, the ability of the LA to decline that information (Badman, 2009).

**Notification:** the officers expressed similar viewpoints about wishing to see compulsory notification. Their general opinion was that for many children ‘unofficial notification already exists’ in children deregistered from a school roll. They could see no reason not to create a duty on parents to notify their LA in respect of children who have never been on a school roll. Introduction of notification was, they felt a sensible minimum requirement for parents.

**Registration:** the officer views on registration were mixed and lacked consensus. Jamie and Charly strongly advocated for registration, expressing the opinion that it would enable the ‘tracking all EHE-children’ and make it simpler for officers to keep track of EHE-childrens’ education and welfare. Registration would create “*parity with schooled children who are themselves registered on a school roll*” (Charly). Charly mentioned the recommendations of OFSTED (2010a) for the creation of a register of all children within each LA, irrespective of educational provision, the failure to implement such a register ‘*categorically*’ made it possible for children to disappear.

However, Chris, Brook, and Ashley voiced concerns that registration would shift the status quo that currently exists between parent and the State, possibly resulting in LAs acquiring a shared duty to ensure a child’s education under Education Act, 1996 (S. 7) a duty which currently rests with the parents. They felt such a change would come with implicit potential for legal action against LAs if home-education failed the child. Ashley was particularly resistant to the notion of registration stating:

*“I think if the law states you must legally register, as opposed to notify ... then the Local Authority, from that point on, is sharing responsibility with the parents of the outcome. I think the law is fine as it stands; the responsibility is totally on the shoulders of the parent which is where it should be. I don’t think there’s any advantage in legally registering children, I think the mechanisms are already there for Local Authorities to intervene and registration wouldn’t change the outcome for children.”*

**Visits:** the officers were concerned that an inability to impose visits to children meant problems could be missed and all concurred that they had a personal preference to visit families in their homes. The officers spoke of visits in terms of ‘relationship building,’ enabling *“clearer communication and better relationships with families”* (Brook). They all felt this was the best route to assess educational provision to gain *“a more rounded view of what’s going on for the child”* (Charly).

The officers provided additional reasons to visit families citing that:

- A face to face meeting with new families could ensure home-education is right for that child (all;)
- To expedite a return to a suitable school for families who are home-educating because of issues with a former school or due to an offer of a school place they consider to be inappropriate (Ashley and Charly;)
- Visits enabled assessment of educational suitability, reassurance of a child’s safety and welfare and to check on family circumstances (all;)

- Visits also allowed them to offer educational advice and support, to signpost to other services and to enable the provision of a future reference for a college place (all;) and
- It could be a positive development to introduce either compulsory initial home visits (Charly, Chris, Eli, Jamie) or a obligatory meeting at a neutral location (Ashley, Brook).

Ashley and Brook were alone in acknowledging that while preferring to visit, it was not essential as they could glean necessary information in other ways, for instance meeting at a neutral location or by the parent providing the “*ubiquitous*” written reports.

**Presumption of visits:** five officers reported they routinely sent out prearranged appointments for home visits, be it new home-educators or a timetabled review of established EHE-families. The officers expressed the hope that families, especially those new to EHE, would “*believe they had to accept visits*” (Jamie, Chris). They also reported sending routine appointments for annual reviews, with Ashley saying that “*it is custom and practice to send a yearly review, to monitor the situation.*” The exception was Brook, whose LA had just refined the role of EHE-Officer in line with good practice recommended by EHEGLA (2013). Whilst admitting a preference to home-visit, Brook had recently ceased to send routine appointments, instead sending “*touching-base*” letters, asking families to “*confirm they are still home-educating ... and reminds families that they can now request a visit should they want one.*”

Whilst the officers expressed their own preference to conduct visits they also conveyed feeling pressured by employers' continuing expectation even when families refuse. Jamie and Chris specifically discussed feeling pressure from supervisory meetings where they are told they 'must prioritise visits and see children'. Both referred to managers' direction to "*visit new EHE-families before they realise that they don't have to, it's not compulsory*" (Jamie) and to "*routinely make unannounced visits*" (Chris).

**Conflict of national v local policy on visits:** the officers, excluding new-to-role Chris, recognised that a LA emphasis to visits conflicted with State policy whereby families do not have to accept visits. Charly raised a further conflict, also mentioned by Jamie, which arises in pressure from Local Safeguarding Children Boards (LSCB) to visit those families who have traditionally declined visits:

*it was implied that refusal is no longer okay. The 'advice' is parental written reports on educational provision is not acceptable, we must now visit all families annually, meet the child and see and assess actual work done by the child. This puts officers between a rock and a hard place.*

Jamie noted that unless LAs are given the necessary legislative authority, instructions such as this LSCB directive was "*almost impossible to implement.*"

**Assessment and Monitoring:** the officers referred to assessment or monitoring of education forming part of their job description. Specifically, that assessing the suitability of the education parents provide to their child is central to their role. The

officers expressed varying degrees of frustration that the law only allowed for 'informal enquiries' to be made, recognising they lack any legal authority to routinely request evidence of education. They felt that this allowed [some] parents to avoid any oversight of their child's educational provision unless there was a genuine reason to believe suitable education is not taking place, but "*how do we know, what we cannot assess to see if there is a genuine reason?*" (Ashley). The officers felt the lack of a legal definition of 'suitable' was 'unfortunate;' it made 'assessing' suitability difficult and compounded the problem in forming a judgement of 'is there is a genuine reason to believe educational provision may be unsuitable'.

The area of assessment and monitoring is one which the officers felt brought them into the greatest conflict with the EHEGLA (2013). With Jamie noting "[our] *job description says to 'monitor and assess' the suitability ... yet legally we cannot do any of that; so, we are compromised from the start.*" Charly, too, highlighted the conflicting demands of LA employer requirements vis a vis the national requirements.

*"We are expected to judge educational provision ... yet we have no duty to do that within the national Guidelines [EHEGLA (2013).] We don't have power to, but we are expected to ... the Guidance gets in the way of getting the job done, but it is only Guidance so is advisory."*

There was general agreement that areas of conflict need to be addressed. The officers suggested that conflicts between competing demands of Statute and

Guidance, and between national and local policy 'could be diminished' by providing them with the powers to do their job e.g. to enable them to proactively assess and monitor educational provision. They also wanted to see the introduction of minimum standards for appropriateness and quality of educational provision.

However, Chris, in post for just nine weeks at the time of interview, seemed unaware of the conflict between the job description and the national Guidance (EHEGLA, 2013). Chris spoke of *"making formal enquiries ... my role is principally to assess the home-education... this is stated in my job description and is in our (LA) handbook."* Although given a copy of the Guidance (EHEGLA, 2013) Chris had not yet read it as the Team Manager had said to *"follow LA policy and you'll be fine and not to worry about the Guidance."* Eli shared the concerns raised by the other officers, and noted:

*My LA prohibits me from assessing education as the policy is in keeping with national EHEGLA [2013] so routine assessment is not permissible, and I don't ordinarily ask to see evidence. However, if the family did allow a visit it was possible to surreptitiously observe.*

Brook had recently undertaken a review of LA home-education policy, with involvement from local home-educators, and as a result visits and assessment no longer happened, unless parents requested it. Brook felt this is a *"retrograde step ... which I will ignore if I am worried that education may not be taking place, then I will [still] ask to see evidence and yes, assess, monitor."*



## Parents and family circumstances

The officers agreed that most parents do successfully provide a suitable education and do a decent job. However, this acceptance was qualified by a range of other issues which they felt affected their overseeing of home-education.

**Parental cooperation:** the officers indicated uncooperative parents who failed to provide 'informally requested evidence' which they felt raised questions regarding the suitability of education. The consensus being, that if education is taking place then 'why would a parent choose to hide it' and not provide evidence.

**Childs' work 'excuse':** another shared concern arose in what Charly described as the '*child's work excuse:*' home-educators' refusal to provide samples of work based on a "*presumed legal defence*" (arising in: *Gillick v West Norfolk*, 1985; Fraser Guidelines, 1986) whereby parents claim that: "*work belongs to the child therefore without the child's express permission parents refuse to share it ... this is their default position used to stop us seeing work and as an excuse for providing an educational philosophy [a written report]*" (Ashley).

**Evidence of educational provision:** the officers shared concerns that parents are able choose the form of any evidence they provide as "*according to Guidance [EHEGLA, 2013] we cannot specify its form, so the evidence may provide no tangible evidence of educational provision or suitability*" (Ashley).

Specifically, officers were concerned about the practice for parents to provide an Educational Philosophy (report) often submitted in response to *“informal enquiries to provide evidence’ of a suitable education and on the advice of other home-educators”* (Jamie). There was general criticism of the value of such reports, with the overriding view being that *“they are inadequate and had to be taken on trust”* (Charly). Ashley spoke of frustration at having to accept Educational Philosophies to evaluate suitability, as:

*“You cannot reach a judgement as to suitability based on nothing; I need to see hard evidence, not a report ... parents can choose to send a report which can say anything; it can be pure fantasy: the child could be home-educated, or they could be sitting at home twiddling their thumbs’.*

The officers raised additional concerns about formulaic or identical philosophies that are *“freely available from home-education groups”* (Eli). Such reports are simply parents saying, *“get off my back and fail to reflect the true EHE provision”* (Brook).

**Provision of suitable education:** the officers variously raised concerns regarding parents’ educational attainment and/or qualifications on their ability to provide a suitable education. They variously highlighted parents who have no qualifications, or struggled at school, or who were themselves ‘disenchanted’ with education. Ashley noted: *“If the parents are not well educated or switched off from education then I have concern.”* There was acknowledgement that ‘despite such difficulties’ some of these parents do manage, that they can and do successfully provide a *‘suitable education by learning alongside their children’* (Brook).

Officers concurred that *“regardless of their competence or educational attainment”* (Charly) parents have a duty to provide a suitable education. Similarly, they reflected whilst they are *“not there to assess the competence of the parent”* (Ashley) they need to be aware of what is being provided for the child. If provision is inadequate then *“you must say to the parent ‘well this seems to be lacking,’ and make sure they know that it’s their duty, regardless of competence to meet the need”* (Brook). However, all expressed degrees of frustration that their ability to act is limited by Guidance (EHEGLA, 2013) when they *“sensed a child’s needs were being met, but not adequately or competently”* (Eli).

**Cultural, home and family circumstances:** Individual officers expressed concerns for families in poor circumstances citing issues such as: poor housing or homelessness, mental illness, parental long-term health conditions or domestic violence. Their unease lay in a belief that such families would not be able to access suitable educational resources and learning experiences including *“employing tutors for subjects the parents may lack competency”* (Brook).

Brook and Ashley, reflecting the cultural and ethnic diversity of the areas they worked in, expressed concerns about Gypsy, Roma and Traveller (GRT) and/or Muslim children. As *“cultural structures could lessen educational attainment”* (Ashley,) and/or *“increase inequality between the education of girls and boys”* (Brook). They noted that these groups had a high regard for cultural education, *“an*

*education that will keep children in their culture and help their culture survive ... if they provide that, then that is considered a 'successful' education"* (Brook).

Both focused on the "Talmud judgement" [R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (12 April 1985,)] criticising it for limiting EHE-childrens' opportunities with its "*overarching acceptance of culture, home and family*" (Ashley). They viewed the judgement as precipitating a climate for: indoctrination, fanaticism, radicalisation, the continuance of female subjugation and/or genital mutilation, which "*now, thankfully, has to be addressed by the Prevent strategy*" (Brook). Overall, they viewed a lack of oversight of GRT, Muslim and 'other similar groups' (mention was made of Jehovah's Witnesses and Haredi Jews) who regardless of potential cultural expression could result in adults unable to successfully integrate outside their childhood community. Both officers strongly expressed the need for LAs to have the authority of oversight in these circumstances "*so we can nip issues before they take hold*" (Ashley).

### **Advocates:**

The advocates felt that the default policy within LAs was to assume that a child 'who is not in school is a CME, until proved otherwise'. This assumption "*tarnishes early officer contact with families and placed any future relationship on difficult ground*" (Pat). They identified a failure by some LAs to follow good practice or "*simply paying lip service to the national Guidelines*" (Sam). The advocates listed their concerns about LA/officer policy and practices for home visits, seeing the child, and calls for

increased powers to monitor or assess. Overall, they saw this as a culture within LAs which led to an unnecessary and very intrusive approach to home-educator's family life.

## Visits

**Assumption of visits:** there was condemnation of LAs insistence, expectation, and/or assumption to conduct visits. All noted that Government Guidelines state that visits are unnecessary and that home-educating parents do not have to accept visits. Pat remarked that officers "*are aware that parents do not have to see them and that they have no right to visit. But they have no duty or moral compunction to tell you that, do they [?], and they know families often don't know any different.*" The advocates felt that LAs 'should be obliged' to inform parents of the true legal position, including "*the true extent of LA duty, and parents' rights, not just parents' obligations*" (Alex) and visits "*should only be by the express invitation of the home-educator*" (Pat).

**Unannounced visits:** such officer visits were viewed as rude, inconsiderate, intrusive, and/or stressful, and "*simply not conducive to forming a good relationship*" (Bryce). All noted that new EHE-families found unannounced visits intimidating and are unlikely to know that refusing such a visit is a valid and legal option. They also observed there is potential for intrusiveness as some officers have been known to visit neighbours to seek information about the family and child if no one was at home.

**Compulsory visits:** they viewed ‘enforced visits without reasonable cause’ would be contrary to article 8 of the ECHR (1950) (right to a private and family life). Pat argued that *“the family home is just that, it is the family home, it not a school, therefore, not be something to be inspected.”* Therefore, *“should the call for EHE visits to be compulsory be met, the family’s right to privacy would be removed”* (Alex). Further, the home-educated family and child *“should not be subjected to the removal of a human right”* (Pat) when the *“children at school, the under-fives or 16-18 years olds are not”* (Sam). To make visits compulsory creates a *“disparity and has the potential to begin a general erosion of societal human rights”* (Alex). The advocates all noted that when there is genuine concern for a EHE-child, there is already provision within the Children Act 1986, S. 47.

### **Seeing the child/the unseen child**

The advocates supported maintaining current Legislation which *“very clearly states that home visits and seeing the child are not compulsory”* (Sam). There is a *“pervasive anxiety that the EHE-child is not seen as regularly by professionals as their schooled peers”* (Pat). Advocates concurred that this concern was unreasonable and without basis, as *“professionals do not see a child below compulsory school age or schooled children in the prolonged holiday periods”* (Bryce). They noted that, *“far from being ‘unseen’ EHE-children are very much a part of society”* (Alex). The advocates variously mentioned the child’s visibility to GPs, dentists, club leaders, neighbours, staff at community facilities and EHE groups.

## **Calls for increased powers**

The advocates discussed their thoughts on calls for increased LA and officer powers for visits, registration, notification, monitoring and assessment.

**Registration or notification** note that unlike the officers (see p. 159-161) the advocates made a clear distinction between the terms.

**Registration:** Pat referred to Scotland where compulsory registration already exists noting that comparison of outcomes in terms of *“where there is registration, to where there is not are virtually identical ... I have yet to see any evidence that compulsory registration improves outcomes for children.”* The advocates expressed concern that compulsory registration would lead a shared duty of ensuring an education and care which currently resides with the parent extended to local authorities. Thus, LAs *“could in theory be liable or prosecuted for failures, so they would be buying themselves a rather nasty sticky problem”* [Alex].

**Notification:** the advocates acknowledged that when a child deregisters from school, notification exists as the school must notify the LA. They viewed this as being ‘entirely reasonable’ given LAs must ensure their schools are performing well and stop funding for that child’s place. However, in the case of a child, whose name has never been entered onto a school roll, the advocates viewed ‘compulsion to notify’ as undermining of the parental duty. The *“duty to ensure education’ rests with the*

*parent, the duty does not rest with the LA, therefore notification would erode that duty” (Alex).*

**Monitoring and assessment:** the advocates viewed the current LA/officer practices of seeking annual reports, requests for samples of work, and attempts to visit and/or undertake ‘safe and well’ checks as indicative of attempts to monitor the EHE-child. They noted that this signalled that LAs/officers do act *ultra vires*. They rejected the suggestion of compulsory monitoring on two grounds: primarily that LAs already have a range of powers available to them under Children Act 1989 “*should they have genuine concerns, but they fail to understand or use these powers they have, so giving them more powers will just lead to more problems*” (Pat,) and that secondly, this would “*give powers to education-officers that exceed the powers of any other agency, and specifically child protection social-workers*” (Alex).

Alex and Pat noted LA/officers have no authority or obligation to monitor or assess provision, until and unless there is a genuine reason to suspect education is not taking place. They expressed disquiet at LAs/officers “*flouting*” the phrase ‘if it appears’ [education is not sufficient, Education Act 1996, S. 437(1)] to “*shrewdly misunderstand and/or intentionally misquote relevant Legislation, Case-law [e.g. Donaldson, 1980] and Guidance to routinely ‘demand’ evidence*” (Pat). Alex and Pat argued that LAs have available to them the Education Act, 1996, S. 437 when there is a “*genuine cause for concern*” about education, and/or parents have failed to respond and/or to satisfy. They noted that this provides LAs with the power to



approach the Courts for a School Attendance Order, and the Courts would expect the parents to provide the Court with proof of education. Overall the advocates felt calls for increased powers to be invalid, current Legislation being sufficient for genuine concerns regarding welfare (Children Act 1984) or home-education provision (Education act 1996,) however, LAs and officers do not understand these powers or use them correctly in respect of EHE, therefore they need to address that deficit before calling for 'increased powers.'

## **Theme 4: Training**

### **Officers:**

Previously in this chapter Theme 1, Table 10 (p210) recorded that the officer interviewees had all undergone teacher training; with three having first taken undergraduate degrees. Charly had various social care qualifications, whilst Jamie had a career in the military and Prison Service. All officers had undertaken a range of former employment related training, with Charly, Brook, Chris, and Eli specifically having special needs training. This former employment experience and/or training would accompany them into the role of EHE-officer.

The training undertaken by the EHE-officers falls into two categories,

- **Mandatory Training:** where the employing LA deems attendance to be essential to the performance of the role; and

- **Discretionary Training:** where the officer can elect to undertake additional training, which might be beneficial to their role.

**LA Mandatory Training:**

**Safeguarding Training:** the officers were all required to take Safeguarding/Child Protection Training: a three-day Safeguarding Course shortly after appointment and an annual refresher course. Eli, Charly, and Jamie noted that *“home-education was frequently given as an example of safeguarding risk”* by the trainers.

**Prevent Training:** all officers had all attended mandatory Prevent Training (introduced under Counter-Terrorism and Security Act 2015). The officers noted that this was to enable them to identify possible extremist behaviour and that they make checks on home-educators as *“EHE could be used as a cover to foster extremism”* (Eli).

**Other mandatory training:** the officers indicated that they had also undertaken specific training as required by their current employer in respect of LA policy and procedures: LA Databases, Lone Working and/or Self-defence, Data Protection, Health and Safety, and Equal Opportunities.

**Discretionary Training:**

The officers had variously undertaken other training: Giving evidence in Court; Preparing for a Prosecution, Hate Crime, LGTB Awareness, Youth Offending, Addiction to Drugs and Alcohol (ADA,) Fabricated and Induced Illness (FII,) Mental Health (MH,) Child Sexual Exploitation (CSE,) Domestic Violence (DV,) Female Genital

Mutilation (FGM,) People Trafficking, Cultural and Religious awareness (CRA). Ashley, Brook, and Jamie noted that home-education ‘almost always got a mention,’ but acknowledged this might be because the trainer was aware of their area of work.

Training undertaken by officers, including discretionary training where they can recall home-education being mentioned is presented in Table 11. All officers, including 9-weeks-in-post Chris, have had Safeguarding and Prevent Training. While, three officers had recently had EHE related training it was purely legalistic, provided by Daniel Monk and was very much reflective of his perspective (see Chapter 2; Monk, 2014).

Officer	Years of Employment and Length of Service	EHE	Year and Trainer	Annual Safe-Guarding, mentioned EHE	Prevent, mentioned EHE	Discretionary: where the officer can recall mention of EHE
Charly	2006/9	Yes	2007 - Sauer 2014 - Monk	Yes, Yes	Yes, Yes	MH, SEN, CSE, DV, ADA
Ashley	2005/10	Yes	2014 - Monk	Yes, Yes	Yes, Yes	CRA, FGM
Brook	2009/6	No		Yes, Yes	Yes, Yes	GRT, SEN, DV, FI, FGM
Chris	2015/ 9 weeks	No		Yes, Yes	Yes, Yes	
Eli	2011/4	No		Yes, Yes	Yes, Yes	MH, DV, CSE
Jamie	2013/2	No	2014 - Monk	Yes, Yes	Yes, Yes	ADA, MH

**Table 11: Officers’ experience of in-post training**

**Note:** see p. 235-6 for definition of abbreviations

## **EHE 'training'**

This is not mandatory but 'discretionary' training. Only three officers, Ashely, Jamie, and Charly (who had had previous EHE training,) and all based in East or South East England, had recently attended a session with Daniel Monk (of Birkbeck School of Law,) which they described as "*purely legal.*" It had covered relevant National Legislation and EHEGLA (2013) "*which Monk criticised*" (Jamie and Charly) for allowing "*parents' wishes to override everything*" (Ashley). The training covered The Localism Act 2011, which they understood as allowing "*LAs to implement local policies beyond EHE relevant Legislation*" (Charly,) and the "right to education" (European Convention on Human Rights, Article 2 Protocol 1) which they understood "*overrides UK Statute*" (Ashely and Jamie). Both understandings are erroneous but are reflective of Monks perspective (see Chapter 2; Monk, 2014).

Only Charly had had previous 'comprehensive' EHE-training which was 10 years ago and "*provided by a home-education specialist and advocate Alison Sauer.*" Charly stated that the training "*was wide ranging*" covering all aspects of EHE including: "*Legislation, educational approaches, ways to foster good relationships.*" The "*accompanying training pack included extensive resources*" including: sample letters, toolkits, and relevant Legislation. However, "*sadly such training is now a gap that needed filling as Ms Sauer ceased [training] several years ago.*" One officer, Brook, who has an additional role as LA GRT officer, had undertaken training specific to that community. This included a session on "*EHE specific awareness*" as home-education

is a common this community, this is the *“only formal training I have had in home-education.”*

**A “predominance of non [EHE] training”** (Brook:) they all referred to the same experience at the commencement of their EHE role, their manager referring them to their job description and providing LA EHE-policy document and/or EHE-handbook, and the “advisory” EHEGLA (2007, 2013). Jamie surmised this approach as being *“simply told to learn it.”* They all reported the importance of ‘learning the job’ from a more experience colleague, as Chris was doing now, where they shadowed visits, and observed how an experienced officer works and applies policy.

All officers referred to ‘training’ from within monthly/weekly team meetings as being an *‘essential element of their training’* (Jamie). Team meetings *“inform me of anything I need to know”* (Eli,) and the officers gave examples of changes in national or local policy, new procedures, and local concerns. They also all received email information of anything more urgent including updates such as Serious Case Reviews, reports, or alerts from the DfE, OFSTED and LGA, and relevant media reports; three officers also mentioned subscribing to bulletins from the NSPCC, ChildLine, Children and Young People Now. Jamie, Eli, Brook, and Chris reported using the internet to increase their knowledge, explicitly using home-education websites, citing Home-education UK, Ed Yourself and Education Otherwise, and/or joining home-education Facebook groups so *‘I know what is going on locally’* (Chris). Although Ashley and Charly are now managers, they reported adopting similar approaches with

inexperienced staff within their teams. In respect of Charly this *“is the best way for the want of other options or provisions.”*

The officers did not question the disparity in training provided for their role, including the extent or emphasis of mandatory and discretionary training available, when compared to a lack of specific EHE-training. All acknowledged comprehensive EHE-training might be helpful, but they generally felt it *“not to be essential”* (Ashley,) because as teachers they *“understand the principles of education and child development”* (Brook). Only Charly saw the wider value of comprehensive EHE-training, having experienced such training in 2007.

### **Advocates:**

*It’s remarkable that home-education, being a mass movement for over 50 years that local authorities still believe that untrained staff can, with no training or understanding of the issues, undertake contact with home-educators (Alex).*

**EHE training:** there was consensus that without *“explicit training in home-education officers are unsuitable to the role”* (Sam,) particularly in respect of *“teachers who will, otherwise, maintain a school model to education”* (Bryce). The advocates noted that in general terms, throughout the UK, there is no training to equip LA officers to understand both Statute (Legislation, Case-law, and Guidance) and the *“principles, ethos or practice”* (Pat) of home-education: such *“training is notable only by its*

*absence” (Alex). As Pat expressed “officers must be trained to understand EHE and to be compliant to the law. At an absolute minimum all EHE officers should receive a comprehensive training in home-education, updated periodically, as Safeguarding is.”*

The advocates felt a lack of appropriate training was fundamental to LAs overstepping their authority, with untrained/undertrained officers lacking the necessary rounded knowledge, and thereby they *“act in an ultra vires manner: training is a central issue that must be addressed”* (Alex).

The advocates felt that LAs tend to deliver EHE-Officer training *“informally, ad hoc and in-house, often by staff who are themselves unfamiliar with home-education”* (Sam). In-house training fails, it is a *“pretence of training”* (Alex,) *“training is someone saying here’s the Guidelines, read it [sic]”* (Bryce). Such training means *“officers are poorly equipped to do a job that they essentially do not understand”* (Pat).

**Safeguarding Training:** the advocates accepted that all officers should have safeguarding awareness training at the commencement of their role which should reinforce the notion of a general duty as a professional. However, Safeguarding/Prevent training *“is too heavily emphasised, particularly when LAs who offer little, forget little, NO EHE-training to counterbalance”* (Alex). Bryce observed that this *“lopsided process can only infer to the officer that they must look out for abuse; it hyper-sensitiveness them.”* The heavy emphasis on *“safeguarding training, with annual ‘refreshers,’ coupled with the exclusion of EHE-training sends a message to officers that their role is predominately safeguarding”* (Pat). Consciously or

unconsciously this creates an environment where officers look for safeguarding issues as opposed to education. Alex referencing Charles-Warner (2015) contended that *“the idea that the safeguarding risk of an EHE-child is greater than compared to a schooled child is ‘unsound’ as the EHE-Officer’s main emphasis becomes safeguarding.”*

**Other training:** the advocates accepted that officers must be trained in LA policy, which *“must be within the limits of Statute, and databases, Data Protection, and lone working etc.”* (Bryce). However, they had concern about other [discretionary] training, *“the pick and mix training ... particularly when trainers throw in an ill-informed bit about home-education as EHE-Officer is present”* (Sam). This is *“really dangerous as the trainer not likely to be conversant with home-education, rather draws on some snippet, a half-heard and unsound snippet”* (Alex).

## **Theme 5: Legislation.**

A premise of this study is that ambiguities exist between national Statute, and local policy. The interviews sought to discover officer awareness of the potential for conflict and the causes.

### **Officers:**

In their day-to-day practice officers acknowledged that LA policy defined their job role and recognised that LA policy potentially brought them into conflict with



National Legislation and Guidance (EHEGLA, 2013). Therefore, they understood that the ‘terms of their employment’ meant they implemented their LA employers’ policy in respect of *“how they want me to ‘police home-education’, even if it conflicts with Legislation and the National Guidelines”* (Brook). In this statement is a recognition that officers can or do act beyond their legal authority, to meet employer defined requirements. Whereby, they followed local policy as *“my prime duty is to my employers”* (Ashley) and also *“our local policy makes it possible to get the job done, to ensure childrens needs are met”* (Eli).

The officers identified the various pieces of Statute, which regulate home-education as being unclear, confusing, conflicting and/or imprecise. They attributed ambiguities in Legislation and Guidance as causing conflict with local policy, rather than local policy conflicting with Legislation. In attributing ambiguities arising in Statute the officers ascribed their adherence to local policy as *“arising in the vagueness in Legislation and Guidance”* (Ashley). Further, conflicting Statute, compounded with a lack of legislative authority, hampers LA administration and officers’ implementation of policy and their ability to practice. Eli explained this view with an example:

*Officers are restricted to making informal enquiries in respect of EHE with an inherent risk that education is not taking place. Yet officers have a duty to identify children missing education, but there is no reciprocal duty on parents to notify the LA of EHE. The law contradicts itself ... it lacks teeth to enable us to meet our duties. We are told we have to do x, y and z but we are given no legal authority to do it*

The officers variously highlighted their belief that inconsistencies in Legislation caused a “*dangerous divide between educational and welfare oversight*” (Brook) of EHE-children when compared to their schooled peers. Ashley gave strong voice to this view:

*My current view is it's [legislation] too woolly, because it's the complete and total opposite of what goes on in schools I think home-education is too far removed from what the government is doing in education generally. I can't understand really, how [E]HE can be as far removed from a government who is doing the total opposite for education of all children in school, and yet they have this group of children that there's nothing at all... for a small number of children there is no real oversight, crazy*

### **Specific conflicts**

The officers identified several specific areas where they had issues with legislative ambiguity and/or oversight.

**Confusion regarding the statutory nature of EHEGA (2012):** the officers were universally unaware of the DfE directive that Guidance is statutory (DfE, 2011; Chapter 2, p. 40). There was a shared view that the EHEGLA are “*simply optional*” (Brook and Eli,) or “*the Guidance is to draw on as appropriate*” (Charly,) or “*it is up to me how I apply the Guidance*” (Ashley) and “*Monk has confirmed the EHEGLA is advisory*” (Jamie).

Here lies the main cause of conflict between State defined policy strategies and local administration and/or implementation. The Guidance (EHEGLA, 2013) is statutorily directive, a roadmap to policy creators' intentions in respect the administration, and implementation of EHE-policy; but LAs and officers view it as advisory. Therefore, the interview explored the specific areas of conflict or ambiguity, between local policy and State strategy (legislative and/or Guidance) as identified by the officers: home visits; cold calling, evidence of education/assessing suitability of education and safeguarding.

**Visits:** the five officers (excluding new officer Chris) were aware that that they do not have a 'right' to conduct home visits (EHEGLA, 2013, para. 3.6). All stated their LA job descriptions and/or team/LA managers had an expectation that they will visit families (see Theme 3 p. 218). Consequently, the officers started from the position that they would attempt to meet with families, particularly new families. They felt that once they had a first visit "*it becomes harder to say no, as the precedent is set*" (Jamie). Officers (excluding, Chris) initially wrote to 'new' families, and four included a prearranged appointment. Charly noted that unless new families had already had contact with home-educators "*so had been made aware that they could refuse visits, most accepted.*" Whilst Jamie admitted "*I imply, cajole, get a bit pushy; with new families ... this is often all that is needed as they are often not aware of their 'rights'; that they don't have to have a visit.*"

The five officers expressed awareness that unannounced visits are not appropriate and/or best practice. Four of the five officers said they would always attempt to contact a family, two or three times by letter, email, or phone, before visiting. If they got no response they would refer the child as CME, rather than visiting unannounced. Although Ashley noted that *“holding both roles means I refer to myself so would then ‘put my CME hat on’ and call around at the home.”* Yet Jamie, and new to post Chris, both regularly engaged in unannounced visits. Chris said the Team Manager had instructed *“just drop around”* when notified of a new EHE-child; so, would attempt to *“catch the family in and if not at home would put a note through the door”* asking them to ring the office. If they did not respond another attempt to visit would be made and then *“a referral to the CME officer.”* Whilst, Jamie would *“initially try to arrange visits by letter, but if there was no response would then call around”* rather than sending another letter.

**Evidence of education:** four officers acknowledged that they have no powers to routinely request evidence from families, unless it appears that the education provided is not suitable (per EHEGLA, 2013, para. 2.7). However, the officers admitted that they do request evidence (Theme 2, p. 212,) especially if they visit, while Ashley, Charly, and Jamie would specifically ask for evidence if parents refused visits and/or contact was only in writing. When discussing assessing the ‘suitability’ or quality of education the officers spoke of appraisal reminiscent of their teaching background: evidence of reading, writing and numeracy, and of workbooks, projects, written work, dating and marking of work.

**Inconsistencies between EHE and school education:** the officers all expressed concern over national policies' perceived prejudicial approach to home-education when compared to school-education, specifically in relation to: curriculum requirements, safeguarding and monitoring of education.

*National EHE-policy is the complete opposite to school policy, including educational and societal ethos and oversight." Charly emphasised that "EHE is 'too far removed' from what the government is doing in education generally... the total opposite for education of children in school (Ashely).*

There was a consensus of concern that the EHE-child, unlike their schooled peers, does not have to follow the national curriculum or be regularly 'target tested' to assess educational progression. Whilst the officers shared anxiety about the need to know where home-educated children are: *"there is illogicality in a system which does not require EHE-children to be registered on a home-education roll yet school children are entered on a school roll"* (Eli).

The officers all felt that there was a disparity in welfare oversight between EHE-children and schoolchildren, and this was reflected in the concern of Chris,

*"it is easier to ensure the welfare of the schoolchild, as they are subject to regular professional oversight by attendance at school. But EHE parents don't have to be accountable so how can the Local Authority check that their children are safe and well?"*

**Powers of oversight:** the officers raised concerns about not having necessary powers to enable them to carry out their role; specifically, a lack of authority to enforce professional *“oversight over home-education, when schooled-children were so easily monitored”* (Jamie). Their anxiety about a lack of legislative authority to oversee EHE encompassed several concerns, including not being able to ensure regular contact with families, to see children, or to assess or monitor educational provision. They also felt changes are necessary to mitigate imbalances between EHE-children and schooled-children; between parent’s rights and parental duties; and parents’ rights and the rights of the child. Overall, they felt legislative changes are needed to address such imbalances and concerns.

### **Changes to Legislation officers would like to see**

There was consensus that there is a need to clarify contradictions and ambiguities, specifically those arising from within State strategy (Statute, and Guidance) which impact intra/inter LA policy. In their view, National Legislation and specifically EHEGLA (2013) are ill defined, lenient, and open to wide interpretation. They felt a review of home-education, Statute, and Guidance is necessary *“in the hope of improving or introducing a new fit for purpose policy”* (Jamie). At a minimum, compulsory notification of EHE to LAs should be mandatory and there was agreement that there should be a statutory requirement for parents to respond to informal enquiries, and the formalised introduction of annual reviews with parents obliged to respond and engage. However, Charly, whilst liking to see these *“minimum changes,”* emphasised that *“appropriate research is essential before any*

*further consideration to alterations to EHE national policy, otherwise it is just tinkering for the heck of it."*

### **Officer opportunities to directly influence LA policy**

Ashley, Charly and Eli specifically identified that they had a direct ability to influence policy within their LA. Charly and Ashley, as Team Managers, attended decision-making forums, including council committee meetings, Child Protection meetings and Local Safeguarding Children Boards, when issues involving EHE or CME children were on the agenda. Here, attendance *'allows me to give my opinion based on my professional experience and try to influence the direction they are taking'*. (Charly). Eli felt able to recently exert influence through conducting home-education service evaluation for the LA, including evaluation of the EHE-Officer role, although Eli's recommendations were awaiting council agreement.

**Safeguarding:** this is a specific concern for the officers and they identified it as an area of conflict. However safeguarding forms Theme 6 of this chapter.

### **Advocates:**

Commenting on a call for legislative oversight changes the advocates felt strongly that the existing Legislation is clear, simple, and well written, particularly the EHEGLA (2013). Pat commented that these Guidelines were *"written by people who understand what they're talking about and after consultation with home-educators."*

However, the LAs interpretative response to *“exceedingly clear Statute and Guidance is problematic”* (Sam,) where LAs administer local policies which are less than compliant with Guidelines, *“effectively modifying implementation and application from what the EHEGLA [2013] intended”* (Alex). Such ‘modifications’ are compounded by *“officers who lack relevant training”* (Pat) in home-education generally and Statute, and consequently, *“they fail to understand the law, and inaccurately interpret”* (Sam) the *“Legislation and Guidelines that they should be working under”* (Bryce).

Alex spoke of LAs/officers *“legislation shopping”* by drawing on non-EHE Legislation e.g. the Children Missing Education Guidance (2017b) and the Children Act (1989 and 2004) to justify their actions towards home-education. The advocates all reiterated that some LAs/officers act as if ‘local policy trumps Legislation,’ highlighting cases of LA staff quoting local policy outside the legislative framework: e.g. EHE-officers reporting families who legally refuse visits to Child Welfare Services. Pat summed up the frustration of the advocates: *“many LAs and officers are surprised to find that they don't have the powers they think they have; while others absolutely believe they do, regardless of evidence to the contrary.”*

Overall the advocates felt the difficulties with the implementation of EHE Legislation and Guidance [EHEGLA, 2013) lay with the lack of understanding of LAs and officers. Pat suggested that it would be helpful if *“LAs were compelled to seek legal opinion from their lawyers in drawing up their local policies and were obligated to ensure*



*their officers were properly trained.” Alex noted that LA lawyers “need to ensure they are well briefed on the relevant law and the Statutory Guidance and ensure the LA and officers followed it.” Pat suggested that the DfE could help by providing a short, clear flowchart to be used alongside the Guidelines, to “simply ‘transmit’ to LAs and officers, their statutory nature, the law, their duties and how and when they can exercise authority so that they stay within the spirit and letter of the law.”*

## **Theme 6: Issues of Safeguarding: Unknown Children, Children Missing Education, the Childs Voice/Rights of the Child, and Socialisation**

As discussed in Chapter 6, LAs place an importance on safeguarding, an emphasis that is apparent in their FOI responses and within EHE-Officer job descriptions.

Therefore, the interviews sought to gain insight into the officers’ views around issues that can be regarding as welfare or ‘safeguarding’.

### **Officers:**

**Safeguarding:** The officers understood that legally they do not have a specific safeguarding duty beyond a general safeguarding obligation which is incumbent to all ‘professionals,’ five officers acknowledged that EHE-children are ‘comparatively not at any more risk of abuse’ than schooled children. While Chris felt the EHE-child “*might be at more risk of abuse because they were not subject to the monitoring of school children.*” They all acknowledged that, where possible, they attempt some

level of safeguarding oversight as 'it is a requirement of their job descriptions'. LAs and line-managers have expectation of seeing a child for 'safe and well' purposes, and/or regular safeguarding assessment of all EHE-children (Chris and Jamie). More recently external stakeholders (cited where LSCB and OFSTED) "*actively promoted*" the need for welfare checks (Ashley and Charly).

**Unknown children:** the officers all expressed concern about unknown children. Charly felt "*the unknown and the hidden EHE are a major worry.*" Even where EHE-children were known the officers believed they lacked scrutiny and/or were not subject to the same level oversight as their schooled peers. There is a lack of "*tangible professional oversight, be it education, welfare, and health* (Ashley,) with the "*inherent risk that the EHE-child might go unseen by any professional*" (Chris).

**Children missing education (CME):** all officers concurred that some children are identified by parents as home-educated when they are really CME. They gave the example of children having been deregistered to avoid legal action for non-attendance (Ashley, Charly and Brook,) or because parents had an issue with the school (Charly and Jamie). As Brook noted "*Intellectually 'we' know such children exist and will not get an education, but proving it is impossible.*" They concurred that they lack the necessary powers to investigate to enable them to make a clear distinction "*unless it is utterly blatant*" (Charly).

**Serious Case Reviews:** all the officers displayed an awareness of SCRs where EHE was a factor in the child's life. Brook noted reading the Reviews of several individual EHE-children, "*so there is obviously a level of abuse.*" While Ashley noted that "*we do get bulletins of all SCRs' including EHE-children, which I flag up to my team,*" while Charly additionally noted that the "*NSPCC have a publication listing those and there are quite a few.*" The five officers could name several of these 'EHE' SCRs, including: Victoria Climbié, Spry, Khyra Ishaq, Family W, and Dylan Seabridge [respectively referring to Laming, 2003; Gloucestershire SCB, 2008; Child 14, 2010; Family W, Unnamed LCSB, 2013, 2013a, 2013b; Rhodes-White, 2016). Jamie and Charly expressed that SCRs do impact on LA and officer practice, including their own. Overall there was a shared view that EHE-children require welfare checks as these reviews evidence that when they "*are unseen it screams safeguarding risk*" (Charly).

The influence of SCRs indicates the confusion that can arise between CME and EHE: all officers expressed the view that Victoria Climbié (Laming, 2003) and Khyra Ishaq were 'home-educated' (see Chapter 3, p. 74) when they were a CME. They held a shared opinion that their deaths were "*attributable, in part, to professionals being thwarted by lack of authority and power to see EHE-children*" (Brook). When probed as to "how they know this" they referenced colleagues, professional sources, NSPCC bulletins and media reports. Chris noted that "*Khyra was all over the media and her murder led to that home-education Review*" (referring to the Badman Review, 2009).

**Rights of the Child, the Child's voice:** Charly, Ashley and Jamie, perhaps reflective of their recent training with Daniel Monk (2014) identified a lack of consideration to the Human Rights Act and Rights of the Child (see Chapter 2) in the implementation current national EHE-policy. They expressed anxiety that although the rights of the child are based in Statute, their rights were being *"circumscribed by rights of parents"* (Charly). They viewed current Legislation as *"unbalanced"* with the mechanisms to *"ensure the child's rights being weaker than those which ensure the rights of the parent"* (Jamie). Ashley noted that the rights of the parents are *"explicit with parents knowing their rights which leaves a lot of squirm room – for instance the parents have the right to deny access to the child, while, the 'rights' of the child are opaque, obscured by the will and influence of the parents."*

All officers expressed concern over 'hearing the child's voice'. There was consensus that the parents' voice was dominant and/or has *"potential to 'drown out' the child's voice"* (Eli,) for instance, EHE might not be the child's choice and that the child might harbour a desire to attend school (Ashley and Brook). Therefore *"it is essential to hear the voice of the child to ask what they want and make that a core part of their education provision"* (Ashley). As Charly put it *"I have no right to speak to the child... that silences the child's voice immediately, completely... unless it becomes the officer's right to see the child then the child's voice will be stifled under the current Guidance"* [referencing, EHEGLA (2013).] It is impossible to speak to the child freely, as *"currently the parent can be present, making it hard for the child to speak easily"* (Jamie). There was consensus that it is impossible to discover how the child feels and

what the child wants, therefore, there is *“need to have legal authority to speak to the child unimpeded”* (Ashley).

Charly noted that, *“as the result of the input of Daniel Monk”*, several LAs including their own *“were now drawing on the Children's Act to insist on seeing and speaking to the child, preferably alone”* [referencing Children Act 2004, S. 53, which applies specifically to ‘hearing the voice’ of Looked After Children.] Brook expressed that *“you can't blame ‘us’ [LA and officer] as if anything goes wrong it will be us that is in the firing line.”* The officers displayed an awareness of Statute and acknowledged a tacit acceptance that LAs (and officers) are interpreting and implementing Legislation not intended to apply to EHE to justify increasing oversight of EHE.

**Socialisation:** the officers all expressed concern that EHE-children may lack socialisation opportunities and/or be at risk of social isolation. They variously referred to: children missing-out on playtime, school and classroom banter, friends, and having to *get along* with others. There was a shared feeling that relationships between parents and children could be *“intense, stifled and even unhealthy”* (Charly,) therefore, for most children school was preferable as *“they could mix with others outside the home and away from parental interference”* (Brook). Ashley commented that EHE-children went to social activities, *“particularly home-education [events] were parents are always hovering [close by] which is both ‘unhealthy’ and limiting to the child’s social development.”* There was a general feeling that socialisation within the EHE ‘community’ was *“too nurturing and/or constricting”* (Brook) and did not

allow the EHE-child to *“learn the necessary social skills to get along with others as in school”* (Chris).

## **Advocates**

Commenting on EHE-children having an increased safeguarding risk the advocates acknowledged it is a common perception, *“but it is a perception that lacks empirical evidence”* (Alex). They noted that LAs and their officers frequently state they need to visit/see the child for ‘safe and well’ checks or cite a ‘safeguarding duty’. For many LAs this has become a routine annual policy, but one which causes *“unnecessary stress and even insult to families, who feel labelled as potential abusers”* (Sam). The reality is that *“LAs do not engage in ‘safe and well’ visits to other groups, such as the under 5’s, who also may not be seen routinely by professionals”* (Bryce). The advocates felt that preoccupation with safeguarding *“damages EHE-families and damages the potential for positive relationships between families and LA officials”* (Pat).

**Rise in safeguarding referrals:** the advocates observed they were seeing a *‘worrying rise’* in referrals to Children’s Social Services, specifically schools referring at deregistration and EHE-officers when parents refuse LA visits. They highlighted a tendency for referrals to be made by other ‘professionals,’ particularly from health services, and worried public who do not understand home-education is a legal option. Within wider society *“not attending school, by being home-educated, is a cause for concern that needs referring, investigating and resolving”* (Alex). This

reaction can be more pronounced if the EHE-child has other issues e.g. health or SEN, the perception being this means the child is *'especially vulnerable so [this] necessitates a Social Services referral, even when the child already is involved with health and other services'* (Pat).

**Conflation of EHE and safeguarding:** the advocates assert this is visible in LAs *'misinterpreting the obligation to safeguard children'* (S. 175 Education Act 2002) as a *'proactive duty'* (to go and look for abuse) rather than the intended *'reactive duty'* (to be generally aware and share details with welfare professionals if issues are suspected). They viewed this conflation as precipitating a trend for referring EHE-families to Childrens Social Services on the grounds that the child is *'unseen'*. The implication of this being *"that if parents refuse a visit as is their legal right, they are hiding abuse"* (Pat,) that *"inference is insulting and offensive"* (Alex) and creates *"ill feeling and tension with parents"* (Sam).

The advocates reported that this transmission of conflation by for example stakeholders, some politicians and the media, means a *'clear majority'* of LAs and wider society now see EHE as a welfare issue. They identified the heavy emphasis on safeguarding as impacting thinking whereby the EHE-child is labelled *'at risk'* simply because they are home-educated. The preoccupation with safeguarding leads to officers *"putting on their Batman cloak and go on and rescue this child mentality"* (Pat).

Alex noted that conflation, whilst always present, seems to go in “*hyper-sensitivity waves,*” which follow Safeguarding training particularly of new or inexperienced officers. Whereby, the impact of “*sensationalist reporting of home-education sees a ‘coincidental’ increase in officers acting on concerns about welfare, safeguarding and neglect*” (Sam). While Pat felt that personnel changes within LA education teams, whereby “*staff lacking knowledge of home-education get placed into key managerial roles ... or a new EHE-Officer role precipitates a rise of hyper-vigilance to potential welfare concerns.*”

However, none of the advocates claimed home-education was completely immune to welfare issues. All acknowledged that ‘like any other group’ in society abuse can and could occur. They acknowledged that EHE-officers should rightly have a ‘general safeguarding duty’ towards all children. Nevertheless, they contended the “*number of home-education cases would be tiny, certainly in comparison to schooled children or CME,*” however, “*despite the claims of risk, it is an area lacking in-depth research*” (Sam). Pat and Bryce asserted that home-educators also have a ‘general safeguarding duty’ and ‘can and do police themselves’ by providing peer support including long-term peer support to struggling families. If peer support fails or an issue presents as highly concerning or becomes ‘urgent’ home-educators do make referrals to social services (Pat and Alex).

**Parents versus child rights and child’s voice:** the advocates acknowledged that stakeholders (public bodies, NGOs, and commentators) see home-education as a



conflicted 'rights' issue: between the needs/rights of the child and the rights of the parents. The advocates felt that this anxiety overlooks a very basic point, "*who is the child's representative*" (Pat). It is "*enshrined in law that the parent is the child's advocate and representative and not the Government nor the local authority*" (Alex). This is reflected "*when parents chose to delegate their responsibility for their child's education to a school*" (Sam,) where it is "*quite clear that parents retain advocacy and the decision-making authority for their child*" (Pat,) i.e. the school get a parent's permission for vaccinations or trips. Therefore, the advocates did not accept such anxiety about 'rights' as justifiable, but they also accepted there could be 'conflict' in cases where the parent is an abusive parent. However, they saw this as a conflict attaching to any parent with existing Legislation more than able to respond when to all abuse regardless of educational provision.

**Serious Case Reviews:** the advocates acknowledged that out of an average of 350 SCRs per year (as detailed in the NSPCC Repository, 2016) there had been a small number of SCRs where EHE was a factor in the child's life (seven during the timeframe set for SCRs included in this study of 2008-2014). They noted that, in the main, EHE was "*not found to be causal to the abuse*" (Sam). Pat identified that in all cases and prior to the commencement of home-education there was knowledge of:

- The child having multiple and complex difficulties; and/or
- Current Children Social Service involvement or the child was known to Childrens' Social Service; and/or

- Other professional agencies involvement including paediatric services, mental health services and the police.

Therefore, *“in these cases home-education occurred while other issues were at play, tragedy strikes frequently due to something being missed by professionals and suddenly home-education is at fault”* (Alex). The advocates ultimately felt that in the case of these 7 SCRs home-education became the scapegoat for the inadequacies or failures of professionals and their employing body.

## **Theme 7: Officers Thoughts on Discretion/Professional Judgement**

As seen in Chapter 6 LAs frequently recruit teachers into the role of EHE-Officer and all the officers interviewed were former teachers. The study proposes that the identity of ‘teacher’ provides shared experiences, understandings, and knowledge formed within teacher-practitioner CoPs. Additionally, their association with these CoPs continues to exert influence, informing their professional judgement and use of discretion as Street Level Bureaucrats (SLBs) (Lipsky, 1969, 1971, 1980, 2010) within their EHE-Officer role.

As SLBs the officers do the day-to-day implementation of home-education policy. They perform the everyday routine tasks associated with LA oversight, and exercise professional judgement in their decision making (see Chapter 4). The interviews

sought the officers' opinions about their use of professional judgment and/or discretion.

**Note:** in interview the officers used the terms 'discretion' (exercising latitude of choice) and 'professional judgement' (exercising knowledge, competence, skills, and experience,) interchangeably. To the officers these two concepts displayed an affiliation: they exercise latitude of choice through applying their knowledge, competence, skills, and experience.

**Officers:**

All described exercising professional judgement and/or discretion within their day-to-day caseload, and all mentioned utilising their experience as educators/teachers. This signals a connection to and continued identification with 'teacher-practitioner' conceptions formed during training, employment, and associations with 'teacher-school' CoPs.

Ashley expressed the view that as an EHE-officer, professional judgement "*must be centred on the understanding that ... the law says the education must be efficient, so must achieve what it sets out to achieve ... [so I must] mitigate problem areas of educational deficiency and consideration of suitability.*" A decision to exercise professional judgement or discretion must:

*Measure the application of discretion is balancing the parents' rights with the child's rights, whereby professional judgments are made to fulfil the 'statutory duty' to ensure the child's rights to a suitable education are met (Charly).*

The officers all spoke of using their professional judgement in terms of exercising discretion.

*Professional judgement occurs subjectively and is discretionary: so in evaluating what is suitable education or if a child is safe ... you draw on your knowledge and training as a professional and that informs your decision to act, or not (Jamie).*

Brook explicitly identified applying the knowledge and experience of teacher to the role of EHE-Officer, whereby:

*In teaching you develop an instinct for parents who are serious and committed, so I apply that instinct to decide if parents are providing a full-time education ... or if they really couldn't give two hoots and home-education is an excuse to do nothing. The knowledge and experience acquired as a teacher enables me to form a professional judgement as to what is appropriate for this child.*

The officers all referenced that as "teachers" they know where a child should be developmentally, socially, and educationally. Eli described using "*professional*

*experience to make judgements on how best to advise parents so their child gets a decent quality home-education.” New officer Chris, who was still “working under direction had yet go it alone but [believed] the knowledge gained as a teacher is essential to meeting and advising families or assessing educational provision.”*

The influence of teacher is visible in officers’ reference to school assessment tools and teacher-practitioner terminology. They all said they preferred to see examples of work, favouring an *‘organised body of work, dated and marked by the parents’* (Jamie and Chris). Officers additionally mentioned records or detailed reports of [family/child] educational conversations, programmes watched, visits made, or photographs of activities, *‘appropriately organised with something for me to assess, to judge’* (Charly).

However, although wanting to see proof of education, Ashley was keen to express the view that LAs and officers should not specify the nature of evidence as the parent will then only provide that.

*In my professional judgement it is better to leave responsibility with the parent to show what they think indicates this child is receiving suitable education. If the parent provides something which in my professional opinion raises more questions than it answers, then I’m going to ask the questions and they must convince me that the child is getting a suitable education, if not I may determine that I need to act.*

**Where officers felt they have discretion:** the officers concurred that their ‘real authority’ lay in making a professional judgement to decide to issue a notice of intention to apply to the Courts for School Attendance Order (SAO) (Education Act, 1996, S. 437). Whereby officers have “*ultimate discretion to decide to take action if evidence is not forthcoming from the parents or provision is felt to be unsuitable, lacking in quality and/or quantity*” (Ashley). Whilst acknowledging they only have informal authority to request to see evidence, an inadequate response or lack of any evidence would result in a “*firmer, more directional, setting of expectations*” (Charly,) whereby parents are made aware of what could happen: the return of the child to school and/or issuing of SAO, and/or the parents will have to answer to the Courts (Charly, Brook, and Jamie).

**Curtailement of discretion:** the officers also identified that the ability to use discretion/professional judgement, beyond the day-to-day administration of caseload, is increasingly constrained, due to “*external factors progressively determining practice*” (Charly). They variously referenced increasing bureaucratic direction and/or oversight from managers, senior LA officials or influential outside bodies such as OFSTED and LSCBs. Accordingly, they had discretion on how to get the job done, but progressively, the dictates of administrative or externally decided aims were impacting their practice e.g. direction to home visit or to proactively assess work. They saw this as a gradual erosion of the ability to use professional judgment or discretion as they are:

*increasingly controlled, directed and monitored ... new policies and systems that are data driven ... there is a 'tick box culture' with aims and targets chosen by others, without consulting the people who do the actual work, but officers must meet these or questions get asked (Charly).*

Eli similarly observed a rise in external pressures noting that progressively more time is spent completing paperwork, mentioning LA, DfE, and OFSTED:

*"The reports that are requested are biased, they support political orientations. I should be able to give a balanced, fair report based on my professional experience not some political agenda, Prevent Agenda, Safeguarding Agenda, or whatever, that focus on the latest scare story due to 'pressure from above'.*

Or,

*"My manager's major worry is OFSTED, who say our oversight of home-education needs improvement, so we dance through their hoops, give them what they want, they are definitely pressuring" (Brook).*

Jamie felt the extent of discretion was managing the caseload and deciding how to get the job done, but felt *"very constrained"* by LA policy which conflicts with State strategy by directing visits and monitoring, whereby:

*Professional judgement is limited by the processes and policy as formulated by my employers ... the new manager is pushing the envelope deciding 'policy and practice' priorities. Intellectually I know this conflicts with my judgement,*

*I know this, but there is nothing I can do about it. I just do what I am told really.*

However, Ashley and Charly felt that “*as managers*” they were less affected by such pressures, “*less impeded in exercising judgement or using discretion than my subordinates*” (Charly). Further Ashley felt able to exercise discretion in determining “*how appropriate it is to follow, and I underline this, the non-statutory and advisory Guidance*” (EHEGLA, 2013). Overall, they followed LA policy as laid out in their EHE handbook, which Ashley noted writing “*so in practice I do implement my own policy.*”

## **Advocates**

The advocates blamed LA and officer ‘*ultra-vires*’ policy and practice on external pressures, managerial direction, and officers own practice judgements. The officers “*opinion about education becomes discernible when exercising ‘professional’ judgements or discretion*” (Pat). Officers, often former teachers, view ‘education’ and/or values are likely to be “*diametrically opposed to the values of home-educators which will impact their attitudes*” (Bryce). They “*mislead [in their exercise of discretion] ... by alluding to non-existent powers or duties as ruses*” (Sam) to pressurise parents to comply. Pat noted that “*in some respects*” officer discretion is becoming limited by line-managers’ and the intervention of outside influences, so increasingly officers are “*wary of not following such ultra-vires direction.*”



The advocates contended that officer discretion or professional judgement requires a thorough grounding and proper understanding of all relevant Legislation, Guidelines, and the practices of home-education, and most officers had not been appropriately trained in these areas. Accordingly, the exercise of their professional judgment or discretion is distorted as officers' work from an incorrect basis. As Pat observed,

*Officers do not have duties to visit, monitor, assess or do welfare checks yet they include those as part of their practice. Some believe this is a duty, and others who know it isn't but still imply that it is. Discretion should only be used within the confines of their statutory duty, [referring to: Education Act 1996 S. 7 duty to 'ensure all known children are receiving an education'] with families then able to freely accept or reject officers' professional advice or support.*

## **Theme 8: EHE-Officer, a “Non-Job”**

### **Officers**

A thread that ran through the officer interviews was awareness that they projected power and authority, whereby they assume approaches in their day-to-day practice which give the appearance of authority. They accepted that they variously infer that they have the right to visit, to request to see work, or to do 'safe and well' checks. Recognising that they lack the legislative powers to enforce their authority they felt that “*without using such ploys*” (Jamie) they would “*not be able to meet the job description*” (Brook).

As discussed in Chapter 2, the primary legal duty of LAs and officers extends only to 'ensure all children are getting an education' and is met once the parent confirms EHE. Brook noted "*this limited function makes officers effectively superfluous ... the role can be done by an admin clerk or CME officer.*" Jamie went further: "*half my time is lost in trying to get parents to let me do my job. They have all the cards and can refuse, while I have no authority, other than that I can imply that I have. It is a job, but one that seems rudderless and at times pointless ... a 'non-job'.*" Charly commented that without the necessary mandate with teeth, 'power and authority' to do the job "*what we have is pseudo-official chicanery.*"

Eli, had reacted to the notion of a 'non-job' by taking a proactive approach whereby

*I have created new opportunities for interaction with families, especially those who traditionally rejected contact. As a carrot to engagement I have arranged increased library access, an EHE identity card, and I have introduced informal 'coffee, chat and support' meetings so home-educations can meet with me and each other ... it justifies my role.*

## **Advocates**

The advocates observed that, given there is no duty to assess, monitor, visit, or see the EHE-child, it begs the question "*is there a need for an EHE-Officer role at all*"

(Sam,) as:

*LAs could get by with an admin or other officer making the necessary enquiries to confirm, or not, that the child is home-educated. Once they have that confirmation their duty has ended. If they don't get that confirmation LAs have enough powers and other 'specialist' education officers, EWO or CME, to take things forward (Bryce).*

The advocates surmised the role as being unnecessary. *"It's really superfluous, EHE-officers have to validate their role, their pay, by being seen to be effective, but it's a job that doesn't need doing"* (Pat). The advocates concluded that the EHE-Officer is a *"nominal role"* (Alex) and therefore is a role in which the officers need to be *"justifying their existence."* (Sam) by overstating their role, powers, and authority so *"making extraneous demands on families"* (Alex,) otherwise there is *"no justification for their job role or their salary"* (Bryce).

## **Summary**

### **Officer interview Summary**

This study examines the extent to which local authority administration and officer implementers observe State Legislation and Guidance in respect of home-education. Specifically, factors or influences which stimulate the implementation of a locally policy which deviates from that intended by the policy-originators and outlined in Guidance (EHEGLA, 2013). In this ascertaining the perceptions, knowledge, competences, and willingness of LA delegated officers is pivotal. The officers

considered the extent of their duties and powers within their day-to-day practice. The officers indicated that in their practice they aim to meet the requirements of their job description, even if it conflicts with Statute, adopt ways of working to ensure do this. However, they expressed that the lack of legally based power and authority rendered their role as a potentially ineffectual “non-job.” They identified that lacking power, to get the job done the officers admitted they infer that they have authority through implying a requirement to monitor and assess educational provision, or to conduct visits and/or do welfare checks. The officers recognised that such implied requirements are contrary to EHEGLA (2013). The officers universally considered the EHEGLA to be advisory/discretionary, despite this Guidance being designated as ‘statutory’ (DfE, 2011).

The officers had a shared experience of teacher-practitioner and expressed an affiliation to both teacher identity and school paradigm of education. This indicates both historical and on-going connection to teaching/school communities of practice. LAs provide the EHE-officer with wide-ranging training, covering a variety of areas unrelated to home-education and/or in areas where EHE is problematised e.g. Safeguarding and/or Prevent training. However, fully comprehensive EHE training was lacking, although some officers have some training in EHE related Statute.

Officers identified having a range of concerns related to home-education including: unknown children, lack of socialisation opportunities, the provision of appropriate education and lack of assessment of suitability or quality. In these areas they sought

to use their professional judgment, formed as teachers, to assess, manage or mitigate issues. However, they felt their professional judgement and ability to use discretion is subject to LA and external pressures and hampered by a lack of legal authority. They expressed desire for increased legislative powers and authority which would not only validate their role as EHE-officers but would ensure the education and welfare of EHE-children.

### **Overall Summary**

Reflective of Wenger's CoP model (1998, 2006, 2010,) officers and advocates agreed the officers with the background of teacher-practitioner will bring the identity and experience of 'teacher' into their practice, specifically when exercising professional judgement and discretion. Advocates expressed that it is inappropriate to employ officers to implement EHE-policy when holding a school paradigm of education without comprehensive EHE-training. Whilst officers do not get a comprehensive training in EHE, there was agreement that they do undertake regular Safeguarding and Prevent training. Officers had misconceptions about SCRs and claims EHE is being used as a cover for abuse. Advocates felt such factors hyper-sensitised officers to view EHE as problematic and influenced the conflation of EHE with welfare.

Some officers recognised they only have a general safeguarding duty, others felt they had a statutory duty to safeguard. Advocates agree that officers have a general duty but see EHE and welfare as being conflated without empirical evidence. Officers and advocates agreed external pressure is diminishing professional judgement by

directing officers to visit, monitor, assess and do safe and well checks. Officers and advocates recognised that the EHE-Officer role is a 'non-job'. This led to the officers engaging in practices to justify or grow their role, while the advocates maintained the role was simply unnecessary.

Officers and advocates accepted that National Policy is 'redefined' during its administration and implementation; that local policy conflicts with national Legislation; and those officers will follow local policy rather than national Legislation. Officers accepted they follow their job description, acknowledged the influence of external pressures, and viewed Statute and Guidance as conflicting. Nonetheless, officers recognised that they can infer need for visits, send appointments, attempt to assess/monitor and do 'safe and well' checks to meet the demands of their role; in this they conceded they implement redefined policy. Advocates viewed such redefinition as officers (and LAs) acting outside their power and authority. However, in Lipskian terms officers inferring authority or redefining State policy is reflective of the SLB-officer activity.

Legislation and Guidelines presented further areas of disagreement, with officers viewing the EHEGLA (2013) as advisory, exhibiting an unawareness of DfE (2011) directive to consider the Guidance as Statutory. Contrary to the advocates, officers also viewed Legislation as generally confused, conflicting and in need of revision. Officers were supportive of increased powers, but the advocates contend Statute

and Guidance is fit for purpose and LAs and officers need to understand and use the powers they already have.

## CHAPTER 8: DISCUSSION

This study considers the extent to which local authorities (LAs) and their delegated officers observe, or not, State legislation and Guidelines in respect of home-education. The finding from a variety of data sources have indicated that national EHE-Statute diverges from legislators' original intent during the process of local implementation. This chapter discusses these findings within the context of the policy implementation theory. Specifically, the theoretical deliberations of Lipsky (1969, 1971, 1980, 2010,) Street Level Bureaucrats; Reynolds and Saunders' (1987) Implementation Staircase; and Wenger (1998, 2006) Communities of Practice (see Chapter 4). These illuminate factors which bear on the implementation of national EHE-policy (Legislation and Guidance,) impacting on expected policy outcomes as experienced by home-educators.

The Literature Review (Chapter 3) identified 'perceived anxieties' held by academics, commentators and stakeholder organisations around the practice of home-education and EHE-childrens education and welfare. It is an anxiety which generates conflict over EHE-policy and what it should achieve, and between anxious commentators and home-educators. Such concerns were similarly apparent in the responses of LAs and their officers, as seen in Chapters 6 and 7. It might be helpful to review these findings:



**Chapter 6: ‘Findings – Local Authorities:’** Drew on LA Freedom of Information responses and LA documents (websites and online-handbooks, letters, and EHE-Officer job applications) revealing that:

- LA local policy is at variance with national Statute (Legislation, Case-law and Guidance;)
- Local policy, contrary to reactive State strategy, is to proactively visit, assess and/or monitor, and safeguard EHE-children;
- LAs place EHE within teams which deal with ‘problematic’ groups (e.g. Children Missing Education (CME;) Special Educational Needs (SEN;) and use inappropriate [to EHE] officer and team titles;
- LAs display strong preference to employ formerly teachers;
- Skewed training provision for the role of EHE-officers (with emphasis on Safeguarding and Prevent and a lack of EHE-training).

**Chapter 7: ‘Findings – Officer and Advocate Interviews:’** Six officers provided their insight on EHE-policy, its implementation, and their concerns about EHE: e.g. oversight, educational quality, welfare, the role of officers, and officer practice. The officer findings revealed commonalities in officers’ backgrounds: they were all qualified teachers who have experience of classroom teaching, holding a school paradigm of education. The officers cited using knowledge and experience acquired from teaching to form professional judgments in their officer role, indicating ongoing ties to teacher-practitioner communities of practice. They all spoke of having a “*duty*” to ensure that EHE-children are getting a suitable education and that they are

safe. They all identified their practice as ‘being informed by their job description’ which directed them to undertake visits or to monitor. The officers all reported having regular Safeguarding and Prevent training. However, only three officers had had EHE-related training, this was purely legalistic provided by Monk (2014) who is critical of home-education (see Chapter 2).

**The officers** all expressed concern about EHE oversight and a lack of legal authority to visit, see the child, monitor, and assess educational provision. They admitted they infer to new or unaware families that they have do have this authority. They viewed Legislation as skewed towards parents’ rights at the expense of the child. The officers were, overall, in favour increasing their powers in respect of educational and welfare oversight. They recognised there is conflict between State strategy (Legislation and Guidance) and local policy. But they viewed the EHEGLA (2013) as advisory [this being contrary to DfE (2011) direction.] which persuaded them their local policy and practice was permissible as the ‘Guidance is discretionary’. The officers concurred that a lack of legal power and authority meant that their job was about applying “*pseudo-official chicanery*” (Charly) to get the job done, otherwise there was a lack of justification for the role and salary.

**The advocates** provided insight into LA administration and officer implementation practices. LAs’ administration and officers’ implementation of EHE-policy was seen to be misleading or deceptive, whereby, LAs and officers exceed their authority by proactively creating non-existent but implied duties. They viewed expressions of anxiety about risks, and stakeholder critics related calls for increased oversight, as

lacking evidence and/or empirical research. LAs and officers, therefore, need to understand and use the powers they already have, not call for more. The advocates felt that current Statute is clear, simple, and well written, whilst LAs' and officers' interpretative response to Legislation and specifically the EHEGLA is problematic.

## **Discussion of Findings**

### **Policy Implementation**

EHE-policy is formulated by central Government with downwards delegation: to LAs to administrate, and officers to implement. However, this study has shown policy creation is a two-way process. The implementers and/or stakeholders can themselves interpret, define or formulate policy, thereby, generating an upwards push of policy creation. To illuminate the factors at play, this study draws on three strands of implementation theory, in particular the models provided by Lipsky, street-level bureaucrats' (1969, 1971, 1980, 2010;) Wenger, Communities of Practice (1998, 2006;) and Reynolds and Saunders, 'Implementation Staircase' (1987).

The study acknowledges 'implementation' is a discrete aspect of policymaking which analysis enabling a deeper understanding of the issues that can arise. For example, implementation of EHE-policy requires stakeholder (governmental, LAs, EHE-officers, home-educators, and relevant others, e.g. professional or non-governmental organisations, politicians, or media) participation and/or acceptance. Yet as this study reveals, EHE-stakeholders are discordant with each other and hold markedly differing views. The adoption of a policy implementation approach allows

identification of issues arising in the accomplishment of nationally legislated EHE-policy by decentralised administration by LAs. Local administration allows the opportunity for the interpretation of National Legislation and Guidelines with resultant unexpected outcomes (Smith and Larimer, 2009). For instance, the EHE relevant Legislation and Guidance directs a reactive approach: whereby action should only be taken *'if it appears'* that an EHE-child is not receiving an education (Education Act, 1996, S. 437; EHEGLA, paras. 2.7 and 3.5). Yet, the data gathered for this study evidenced that LAs and their officers frequently adopt a proactive approach: actively seeking proof that an EHE-child is being educated. They draw on their interpretation of LA general duty to *"make arrangements to safeguard and promote the welfare of children"* (Education Act 2002, S. 175) to infer a duty visit, or to assess or monitor. This is contrary to the EHEGLA (2013) direction which allows LAs to informally establish whether EHE-children are receiving an education (para. 2.15). Thereby, the intended outcome of State strategy has altered as LAs and officers act outside Statute by interpreting it and by failing to adhere to relevant Guidance; over time this can create a precedence of practice (see, p. 112-113).

Evidence presented in this study suggests implementation of policy at a local level often fails to meet the intentions of the relevant Legislation and Guidance. Intended National policy, incorrectly and/or inappropriately interpreted at LA level, becomes compromised by those tasked with its implementation. Law is by its very nature complex: EHE-policy is subject to several Parliamentary Acts and Guidance. As this study has highlighted, LAs and officers view the legal standing of Guidance,

specifically EHEGLA (2013) as being advisory or discretionary. This belief is contrary to direction given by the Department of Education that the EHEGLA (2007/2013) are to be considered statutory (DfE, 2011) or The Education and Inspections Act 2006, S. 4(2) which states: *'In exercising their functions ... a local education authority must have regard to any Guidance given from time to time by the Secretary of State'*. Consequently, LAs and officers must consider relevant Guidance to be statutory and take heed of its direction, this they are failing to do.

The belief that the EHEGLA (2013) is advisory becomes apparent in LA administration of national EHE-policy resulting in unintended local policy and outcomes. The officers interviewed evidenced a pattern of having implemented unintended local policy. They acknowledged of awareness of conflict between their local policy and the EHEGLA (2013). They viewed EHEGLA as 'discretionary' and choose to follow their (or their LA's) preferred method of practice. For instance, officers displayed an awareness of lacking legal authority to assess the quality or suitability of education, but nonetheless sought to do so. In this they hinder and redefine the intentions of State strategy within their implementation practices.

This evidences a failure to convey the statutory nature of Guidance from the top-down, from the policy formulators (the DfE) to those expected to implement policy: LAs and officers. Failure of policymakers to ensure appropriate understandings negates successful implementation and engenders outcomes removed from the legislators' intentions, enabling LAs and officers to consciously or otherwise

interpret, misinterpret and/or reinterpret policy. However, the reluctance of the DfE to enforce adherence to State policy is reflective of the decentralised nature of educational matters where there is a lack of appetite to intervene in local administrative matters.

The findings from the data find resonance with Khan and Khandaker (2016) who highlight issues whilst not exclusive to EHE are relevant: poor identification of the recipients, unknown number of recipients, lack of cooperation by the client group, and lack of appropriately trained staff. Views on the aims of policy can be negative or conflicting, or there is a failure to commit to the statutory objectives, with poor or officious communication at all stages of the implementation process. There is delegation of authority and discretion is exercised during implementation (p. 542). Within the data presented for this study these issues reverberate, crystallising stakeholder critics opinions expressed within the Literature Review (see Chapter 2 and Chapter 3) and in officer interviews (see Chapter 7).

The issue of successful implementation of EHE-policy is highly dependent on LA officers who are at the 'coal face' of implementation. As seen in Chapter 7, as implementers, officers not only have a level of autonomy, but are often subject to unclear, confusing, or incompatible demands. They are subject to society's prevailing economic, political, and social climate where EHE is increasingly viewed as not only an unconventional educational practice but one with inherent risks for the education and welfare of home-educated children. Lipsky's work highlights a distinctive

element of policy implementation, which resonates with the data in this study. EHE-officers are SLBs; they are 'frontline' public servants, delegated by LAs to implement State strategy as experienced by home-educators. Analysis of officer interviews confirmed their SLB status, they juggle competing directives, rules, and procedures (Wastell *et al.*, 2009; Lipsky, 2010) of National Legislation and local policy, while their practice is characterised by their ability to use discretion in exercising professional judgement (Lipsky, 1984, 2010).

Lipsky (2010) identifies characteristics of SLBs reflected in the experiences of the EHE-officers interviewed: their role as professionals, lack of resources (training,) psychological challenges, conflicting role expectations, difficulty in measuring their job performance, and a consistent disgruntlement that the 'policies' they implement aren't working. As SLBs, officers have come to represent to home-educators the EHE-policy's most criticised aspects: incompetent implementation and authoritarian oppression (Evans, 2006, 2010). This criticism stems from the conflicting moral dilemmas and policy criteria as is apparent within the Literature Review (Chapter 3) and in the interview responses of EHE-advocate and officers (Chapter 7). Officers reported that National Legislation conflicts with the role they are employed to do and provides them little legal standing to do their job. By way of example, LAs often require that officers assess the suitability of the education, yet the 'statutory' Guidelines (EHEGLA, 2013) make it clear there is no such duty, unless as the advocates point out it is to react when it becomes clear there is no educational provision (DoE, 2007). Therefore, for LA and officers to proactively assess education

suitability is contrary to this Guidance and could be considered as officious practice and/or authoritarian oppression.

Lipsky notes that SLBs function in circumstances that require reaction to the human component of any given situation (2010, p. 15). The role of public servant is critical in the implementation of policy, specifically policies relating to social control which involve the delivery of statutory or advisory services (Lipsky, 1984,) Findings presented in Chapter 6 evidenced that LAs do misinterpret and/or misrepresent the legal position relating to home-education, creating a new narrative visible within their FOI responses and webpages, handbooks, and officer job descriptions. While Chapter 7 details findings that officers feel obligated to meet the requirement of the job description and their employer's expectations even though they recognise this can be counter to national Statute and Guidance. Without correct legal knowledge or insight untrained officers (or new home-educators) may well accept LA procedures as a true representation of EHE-Statute, impacting on policy implementation and thereby generating unintended outcomes. LAs administration policies and officer implementation practices effectively 'push the envelope' intentionally or otherwise by their interpretation State policy locally. In overreaching the bounds of nationally formed EHE-policy locally generated LA policy can, unchallenged, become accepted policy. In interviews (Chapter 7) officers and EHE-advocates acknowledged that LAs and/or officers do redefine State EHE-strategy into locally 'defined' terms, policy, and practice, to the extent that LAs and their officers exceed their legal authority.

Officers are the doorkeepers to policy: in interpreting the explicit policy detailed in



the EHEGLA (2013) and/or acting beyond their remit, they alter the intended outcomes. SLBs in their practice decisions influence policy, whereby, locally redefined policy over time becomes normalised. Normalisation creates a precedence of practice and permits a bottom-up construction of policy - usefully illustrated by drawing on Reynolds and Saunders (1987) model of an Implementation Staircase (see p. 115-121).

Lipsky (2010) illuminates the process of SLBs making policy by placing 'policy generation' in the use of officers' discretionary practice which gives them the flexibility to make professional judgements which may be outside intended State strategy. However, Lipsky views this as only a part of a policy redefinition process, given SLBs do not formulate statutory objectives nor design the tools to accomplish them (p. 221). Therefore, a comprehensive review should consider the entire policy environment including the process of creating State strategy (p. 222). While acknowledging this caveat, a small-scale PhD study does not lend itself to such rounded reflections.

**The local authority should be a servant not a master** (Mumby, 2010)

The behaviour of LAs and officers, in taking an administrative and implementation approach which is counter to that intended by State Legislation, can make them the 'master rather than the servant' of both the State and recipients of policy (home-educators). In a speech given by Lord Justice Munby in October 2010, albeit

reviewing the Mental Capacity Act, he summed up the expected relationship between LAs, professionals and their residents as follows:

*The local authority is a servant not a master, a truth which on occasions is too easily overlooked. [People ...] do not seek to be controlled by the local authority and this is not for a local authority to seek to exercise such control. [...] Working together involves something more - much more - than merely requiring [parents] to agree with the local authority's decision even if, let alone just because, it may be backed by professional opinion (Munby, 2010).*

Munby's opinion is highly relevant to EHE. As this study shows, LAs and officers do act outside the law in local policy formation, implementation, and officer practice. The intention of devolved local authority is that LAs and officers act as 'servants' of central government, to administer and implement national policy locally. LAs and officers also should 'serve' their residents *ergo* home-educators. When LAs, (and/or LA officers) act in a manner beyond their authority they become 'master' determining a local policy which is contrary to State strategy of: Legislation, Case-law and Guidance. By implementation practices, be it through pressurising and/or enforcing *ultra vires* policy, the LA can encroach on the rights of local home-educators.

EHE-officers assumed authority, activity, or exercise of discretionary professional judgement can recast their intended role as 'LA servant' to 'LA master' in the eyes of home-educators. EHE-officers' professional judgement can be influenced by their

affiliation to teacher-practitioner identity and CoPs. Chapter 7 found evidence that officers not only identified with school-education approaches but lacked relevant training in home-education, and that they have an imperfect understanding of EHE Legislation and Guidance. As SLB implementers, the officers have an inadequate base to practice and apply discretionary professional judgement. Within their professional practice, and as the face of the LA, they implement policy altered from that intended by national EHE-Statute. Officers are no longer the implementers of intended State strategy but rather of a distorted local policy where their professional status gives credence and authority.

The EHEGLA (2013) provides clear direction, but as this study has confirmed LAs frequently fail to follow it. For instance, whilst making it clear to LAs and officers that they do not have a routine statutory duty to monitor or assess home-education (para. 2.7,) as seen in LA derived procedures (Chapter 6) and officer practice (Chapter 7,) they often do just that. Or the direction that LAs should provide transparent, legally accurate and easily accessible information literature (EHEGLA, 2013, para. 2.5) but as evidenced in Chapter 6 there is failure to do so whereby the information they do provide can be misleading. Therefore, the main source of unambiguous and legally correct information frequently comes from within home-education CoPs: local groups, social media groups, advocates, and organisations, which serve the function of providing legally correct information. The CoPs provide support for families who are impacted, sometimes seriously, by misleading or legally incorrect information; policies and practices which arise from within LAs' and officers' practice.

## **Failure of trust**

The Literature Review, analysis of the LA data and officer/advocate interviews highlights a breakdown of trust. Advocates explained that LAs and officers' propensity to be officious, or to act beyond their authority, creates potential for, or produces, a breakdown of trust between LAs/officers and home-educators. Home-educators respond to this breakdown by non-engagement or choose to provide only minimal responses to 'informal enquiries'. However, a lack of trust goes both ways, with LAs, officers, and other stakeholders, who mistrust home-education. Not only is the practice a cause of educational and welfare anxiety but the manifestations of home-educators lack of trust in 'authority' becomes proof positive that EHE is concerning. Lack of LA, officer and other stakeholder trust becomes apparent in the calls for increased powers and authority to control home-education e.g. powers to monitor, to assess, to visit and to safeguard. The breakdown of trust is visible in this cycle. EHE-advocates believe that current Legislation and Guidance is sufficient, but that the powers available are misunderstood and/or misrepresented by LAs and officers.

## **Officers**

**Officers as Street Level Bureaucrats:** Lipsky (1969, 1971, 1980, 2010)

identified SLBs as being professionals who work in isolation from others which encourages and reinforces the discretionary nature of their work. This reflects the working experience of many EHE-officers who, as indicated from the FOI responses (Chapter 6, p. 165) are in some LAs the only EHE-Officer and/or may be self-

employed, part-time, and/or not attached to an 'LA team'. Lipsky specifically exemplified the teacher as being a SLB; this study found a preponderance of EHE-officers to be former teachers (Chapter 6, p. 170; Chapter 7, p. 197-199).

**Officers as teacher-practitioner:** Chapter 6 identified that LAs overwhelmingly display preference for appointing EHE-officers with teacher–practitioner background, and therefore they have the knowledge, experience, and the identity of teaching professionals. For instance, the analysis of job advertisements revealed LAs list teaching credentials for EHE-Officer posts, and key skills include effective teaching skills; understanding of educational development, target and attainment and knowledge of school curricula. The officers interviewed for this study had all undergone teacher training and, at some point in their working lives, all had taught within the school system, therefore, as Wenger (1998) would suggest have membership of teacher-practitioner CoPs.

Tye and O'Brien (2002) noted teacher attrition is most common in beginners, those who have a few years' classroom experience and become disappointed with teaching, or 30-year veterans heading towards retirement. This pattern is reflective of the officers interviewed as: three out of the six had taught in schools for six years or less, and three had 25 or more years' teaching experience. Canrinus *et al.*, (2011) highlighted that teacher identity is not dependent on their length of teaching experience, a view shared by the interviewed officers (see p. 274-276). Regardless of the length of an officer's teaching career they will therefore bring with them the

attitudes, values, and knowledge from 'teacher' CoPs to incorporate within their EHE-Officer role. Officer expectations are visible in their views of how EHE should be 'done,' and our reflective of the professional landscape of the teacher-practitioner, for instance: curriculum-based familiarity and educational practices of assessment. This in turn reflects on their EHE-officer practice.

Drawing on Lipsky, teacher SLBs have an expectation to be free from routine micro-managerial interference and to have a considerable degree of discretion. This is familiar to teacher EHE-officers and as teachers they have an expectation of exercising professional judgements arising from their teacher identity within the confines of contractual duties and relevant policy dictates (Taylor, 2007). The interviews with officers revealed that they are influenced by this teacher identity: *"once a teacher, always a teacher"* (Chris, p. 214) thus maintaining their affinity to teacher-practitioner CoPs. As former teachers coming to the role of EHE-Officer will bring with them a school paradigm of education, for instance understanding based around a structure of curriculum, timetables, marking and 'formalised' playtime socialisation. Home-educators frequently adopt alternative forms of home-education e.g. semi structured or unstructured child led approaches. EHE-officers often struggle with home-educators quite distinct principles and approaches to education which can be markedly dissimilar to the 'familiar' school paradigm. For instance, the officers interviewed for this study maintained an affinity to school assessment tools, indicated that they viewed alleged socialisation and welfare concerns as linked to or resolved by school attendance. This speaks to the inherent

strain between school education and alternative approaches to education; learning lies outside State control, which can strongly influence stakeholder critics perceptions of EHE as questionable or inferior practice (Hoppers, 2006).

Therefore, LAs whose main remit is to oversee school children, and EHE-officers, can view the school paradigm as 'normal' thereby viewing home-education as equating to a rejection or criticism of school-education and teachers. This perspective may be internalised by officers as a challenge to their professional identity, formed within teacher-practitioner CoP during their training or subsequent teaching employment (Wenger, 1998; Beauchamp and Thomas, 2009). The link between the officers' identity of 'teacher' is pivotal to understanding their opinions, attitudes, and/or practice towards home-education. Their attachment to teacher identity is an influential factor in officers' approach to their professional life. Such 'attachment' throws light on advocates' sentiment that appointing officers on the basis that they are teachers is 'inappropriate' given differing perceptions about education, and without comprehensive training for the role of EHE-Officer the appointment of teacher-practitioners engenders further potential for misunderstanding and conflict.

## **Training**

**EHE training:** the FOI responses and officer interviews revealed a lack of officer EHE-training but a prevalence of Safeguarding and more recently Prevent Training. With a lack of comprehensive EHE-training it is not surprising that teacher EHE-officers draw on their professional knowledge to inform their practice. Against this

training background work objectives become formed by their job description and LA employer dictates which in respect of home-education are divergent from those intended by central government as expressed by Statute and Guidance (EHEGLA, 2013). Therefore, the interviewed officers viewed their role, in terms of their employers' requirements, specifically to 'proactively' monitor and/or assess education, with an emphasis on safeguarding oversight. Demands they seek to meet while exercising professional 'discretionary' judgement in how they achieve this. The lack of training, combined with employer requirements, and the absence of micro-management with ability to exercise discretionary judgement typical of a SLB, creates an environment where officers within their practice act beyond their legal authority. This creates the environment for the potential to alter policy through the precedence of practice.

The failure of LAs to provide comprehensive and relevant EHE-training, exacerbated with little supervision by managers who may be equally as untrained, is causal to officers exercising of discretion without a firm foundation of EHE related knowledge. The interviews revealed that officers do use 'discretion,' as Lipsky suggested (1980/2010, p. 4,) to reconcile conflicting aspects of the relationship between nationally intended policy and local defined policy. However, this reconciliation, is unsupported by comprehensive training, which would provide an understanding of EHE: relevant Statute and Guidance, specifically EHEGLA (2013;) and alternative educational approaches of home-education and home-educators as practitioners. The lack of training and lack of understanding is fundamental to the inconsistent and



official implementation seen in local administration of EHE-policy and the perceptions and implementation practices of officers. As Lipsky notes, if exercising of discretion was informed by training, SLB-officers would have less need to develop routines and simplifications to deal with their uncertainty due to knowledge gaps (Lipsky, 1980/2010: 190,) or their perceptions of conflicts within and between national or local policy. There is therefore, a critical need for State strategy to be transmitted, understood, enforced, applied and accepted with certainty and consistency by LAs and their officers, and suitable training would assist in achieving this.

The advocates noted that there is an inherent danger of officers coming across to EHE-parents with a *“patronising, condescending ‘head teacher’ approach”* (p. 205). As Chapters 6 and 7 showed, officious demands, rather than polite or respectful requests are often made of parents who are legally exercising their choice to home-educate. Similarly, visiting unannounced or sending unrequested, pre-arranged appointments is viewed by home-educators as disrespectful, rude, and even aggressive. A way to mitigate this would be for LAs to adopt approaches to families that demonstrate respect, in person or by written form.

**Safeguarding training:** as opposed to the dearth of EHE-training, LA officers receive an abundance of ‘basic’ Safeguarding Training and more recently Prevent Training reporting that both reference EHE. This training takes place on role appointment and Safeguarding is typically updated annually. Such training

communicates suggestions that the practice of home-education carries risk, this serves to create anxiety whereby LA officers viewing EHE as having intrinsic vulnerabilities. Equipped with safeguarding (and Prevent) training officers can feel competent to engage in 'safe and well' checks and to meet the requirement of 'safeguarding' within their job description. However, EHE-officers proactively undertaking 'safe and well checks' is essentially unsafe. They are employed to oversee home-education, and such training should be for 'awareness' should they come across something untoward in their everyday practice. But, EHE-officers are not social-workers: the training provided does not prepare them to assess a child's welfare. The limited breadth of safeguarding training, together with employer expectation that they will carry out 'safe and well' visits as part of their routine duties is dangerous, giving a false air of competency where none exists.

EHE-officers should have general awareness towards 'safeguarding,' but it should not be a *prima facie* role. EHE-officers should have training in 'signs to be aware of,' but they must be given clear direction that the extent of their role is to be a 'general reporter' if they have genuine cause for concern. Safeguarding and Prevent training needs to reinforce that home-education is not *per se* a cause for concern and emphasise for instance that making a child protection referral simply because a family refuses a home visit is overreaching. Importantly, officers need to be given an understanding not only their own role but the roles and responsibilities of other services and/or professionals, explicitly social-workers. If EHE-officers understood their roles more thoroughly, this would negate them overstepping their authority

and making inappropriate and unnecessary referrals to Childrens Social Services (CSS). From my own personal experience as a social worker, such referrals are time consuming, and take away resources from genuine need as all referrals must be investigated (Children Act 1984, S. 17). Referrals are exceedingly stressful for EHE-families and typically result in no cause for concern and end in no further action (Charles-Warner, 2015).

### **EHE-Officer role**

Unlike social work the EHE-Officer role is not statutory, it is an LA created and defined role created for the local implementation of State EHE-policy. The performance of the role is defined within locally created policy, its precepts laid out in the roles' job descriptions which stress key duties and accountabilities. Significantly analysis of EHE-officer job descriptions showed that these role requirements frequently run counter to National Legislation and Guidance (EHEGLA, 2013). For instance, job descriptions which include monitoring and assessment, thereby exceeding the Donaldson (1980) Case-law precedent. Whereby LA officers can only make 'informal enquiries,' with their 'duty' discharged when home-education has been confirmed. Further, proactive monitoring and assessment runs counter to the duty to act only "*if it appears*" a child is not receiving suitable education' (Education Act, 1996, S. 437) which is a reactive duty. In describing their role, the interviewed officers cited their job description and LA administrative policy, if these were compliant with the requirements of the EHEGLA (2013), some of the issues of overzealous, ultra vires practice might be diminished.

**Officer as implementers:** the officer as a SLB is a significant participant in the implementation process, as Winter (2002, p. 2) remarks policy is ‘nothing but paper’ until SLBs have delivered the policy to the intended target audience. As seen in Chapter 4 Lipsky recognised that SLBs have considerable discretion in their role adapting their practice and implementing decisions which recipients view as having authority and weight in law. Typically, recipients do not understand the fine legal nuances under which officers should practice (Winter, 2002, p. 2). Therefore, if an EHE-Officer sends an appointment to visit or asks to see a child, such ‘requests’ can be seen, particularly by new home-educators, as authoritative and legal. Officer (and LA) activity does thwart the intention of national Statute (Legislation and Guidance) which is at best legally questionable. To counter this, home-educators disseminate, within EHE-CoPs, the legal extent of LA and officer power and authority.

LAs, officers and related stakeholder professional bodies e.g. LGA, ADCS, contend that local policy and practices are expressions of uncertainty and/or conflict within existing Statute, leading to interpretations which run counter to the intention of central government. The interviewed officers identified ‘conflict and ambiguity in confusing or negatively worded Legislation and Guidance’ as being drivers to inferring authority, when they recognised it might not exist. They also identified this ambiguity as being causal to the formation of divergent LA administrative policy and their practice. Officers specifically noted that while they are employed to ‘police’ EHE, current Legislation and Guidance limits their ability to do so due to its inadequacy and contradictory nature (see Theme 5, p. 241).

Lipsky (2010) notes the SLB-officers every day work allows them to adopt strategies to address contradictions in arising in their role. EHE-officers, whether for expediency or professional judgement, depart from Statute (specifically the EHEGLA, 2013) and/or locally derived policy in their implementation practices, impacting intended practice outcomes. To quote Lipsky:

*The decisions of SLBs, the routines they establish and the devices they invent to cope with uncertainties and work pressures effectively become the public policies they carry out (1980: xii).*

The application of the street level bureaucrat (SLB) model confirms Lipsky's theory (1980/2010) that discretion of EHE-officers is evidenced within their practice. Whereby, SLBs' informal organisational routines come to constitute 'policy' as experienced by clients. The SLB model highlights the relevance of structural influences of: policy ambiguity, resource limitation, workload pressure, and bureaucratic attempts to increase authority. However, Lipsky's model is not only illustrative; it has provided this research with the means to identify discernible external pressures, providing important insight into the tensions on officers' implementation practices and/or their view of home-education. The study identified a range of pressures on the officer including:

- a) As an individual: e.g. professional norms (including teacher-practitioner CoPs,) values, role definition, personal meanings;

b) Organisational pressures: e.g. employer (LA) constructions: rules, policy and constraints, organisational routines and culture, job descriptions, and workload pressures;

c) External factors: e.g. wider society, laws, regulations, media, other organisations or agencies;

d) Finally, pressure from within EHE: e.g. recipient families, advocates, organisations, and the wider EHE-‘community.’

As this study has shown such pressures directly impact on the implementation practices of officers, in respect of: the ‘discretionary’ decisions of officers, the practices they adopt, and the strategies they devise (e.g. implying authority) to cope with uncertainties and work pressures. These pressures have served to widen the disparity between State defined written policy (legislative and EHGLA, 2013,) and the implementation ‘policy’ and practices of LAs and officers.

The increasing pattern of LAs and officers implementing local policy contrary to that intended by the legislators will, if unchallenged become ‘normalised’. Normalisation creates additional stimulus to justify and/or call for legislative changes in State policy from the bottom up: as illustrated in the adaption of Reynolds and Saunders (1987) model of an Implementation Staircase (Figure 1, p. 119). The danger for home-education is not just in implementation of unlawful policy, but that it becomes justification for increased power and authority to oversee home-education shared by the interviewed officer.

**Officer adoption of workarounds** (strategies adopted to meet requirements or expectations): the success of an EHE-Officer is evidence by their efficiency and effectiveness measured in: visits made, families monitored, assessments done, and actions taken. These measures of success are often counter to National Legislation and Guidance but are officer 'workarounds' to meet the requirements of their role. Lipsky (1980/2010) noted that SLBs will create workarounds to address the policies of their employer or contradictions rising in their role. Data collected for this research indicates this to be the case. For instance, LA's local defined policy tends to take a proactive stance seeking to assess the suitability of EHE contrary to the EHEGLA (2013). But the officers all employed workarounds, reflective of their SLB nature, by for instance, implying that they have a 'duty' to assess educational suitability, to get the job done, meeting the requirements of their employment contracts and the expectations of employers. Analysis of FOI responses and LA documentation (see Chapter 6) reveals more formalised administrative workarounds visible in LA interpretation of National Legislation and Guidance to fit their own policies and priorities.

### **LAs and officer impact on implementation**

**Ultra vires activity:** this study demonstrated that LAs and their delegated officers do engage in unlawful or *ultra vires* activity in respect of EHE. For instance, by implying authority to: monitor annually, assess education, see childrens' work, do home visits and see children for safeguarding purposes. As discussed in the Literature Review (Chapter 2) LAs and officers do have the power to intervene where

there are genuine concerns regarding lack of educational provision (Education Act 1996 S. 437) or a child's health, welfare or safety (Children Act 1989, S. 17 and S. 47). Given that powers do exist there is no justifiable reason for LAs or officers to act beyond their authority. Rather LAs and officers need to ensure their local policies and practices are not repressive or limit other duties and/or rights, e.g. the '*right to a private family life*' (Article 8, ECHR, 1950) or parental rights: that is the '*rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child*' (Children Act 1989, S. 3). Misuse of power culminates in a situation in which decisions lead to unintended outcomes, therefore, the implementation of any policy or practice which is contrary to Statute risks endangering fundamental rights. There must be a justifiable reason when implementers make demands that exceed the proportionality test (Craig and de Burca, 2011,) whereby, the aims must be legitimate, suitable, necessary, and reasonable. Legislation and Guidance has prescribed that LAs and officers should be reactive, not proactive, in their implementation of policy and practice toward home-education (see Chapter 2). It is not proportional for local policy to be a proactive '*fishing exercise*' whereby *ultra vires* activity is justified by a spurious '*possible*' risk. Home-educators would argue that unchallenged *ultra vires* practices become not only accepted precedent of practice, but sanctioned violation of individual EHE families' rights.

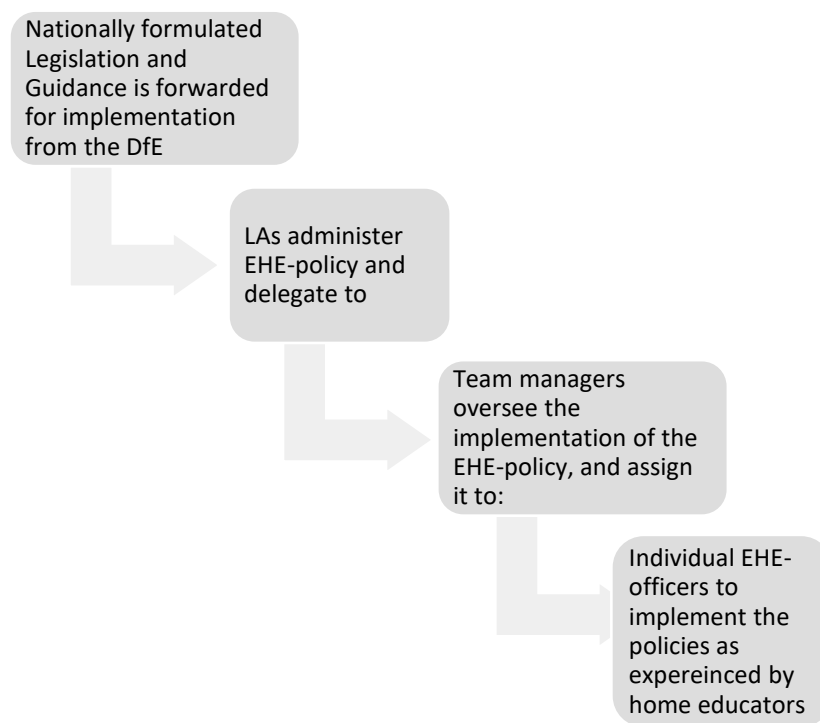
**Practice creating precedent** (bottom up policy): this study has shown a lack of coherence in the implementation of Legislation and Guidelines between that



intended by central government and that implemented by LAs generally, and between the individual LAs. Officer practices can also be at variance with each other and with the bureaucracy who employs them. While LA created policy should not supersede State policy, the reality is quite different. For instance, the EHEGLA (2013) issued by the DfE emanate from the legislative executive and therefore carry statutory weight, but when enough people apply, or knowingly or unknowingly accept, local unlawful policy or practice it engenders a practice of precedent. As acknowledged by officer and advocates ‘parents don’t know what they don’t know’ and, therefore, cannot question or challenge *ultra vires* demands made by LAs and officers, and the interviewed officers reported they rely on this (see. p. 212, and p. 233). This enables locally interpreted policy to become accepted practice – despite Case-law that LA policy cannot and should not supersede State Legislation or policy (Ali v London Borough of Newham (2012)). But unchallenged LAs and officers’ redefinition of State policy becomes ‘accepted’ practice despite Statute, with the potential to gain legal standing in the form of ‘in practice precedent’. Whereby, judges would be ‘*minded to consider*’ that, albeit unlawful practice, is what a reasonable person would consider acceptable and not unreasonable. Thereby a practice precedent which was formerly *ultra vires* would through Court judgment become legal policy. This would need testing in court until then *ultra vires*, but accepted practice serves to increase pressure to change Statute from the bottom-up.

**Implementation Staircase effect:** it is necessary to consider the policy environment to understand the drivers for SLB (or bottom up) policy creation (Lipsky,

2010, p. 222). The implementation steps of bureaucracy can be fundamentally in conflict with each other so indicating a lack of consensus or mutual support (Lipsky, 2010, p. 17). The devolved administration of EHE-policy adds further complexity to this scenario. At its simplest English EHE-policy progress down four steps; see Figure 10. With each step there is opportunity to interpret, misinterpret or reinterpret State policy with the unintended consequence of implementing a redefined and non-adherent local policy. Overtime this 'redefined' policy can become accepted practice, thereby; SLBs (and/or LA employers and/or managers) become significant de facto policymakers (Lipsky, 1980).



**Figure 10: Intended top-down EHE-policy administration and implementation**

However, as seen in Figure 1 (p. 130) the EHE Implementation Staircase is more complex than this simple model. Additional stakeholder groups also exert influence on the occupants for these four steps.

### **EHE-Officer: a non-job?**

The interviews also revealed that EHE-officers felt that their role was, to an extent, a non-job. This lay in the officers' recognition that 'to get the job done' they inferred authority so exceeding the requirements of the Legislation and the EHEGLA (2013,) thereby acknowledging overstepping their remit and that the extent of their 'real' power and authority was extremely limited. However, officers felt State EHE-policy was confusing, and recognised local policy conflicted with national strategy.

Nonetheless they stated they followed local practice. They expressed that the confusing Statute needed revising and had a desire for increased legislative powers and authority to enable them to do their role, without drawing on 'chicanery' (Charly, p. 261). However, it is chicanery of LAs and officers that has led to the breakdown of trust thereby making it difficult to for officers to build a relationship with home-educators.

Officers views of the EHE-role as 'non-job' can find explanation in Lipsky's discussion of alienation (2010, p. 75-80). Although officers do exercise discretionary professional judgements they lack true legal power or authority. In their practice, to meet the competing demands, they pragmatically infer they have authority. In implementing ultra vires practice, they are willing to accept overreaching their

authority and are less concerned with practicing within the constraints of Statute.

This implied authority can be psychologically alienating when officers are aware none exists.

## **Discussion of issues identified as concerns**

The practice of home-education has found itself at the centre of a maelstrom of anxiety and suspicion. It is an anxiety that goes beyond professional and societal educational concerns and encompasses parent rights versus childrens' rights, the child's voice, issues of socialisation, of control, and of oversight. These anxieties extend beyond the right to home-educate into the realm of EHE being used to cover and/or create a climate for abuse, radicalisation, safeguarding and welfare issues.

The interviewed officers voiced concern about the rights of parents *viz a viz* the rights of the child (see Chapter 7, p. 241-242). Their concerns reflect those discussed in the Literature Review by stakeholder critics including LAs, politicians, academic commentators, the media, professional bodies and non-governmental organisations.

**Issue of rights:** there is felt to be too much weighting towards parental choice and their rights, at the expense of childrens' rights, and their desires, welfare, and safety.

Meighan (1984a, 1984b) stated that as a response to concerns about conflicting rights, LAs and officers are judicious in their recognition that 'as far as is compatible [children] are to be educated in accordance with the wishes of their parents' (1944 Education Act, S. 76 now 1996 Education Act S. 9). Thereby LAs and officers temper

their implementation of policy and practice away from parents and towards the child.

However, the notion of parents' rights is a misnomer: The Education Act 1996 (S. 7) does not refer to parents' rights; instead it refers to parental duty to ensure education. However, European Human Rights Legislation has supremacy and 'direct effect', meaning that EU laws can be relied on in court (William, 2002) does talk of parental rights. The First Protocol of Article 2 of ECHR (1950) states "*No person shall be denied the right to education ... the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*" Similarly, Article 26 of the Universal Declaration of Human Rights (1948) to which the UK is a signatory expressly states, "*Everyone has the right to education ... Parents have a prior right to choose the kind of education that shall be given to their children.*" In these statements there is a clear indication that the rights of parents do extend to choosing the educational provision their children receive, but it is a qualified right as the child must receive an education. The wording protects the right of each child to education through placing the duty on the parents to ensure education. Provision exists in the Education Act 1996, S. 437 to ensure that parents failing to fulfil this duty can face legal consequences. LAs do have the power to step in when it is evident that a parent is not meeting their duty, and thereby, the parents' rights are limited, and the child's rights protected. The right to home-educate is not absolute as this can be curtailed by application of the LA to the Courts if the child is at risk or harmed through educational neglect.

**The child's voice:** related to concerns about the rights of parents overshadowing the rights of the child is the anxiety that the EHE-child is 'denied a voice' (e.g. Monk, 2002, p. 48; Brandon *et al.*, 2013; LGA, 2016, 2018; NCB, 2018; NSPCC, 2009, 2014b). The interviewed officers also expressed concern that EHE-children might be prevented from voicing their views or contribute to the decisions around education and other aspects of their life, e.g. the ability to freely access friends, family, or professional agencies.

As recognised in Article 5 of the UNCRC (1989) no child (schooled or home-educated) has an assured or independent right, given a child's ability evolves with age and increasing capacities. The primary legal concept which establishes a link between the child and parents is best articulated by the DCSF (2010a) Joint Committee on Human Rights which noted '*parents are best able to care for a child and to take decisions concerning his upbringing*'. Despite there being no objective evidence that validates the assumption that parental rights subsume childrens' rights or that EHE-children are afforded less of a voice than their schooled peers, critics maintain that an EHE-child 's voice is muffled.

**Socialisation:** in relation to the rights of the child and hearing the child's voice, both stakeholder critics and officers raised concerns about socialisation opportunities. The societal adoption of compulsory institutional education has normalised the perception that schools serve as vital extra-familial socialisation setting, allowing peer-group friendships to form (Root, 1977; Cemalcilar, 2010;

Rawlins, 2017). This view sees school and socialisation as synonymous; therefore, engendering the view that the practice of home-education prevents EHE-children from choosing to experience wider society and friendships away from the influence of parents. Yet for some children, the very environment of school can be problematic and these children's voices can also be stifled e.g. if they experience ongoing schoolyard bullying. However, the typical EHE-child is highly socialised by being out in the community, interacting and forming friendships across peer groups (Rothermel, 2011).

In all three scenarios, parental versus child's rights, child's voice and socialisation claims are made, yet empirical evidence is lacking. As such it is anxiety founded in anecdotal supposition and fear, creating a climate where home-education is deemed to be 'guilty' by an unproven but presumed intrinsic risk.

**Conflation of EHE and welfare:** This study identifies that LAs, officers and other concerned stakeholders conflate issues of education, welfare, safeguarding, parental responsibility and human rights issues. The effect of conflation impacts on EHE-families and the nature of their relationship with LAs and their officers. For instance, anxiety about parents' rights subsuming the rights of the children provokes a 'general' climate of suspicion. This is starkly visible when parents' legally decline visits, or access to the child, stimulating a growing trend for education-officers to make a referral to Children's Social Services (CSS). Refusal of access makes LAs and officers nervous, they question if parents are 'hiding something'. The emphasis of

training offered to officers, reflective of stakeholder concerns for welfare and protection, pushes frontline or SLB-officers to become anxious professionals and defensive in their practice (Vyvey *et al.*, 2014,) for instance making referrals to CSS.

Perceptions of risk positions government, LAs, officers, and home-educators in a relationship of conflict, one overshadowed by anxiety (Stanford, 2010). Home-educators have become cast as 'folk devils' (Cohen, 1972) arising from a moral panic of perceived risks and potential harms for EHE-children. Wider societal concern has impacted and reoriented local policy implementation and officer practice towards inspection and control of home-education, which increases the upwards push on State policy to change.

## **A climate of widespread mistrust**

As shown in the preceding chapters the practice of home-education invites ideological conflict and engenders mistrust. Home-education has been problematised by the expressions of anxiety which associate the practice with a range of potential harms. As this study has evidenced this has impacted on individual LAs and officers who respond by markedly variant adherence to Legislation and/or by the implementation of an interpreted 'beyond powers' local policy and practices. This variance, particularly when it exceeds LA and officer authority provokes widespread mistrust from home-educators and EHE-advocates. Home-educators' have a history of extensive engagement in CoPs (Wenger, 1998, 2006, 2010; Barson, 2004; Safran 2008, 2009, 2012). The growth of social media has



allowed home-educators to rapidly access support, advice, and share information. The speed of social media means information is disseminated quickly and nationally (Barson, 2004; Safran 2008, 2009, 2012; Fensham-Smith, 2017). The sharing for example of one LAs *ultra vires* policy and practice can stimulate a countrywide lack of willingness among home-educators to engage with their LAs. This can be seen in the reactive coming together of home-educators creating specific CoPs to defend their right to EHE unimpeded, as during the Badman Review or as now to contest the Home Education (Duty of Local Authorities) Bill, 2017 and the DfE (2018) consultation on home-education.

**Impact of mistrust:** as seen in Chapters 6 and 7, LAs and officers demonstrate a presumption for visits, routinely sending out appointments, sometimes with a failure to make it clear that visits can be refused. Home-educators share experiences within online forums, or CoPs, some of which are local, others national. Within these CoPs experienced home-educator advise, for example, that accepting a visit could open the door to other ‘abuses’ e.g. demands to see work, additional visits, and once accepted, any engagement becomes harder to refuse. The message transmitted with these CoPs is trifold:

- Firstly, acceptance of LA/officer demands that exceed their authority make it harder for all home-educators as it sets precedence.
- Secondly, even currently legally compliant LAs may not be so in the future: a new officer, head of service, manager, recent Safeguarding Training, or media

reports, can negatively impact and completely change practice and policy within LAs.

- Thirdly, if increasing numbers of LAs are successful in implementing policy that is contrary to National Legislation it can ‘encourage’ other LAs to do similarly: until reaching a pivotal point where nationally policy is no longer as the legislators intended.

Therefore, the application of *ultra vires* demands by LAs and officers, backfires, as home-educators share information, support, and advise each other. New families, who have possibly acquiesced to *ultra vires* approaches, can feel betrayed and then trust is broken. Home-educators draw on the reports and knowledge drawn from other EHE-families experiences of *ultra vires* policy practices. Whilst advocates spend a great deal of time helping families affected by *ultra vires* demands, specifically ‘informal requests’ for evidence that are excessive, and more recently the growing tide of referrals to CSS following refusal of a home visit. What has been generated by LAs and officers acting beyond their authority becomes a vicious cycle of mistrust of: *ultra vires* demands, home-educators disengaging, LAs seeing that as a cause for concern, increasing their demands and/or taking action, and home-educators become more resistant.

### **Stark example of mistrust – Safeguarding:**

The conflation of home-education and child welfare has come to be starkest expression of mistrust in an increasingly risk adverse climate. The practice of EHE has

engendered a moral panic based on the perpetuation of the belief that it is a safeguarding risk (Monk, 2009; LGA, 2016, 2018; NCB, 2018, NSPCC, 2009, 2014b; Soley, 2017, 2018; NCB, 2018) is worrying. The data and findings in this study reveal stakeholder critics mistrust the practice of home-education and/or they distort, misunderstand, or misinterpret the relevant Statute (e.g. Education Acts, Children Acts and relevant Guidance). This mistrust lacks empirical evidence and necessary research into the concerns raised by these stakeholder critics. The 'evidence' that is given is frequently shrouded in unsubstantiated and/or ambiguous claims presented as 'authoritative' or expert opinion arising within organisations such as: NSPCC (2014a, 2014b;) NCB (2018;) Ellison (2018;) OFSTED (2010b, 2011, 2015;) and LGA (2016, 2018). As seen in Chapter 3 (p. 83) the 'evidence' presented in NSPCC Serious Case Reviews Reports (2014a, 2014b) into seven Serious Case Reviews between 2008-2014 was poorly researched and only reviewed the executive summaries (NSPCC, 2016). The Report, therefore did not reference the full SCRs all of which had identified EHE to be a factor in the child's life, but not causal to the harms.

Nonetheless, despite the failure in professional involvement, the NSPCC reported home-education to be a causal factor which allowed the harm to occur and/or to go undetected. The NSPCC is a child protection organisation of standing, yet their Reports are indicative of confirmation bias, providing supporting evidence to show that EHE is a safeguarding risk but failing to offer counterbalance. For instance, they do not question the role and/or failure of social-workers and other professionals who, had they looked at the full SCR, were shown to have a flawed history of professional contact with the families concerned. The NSPCC reports were picked up by LAs, EHE-officers, other professionals, politicians and the media as authoritative,

further problematising EHE and, intentionally or otherwise, branding home-educators as potential abusers. The experience of NSPCC reports highlights the inherent danger in publishing authoritative or expert opinion, which is not informed by sound empirical data and research but is viewed as being both expert and 'authoritative'.

'Authoritative' or expert opinion expressed in a risk adverse climate contributes to LAs' and officers' anxiety, increasing the propensity to misrepresent Legislation and/or the extent of their power and authority, in respect of education and welfare. This as evidenced by the findings arising within the FOI responses and in LA documents detailed in Chapter 6, along with officer's interviews in Chapter 7. For example, LAs (and officers) erroneously draw on Education Act 2002, S. 175 to claim a proactive safeguarding duty in respect of home-education (see p. 194). Within S. 175 the LAs have a general but reactive duty to safeguard all children regardless of educational provision. LAs are directed to "*make arrangements*" to ensure that they have the necessary functions in place to react should it be necessary: that is administrative, procedural, professional and organisational readiness. However, this section does not direct officers to proactively go forth and safeguard: they only need to have an awareness of safeguarding "*in the course of executing their normal functions*" (explanatory notes: Children Act 2004, S. 11).

## Summary

Policy creators intended the implementation of national EHE-policy to be non-interventionist unless there is a genuine reason to be concerned about a child's educational provision and/or welfare. However, EHE has been problematised and become associated with a range of perceived risks, engendering a climate of anxiety. This climate has led to numerous calls from critical stakeholders for increased authority and powers to oversee EHE and is seen in an increase in local *ultra vires* administration and implementation of EHE-policy which amounts to unintended outcomes.

National EHE-policy is devolved to local government allowing opportunity for interpretation, and therefore redefinition, as policy travels along the '*implementation staircase*'. The progression towards implementation provides a trifold opportunity for redefinition: by LAs who administer implementation, by managers who oversee implementation and by SLB officer implementers in their practice decisions. All potentially leading to unintended outcomes, which if accepted or unchallenged can create practice precedents, whereby policy is changed or generated from the bottom up.

LAs administer EHE-policy, which they delegate to EHE-officers to implement. As exemplified in this study, LAs do generate redefined *ultra vires* policy as seen in their documentation (e.g. publishing policy on webpages) and in the job descriptions created for EHE-Officer role (which sets the tenor for officer practice). LA managers

further impact policy implementation in the directions they give to officer-implementers.

EHE-officers do meet Lipsky's (1984, 2010) criteria of SLBs. As this study has shown officers are subject to conflicting, confusing, challenging, and incompatible demands between State strategy and their LA employer local policy. They do seek expedient ways resolving this conflict within their practice. EHE-officers recognised they lack legal authority and power, nonetheless admitted they will infer otherwise in 'order to get the job done' and meet employed requirements. In this they exercise a level of autonomy and discretionary professional judgement. Practice decisions are informed by: employer LA policy, expediency, concern about 'risk' and professional judgement. In the case of the interviewed officers, they are also influenced by their ongoing teacher identity and affinity with teacher CoPs. Their practice decisions, to visit, monitor, or assess, when implementing EHE-policy is contrary to Guidance (EHEGLA, 2013) and changes the intended outcomes of State policy.

The implementation by LAs and officers of *ultra vires* policy and practice demands has another unintended consequence: it has led to a breakdown of trust. Home-educators see LAs and their officers as overreaching their authority and they respond by non-engagement. The manifestations of home-educators' mistrust become to be seen as further proof that EHE is concerning, and this has exacerbated calls for increased powers and authority, specifically powers to assess or monitor children for

safeguarding or educational purposes; again, this is evidence of a bottom up push on policy implementation.

As discussed in Chapter 2 current National Legislation and EHE Guidance is sufficient and affords LAs and their officers the authority to act should any concerns arise.

Therefore, to base policy and calls for increased powers on an unsubstantiated and unproven risk that may exist for a few children within a much larger community is officious and oppressive. This amounts to creating policy and practice on the principal of 'extreme case' exception, akin to taking a sledge hammer to crack an egg; especially when the necessary powers, to ensure education and welfare, already exist. Current Statute (Legislation, Case-Law and Guidance) is in general clear and unambiguous. For instance, if LAs have concerns about illegal schools operating: the authority to inspect and close them down already exists (Education and Inspections Act 2006). If it appears a home-educated child is not receiving a suitable and sufficient education: the power to issue a school attendance orders already exists (Education Act 1996, S. 437). If a child is at genuine risk of neglect or harm: the powers to act already exist (Children Act 1984, S. 17 and S. 47). There is not a deficit in the law, but a systematic failure to appreciate and use existing powers; this is strongly indicative of a lack of training. LAs and officers need to understand and use appropriately the powers they already have. Introducing new or increased powers will not resolve the perceived deficit in current Legislation, which on the evidence of current policy and practice, will also be misunderstood, misinterpreted, or inappropriately applied.

Finally, as noted in Chapter 3 there is a fundamental lack of sound academic research into all aspects of home-education. Before accepting the bottom-up stakeholder policy changes there is an urgent need for sound research into the presumed risks. Home-educators, the recipients of EHE-policy, argue that it is erroneous and inflammatory to claim increased risk or prevalence for neglect, abuse, or radicalisation within home-education when there is no empirical evidence to confirm (or refute) such claims.



## CHAPTER 9: CONCLUSIONS

Despite the growing body of academic literature relating to home-education, no previous study has taken such a detailed and forensic approach to addressing the crux of long running cross stakeholder tensions within home-education's legislative and policy implementation. Such tensions are not only stressful to EHE-families but wasteful of governmental and professional resources. As recently as 2013, Graham Stuart MP, chair of the Education Select Committee, recommended:

*'that the Department for Education carry out an audit of local authorities' performance regarding home-education, and the information they make available on their websites and elsewhere, and publish the results, ascertaining which local authorities are performing well with regard to home-education.'* (HC 1013, 2013)

That audit has never been undertaken, nevertheless, the *DfE* (2018a) has since published new draft guidance for home-education; and Lord Soley has advanced the Home Education (Duty of Local Authorities) Bill, 2017 to implement close regulation and monitoring of home educated children [withdrawn - 20 March 2019]. The main criticism of these proposals is that they are based on summation and that they lack the good quality academic research which should necessarily be undertaken prior to proposing any changes to legislation or policy. This work provides a ground-breaking academic basis for ascertaining the validity of the assumptions inherent in the existing proposals and finds them lacking.

This detailed study highlights the lack of homogeneity in the implementation of State policy in respect of home-education at local level, with practices varying between different local authorities and individual officers. A lack of homogeneity sited within a lack of home-education training for officers and by officer seeking to comply with their contractual terms of employment which are often at variance with legislation and guidance emanating from the executive. This lack of homogeneity should serve as a stark alarm signal to Government, local authorities and other stakeholders.

Decisions that are currently being made in respect of home-education will have long reaching effects on stakeholders. This work highlights the flaws inherent in taking significant steps to change EHE-policy. It makes the call to stakeholders to ensure a solid basis for any proposed changes, one which must involve home-educators and the commissioning of good quality research. The completion of this work could not be more opportune, and it should enable policy makers to review their decisions in the light of the factual evidence presented.

## **Overview of the study**

The study's remit was to ascertain factors and influences which impact on the implementation of, and adherence to, nationally created home-education (EHE) policy administered at local authority (LA) level and implemented by LA EHE-officers. To interrogate these factors and influences Chapters 2 and 3 provided a detailed review of relevant literature. Chapter 2 presented the legislative framework which arises from three sources: Legislation, Case-law, and Guidance, which confers LA

functions and responsibilities for EHE. In respect of home-education the Elective Home Education Guidance for Local Authorities (EHEGLA, 2013) provides specific Guidance regarding authority, responsibilities, and practice for LAs and their officers. The study accepted that EHEGLA are statutory as detailed by the DfE, (2011) statement. Therefore, there is the expectation that LAs and officers will adhere to it. Local policy implementation should thus be reflective of this Guidance and LAs and officers should moderate their practice accordingly. Chapter 3 provided a review of literature arising from academics/independent scholars, media, and EHE stakeholders. Literature which further informed the EHE narrative, clearly demonstrating that home-education is both a contentious issue and one which is seen as a cause for concern, particularly among professional stakeholders and resultantly disseminated into wider society. Concern which has been shown to be the driver for the implementation policies and practices of LAs and officers, but which diverge from the policy and intended outcomes expected by policymakers.

The data Chapters 6 and 7 presented the findings from the research data drawn on to inform this study, specifically data which examined issues of local divergence from prescribed Legislation, Case-law, and Guidance. Chapter 6 examined LAs, who are the delegated bureaucratic body to administer central government policy and manage the local resources to implement EHE-policy, including human resources (EHE-officers). The chapter was informed by analysis of the LA Freedom of Information responses into their administration of EHE-policy, and LA generated literature: LA websites, handbooks, EHE job descriptions, and letters sent to home-educators.

Chapter 7 presented analysis of detailed interviews with EHE-officers (the street level bureaucrats (SLB) of the LA) the implementers of policy, whose professional practice directly impacts the experiences of home-educators; and with EHE-advocates, who provided insight into the perspective of home-educators. Officers were asked about their views on State strategy, local policy implementation and officer practice and issues which impact on officers' roles. The advocate interviews provided counterbalancing insight into local administration and implementation of policy, and specifically the effect on home-educators. Chapters 6 and 7, viewed together, evidenced that LA and officer interpretation of their powers and duties are frequently at variance with and counter to national Statute and the EHEGLA (2013).

To aid understanding of the issues at play and in seeking to answer the research question and the subsidiary questions (see p. 32) Chapter 8 provided a discussion of the findings. This can be briefly summarised as follows:

### **LAs interpret and/or reinterpret EHE Legislation and this reflected in their local policy**

LAs and their officers do administer and implement *ultra vires* policy and, therefore local policy is at variance with Legislation. This is evidenced by:

- Non-compliant LA documentation e.g. webpages and job descriptions where policy and practices exceed authority.

- EHE-officers implementing policy, as reflected in their practice, which infers authority where none exists.
- LA and officer practice display misunderstanding of current Legislation, specifically the statutory nature of EHEGLA (2013) which they should adhere to.

### **LA policy does impact on officers**

The impact of LA local policy on officers and their ability or willingness to adhere to National Legislation and Guidelines is seen in their implementation practices. The officers' interviewed revealed they are inclined to follow LA policy thereby meeting their contractual duties. Officers showed an awareness that they can and do exceed their authority by inferring powers and duties they do not have. Officers are aware of and share stakeholder commentators' concerns about EHE, including Serious Case Reviews where EHE was a factor. The interviews confirmed that there is a lack of appropriate and/or comprehensive EHE training, but officers are provided with regular Safeguarding and Prevent Training. This training pattern serves to raise officer anxiety, skewing both their knowledge and practice. Officers (interviewed) identified that they relied on their professional training and identity as teacher to inform their practice which (lacking comprehensive EHE-training) can be inappropriate.

## **Specific areas affected by LA and officers unintended**

### **interpretation of State Legislation and Guidelines:**

This thesis has evidenced that implemented policy frequently exceeds the bounds of Statute, explicitly direction within the EHEGLA (2013). For instance, LAs and/or officers inferring or stating that officers: need to visit, to see a child, to monitor or assess educational provision, and do 'safe and well checks,' all of which are counter to the direction within the EHEGLA. This degrades national legislators intended policy, specifically intended outcomes, creating the potential for the advancement of a precedence of practice and generates mistrust with home-educators.

### **There evidence of anxiety in respect of EHE-children, specifically educational provision and welfare:**

The practice of EHE has become increasingly problematised by stakeholder critics who cite educational and safeguarding concerns. Specifically, concerns raised about the number of unknown EHE children, conflation with CME, and perceived notions that EHE-children are unseen, specifically by professionals. There is anxiety about parents' rights subsuming childrens' rights.

## **Main conclusion**

**A lack of homogeneity:** the literature and findings presented in this study shows that there is a distinct lack of homogenous thinking in respect of home-education.

This lack of homogeneity can be observed in the effective redefining of intended

State strategy (Legislation, Case-law, and Guidance) during its journey to implementation at local level. There is a lack of homogeneity between the intra/inter LA policies and practices, and between officers. There is a lack of homogeneity in the opinions of commentators, academics, professionals, and EHE-advocates alike. This lack of homogeneity is seen in expressions of anxiety around the practice of home-education, parental rights versus child rights, educational suitability, registration, monitoring, visits, and safeguarding, this engenders strong opinions on all sides of the debate.

This lack of homogeneity between State policy formulators and implementers is observable in the local policy administration practices of LAs, and in the opinions and implementation practices of officers. The root of this discord arises in the decentralisation of education administration in England, whereby LAs administer State strategy at the local level. However just how LAs 'administer' is subject to local decision-making and is subject to an interpretative element. It is this interpretative element which facilitates LAs and officers to act beyond their legal power or authority, thereby redefining State policy locally. Without the explicit will of central government to constrain and require LAs to implement State strategy (Legislation, Case-law, and Guidance) the continuance of the implementation of redefined *ultra vires* policy with unintended outcomes will continue.

## **Specific Conclusions**

This study has identified and evidenced specific issues which impact on the implementation of home-education policy.

### **Prevalence of problematising EHE**

Analysis of the information presented in this study reveals that frequently home-education is portrayed as a 'problem'. For instance, locating EHE within LA teams, or with officers who carry a mixed caseload of e.g. non-attendance, SEN, and/or welfare issues, creates an environment where EHE becomes another problem to be dealt with. Further, LAs and LA officers are not immune to wider societal concerns, the interviewed officers disclosed awareness of SCRs, stakeholder Reports, and media reporting. They showed that as EHE-officers they are influenced by them through echoing these concerns.

For instance, home-education has been held to subjugate childrens' rights to parental rights, thereby the child's voice becomes stifled. EHE has been identified as having the potential to hide a range of child maltreatments be it radicalisation, forced marriage or a cover of psychological or physical neglect or abuse. These concerns are anecdotal, unsubstantiated and lack independent and evidentially sound academic research. The lack of evidence, in the form of independent research, raises the question whether these concerns is simply a moral panic, whereby home-educators have become a societal folk devil. But in a climate where home-education



is portrayed as a 'problem,' it is not surprising that such concerns drive LA policy and officer practice.

### **Officer background and training affects practice**

This study has evidenced that LAs have a preference to employ teaching professionals in the EHE-Officer role. As teacher-practitioners, officers come from communities of practice sited within a school paradigm of education. The interviewed officers had all retained the identity of teacher. Whereby, the identity and experience of 'teacher' becomes visible in their opinions, principles of practice, and in their exercise of discretionary professional judgement. The employment of teacher-practitioners as EHE-officers is concerning to home-educators whose view of education is frequently divergent from teachers' identity and the dominate school paradigm.

### **There is a lack of EHE training for officers**

Appropriate officer training around all aspects of home-education might mitigate teacher-practitioner attachments and understandings of EHE. This study confirmed that there is an absence of such training. As came through during the officer and advocate interviews, a lack of training created an environment where officers judge EHE from a school based, teacher-practitioner paradigm. A lack of training which increases potential for officers to misunderstand EHE, to therefore become officious, and/or to act beyond their authority. Whilst this thesis has established a lack of EHE-

training it has also evidenced that officers do have extensive Safeguarding and Prevent training which presents EHE as a risk. Such bias in training will skew their assessment of home-educators and will encourage officers to be risk adverse in their practice.

### **The EHE-Officer role is a non-job**

The functions and responsibilities conferred by national Statute in respect of EHE are reactive: LA/officers can only act if it appears that education is not suitable, or no education is being provided. Although LA duty is limited within these terms, most LAs employ EHE-officers, creating a job description that defines their role, duties, and responsibilities, thereby giving the EHE-officer role its substance. As this study has found officer job descriptions frequently specify responsibilities which exceed those required by Statute, resulting in officers seeking to meet their contractual duties are driven to perform beyond their legal authority.

The interviewed officers expressed a feeling that their role was essentially a non-job, which they blamed on a lack of 'real' power and authority. Therefore, they employed behaviours within their practice not only to get the job done, but to validate their role. The officers also reported that they followed the criteria of their job description; despite being aware that this required them to undertake activities contrary to State strategy: e.g. performing 'safe and well checks' or undertaking assessment and monitoring. Under current Statute and Guidance, the EHE-Officer role is not required. But in the existence of the LA created role expressed within a job

description is the manufacture of the climate to imply authority, duties and power where none exist.

Given the role of EHE officer exists and is unlikely to disappear the role's sphere of activity needs to be defined. I would suggest that it should potentially encompass a trifold area of activity: to support, to champion and to act but only if necessary. The offer of support should be in a manner which would encourage take up of that support, without seeking to generally enforce engagement. Therefore, LAs and officers must have regard to current legislation and guidance, ensuring they do not exceed their authority or act in an officious manner. They should champion the local home educating families, for instance by negotiating with third parties and other agencies to open doors to enable families to access resources and facilities. Lastly, they should only act in cases where there are genuine and demonstrable causes for concern that education may not be suitable. This should initially be by supporting failing parents to improve their provision, but if no improvement is seen, to act swiftly to protect the child's right to a suitable education.

### **LAs and officers fail to adhere to Legislation:**

LAs and officers do fail to observe State strategy, as defined in the EHEGLA (2013) through misinterpretation and/or reinterpretation. This leads to numerous local policies whereby the deviations constitute an *ultra vires* degradation of State policy. Local policy as portrayed in LA produced literature (be it websites, handbooks, letters, or EHE-Officer job descriptions,) are presented as legally factual, the implication being that they are reflective of State policy. However, officers tend to

follow the local policy of their employers, reflective of LA literature, managerial direction, and job description, despite being aware of Legislation, Case-law, and Guidance.

### **LAs and officers misrepresent the extent of their authority, creating a precedent of practice**

LAs and officers' functions and responsibilities, as local implementers of State policy, are conferred by Statute. In respect of EHE, as seen in Chapter 2, this is a prescribed but limited function (e.g. S.437 of the Education Act 1996) but overall, they are afforded little authority or power. This study has presented evidence which confirms LAs (in their FOI responses and literature) and officers within the day-to-day practice claim *ultra vires* authority or duties. Those unaware (e.g. new home-educators or officers, or uninformed 'others') can accept that such claims of authority are genuine; thereby increasing the likelihood that unwarranted claims will be unchallenged and normalised, creating a practice of precedence.

### **Summary of findings**

The study has confirmed that LAs and officers do interpret EHE Statute, particularly relevant are deviations from the directions of EHEGLA (2013). In so doing the policy architects intended EHE-policy expected outcomes, as experienced by home-educators, becomes altered. LAs interpretation of National Legislation and Guidelines was evidenced by their responses to FOI questionnaire, and in the examples of LA literature. The EHE-officer job descriptions, which officers acknowledged directed

their practice (in seeking to meet contractual obligations). Similarly, when faced with conflict between employer expectations or adhering to National Legislation and Guidelines, the officers reported that they 'decided' to follow locally defined policy. EHE-officers are street level bureaucrats; they do exercise discretion, including decisions to implement redefined EHE-policy. The interviewed officers were influenced by their ongoing affiliation to teacher-practitioners' communities of practice and this was reflected in their opinions, practice preferences, and judgements.

LAs' and officers' implementation of their interpretation of National Statute, as outlined in the EHEGLA (2013,) creates a climate for a 'practice of precedence'. Unchallenged and/or accepted local precedence of practice generates an upward pressure for State strategy to catch up with local policy and practice. Many factors impact on LA and officer policy and practice, issues which are mirrored in risk adverse nature of modern professional practice and transmitted to wider society. Officers lack training in home-education but have extensive Safeguarding Training skewing practice and conflating EHE with welfare. The practice of home-education is problematised, EHE-children are perceived to be at risk of harms: educational, social or welfare, due to their education being outside the school system and professional oversight. Home-education's lack of 'oversight' and professional engagement becomes identified as parents endangering and limiting EHE-childrens' rights and voice. Therefore, to reduce the potential for harms, parents need disempowering and EHE requires increased professional oversight. Calls for increased scrutiny and

powers are indicative of rising distrust of parents driven by populist anxiety but lack an evidentiary basis of independent empirical research.

## **Researcher Recommendations**

This study has identified several issues in the implementation of intended State strategy (Legislation, Case-law and Guidance) and makes several recommendations. These might serve to resolve some of the conflict that arises in the local administration and implementation of EHE State strategy. This might serve to mitigate the breakdown of trust arising from home-educators' negative experiences of ultra vires locally redefined policy administration, implementation and officer practice; with the possibility of increasing engagement

### **Need to observe current Legislation and Guidance:**

LAs and their officers need to adhere to (current or future revised) State strategy (Legislation, Case-law and Guidance). This would circumvent the tendency of LAs and officers to purport to have powers they do not have, or to act outside State policy which 'breaks trust' and only serves to damage relationships with individual home-educators and the wider EHE-community.

### **LAs need to act compliantly and consistently**

LAs need to act not only within Statute but consistently, both within an LA and across all LAs. Individual LAs have significantly different practices in their administration of

State strategy. Whilst some LAs seek to implement in accordance with the EHEGLA (2013), the majority do not: some being markedly unobservant of the EHEGLA.

Within an LA the level of compliance can alter with new staff or local policy directives from external stakeholders e.g. LSCBs. There is a need for a more 'joined up' local administration of EHE, so neighbouring LAs are not approaching EHE in vastly different ways. Overall, this causes a broad mistrust from home-educators and advocates of LAs and their officers, and *vice versa*.

**A legally compliant policy transmitted throughout a LA:** not only to education officers, but to child social-workers, head-teachers and local external stakeholders e.g. health professionals. This will increase general awareness but also to prevent oppressive procedures or referrals, and to engender good practice.

**LAs must provide legally correct information to parents:** LAs must provide legally correct information, reflective of State Legislation, Case-law, and Guidance within their websites and in their documentation. Without accurate information parents cannot make an informed choice on what they must or must not do to comply in respect of their legal duty towards their children as prescribed by S. 7 of the Education Act 1996. Legally correct information would additionally inform parents of the extent of LA and officers', powers, responsibilities, and duties so diminishing the potential for oppressive practices.

**LAs must provide officers with legally compliant EHE job descriptions:**

which are reflective of the extent of LA and officer legal authority and duty towards EHE. Officers need to know the true limits of their role, so that they do not act in ways that can be repressive to home-educators.

**LAs need to provide officers with relevant EHE-training:** there is an absolute need for all EHE-officers to have good, consistent, and legally sound EHE-training and for this training to be updated and refreshed regularly. Such training should cover all aspects of EHE practice, including its differing forms, and should counter the school model of education. It should also address concerns of socialisation, welfare, and legal aspects. Such training would benefit from the involvement of local home-educators or advocates.

**LAs must not use EHE-officers as quasi-child safeguarding officials:**

officers need to understand they have no role beyond a general safeguarding duty placed on all professionals. They should not be put in (or put themselves in) a role that proactively seeks to assess child welfare. It needs to be reinforced that their duty is solely to report any genuine concerns that arise within the normal day-to-day practice and refer these to Children's Social Services.

**LAs and officers need to work with home-educators:** LAs (and officers) must seek local home-educators involvement in drawing up local policy and officer training. LAs and their officers need to work from the presumption that home-



educators are good and caring parents, able to provide a suitable education and life experiences for the children, until and unless there is evidence to the contrary. LAs and officers should not start from a presumption of risk, potentially causing families to be seen a 'guilty until proved otherwise'. This is a negative approach which skews the emphasis of both policy and practice, to the detriment of home-educators and the achievement of good relationships.

### **Government and LAs must unambiguously and proactively consult with home-educators about local and/or national EHE-policy**

- Locally, LAs must involve local home-educators in devising a legally compliant and acceptable local policy (as recommended in EHEGLA, 2013, para. 4.1) and this must inform officer practice.
- Nationally, any movement towards legislative changes, including amendment to national Guidance, must commence from the standpoint of involving home-educators and actively seek and consider their views and concerns.

### **Moving forward: and overriding need for research**

A lack of homogeneity and a perceived inference of risk has made EHE a partisan football. EHE attracts strong opinions, to use the marmite analogy 'it is either loved or hated'. However, much of this societal populist anxiety arises in a lack of understanding and/or supposition about the practice of EHE and home-educators.

As the Literature Review revealed wide-ranging negative pronouncements about EHE

are made, despite the lack of sound evidence and/or independent empirical research. This leads to a distortion or blurring of facts based on claims that lack real substance, evidence, or validity. The relationship between LAs, their officers and home-educators has become fraught: research to confirm facts and look towards solutions would be beneficial before engaging in legislative or policy changes.

### **Areas requiring research**

Including recommendation for areas not examined within the context of this study

**Engagement:** why home-educators are reluctant to engage with authorities and the identification of resolutions?

### **The rise of home-education:**

- Why is EHE on the rise, what factors are at play?
- Why are so many SEN children home-educated – e.g. is it due to failings within or 'off rolling' by schools?

**Safeguarding:** as evidenced in this study there are claims of an enhanced level of safeguarding risk, including home-education being used as a cover for abuse, radicalisation or forced marriage. These claims are, at best, anecdotal due to a lack of research but drive local policies and practices; therefore, there is an urgent need for:

- An intensive study into comparative levels of safeguarding risk for EHE-children, and/or
- A comparative study of EHE safeguarding risk evaluated against their schooled peers.

Such studies need to identify the nature, level and reality or prevalence of any risk.

**Stigmatisation of EHE:** research into the perceptions of stigmatisation of home-education would be a valuable. Such a study could usefully assess the level of fact (or myth) in respect of perceived risks for harm e.g. welfare or lack of socialisation.

**Educational attainment:** as seen in the Literature Review there has been some comparative analysis of EHE attainment research. However, much is from the US and/or is too outdated to be of use, so UK based research would be beneficial. Given that not all EHE-children take GCSE or A' level examinations a comparative attainment analysis would require measures of attainment to be other than just exams. In respect of attainment there is a wide range of comparative markers that could be used, for instance: socio-economic class, age when EHE started, duration, approach used (whether structured education or not) and the outcomes of home-educated adults.

**Longitudinal and/or case studies of EHE child to adult:** the UK would benefit from research reflective of Ray's (1997, 2005, 2013, 2015) US exploration of

'home-schooled' adults. Such UK research could examine various attainments: academic, social, community involvement and their understanding of various issues (politics, maths, world concepts etc).

## **Closing Remarks**

The information presented in this study reveals that all too frequently home-education is portrayed as a problem in need of a solution. The problem ranges from stakeholder and societal concerns that too many children are home educated through to accusations that home education is being used as a cover for neglect, abuse, forced marriage, and radicalisation. These concerns are anecdotal (unsubstantiated assertions which are not backed by evidentially sound academic research,) and the lack of evidence calls the basis of concerns into question. For instance, do they arise from a moral panic where home-educators have become a societal folk devil, or are they indicative of a defensive reaction to increasing numbers of families opting out of the wider societally accepted school-based education system.

Whatever the cause of concern, this study has established that state EHE-strategy detailed within EHEGLA (2013) is often altered by Local Authorities during the process of implementation at the local level. Local Authority policy often appears driven by the most recent presentation of home education in the media, or as a by-product of government and stakeholder reports intended to address another pressing educational or welfare issue into which home education is conflated.

The key contribution of the thesis lies in identifying the range and extent of the lack of homogeneity in EHE-policy implementation. This is revealed in the post code lottery of inconsistent, divergent and/or officious local [LA] administrative procedures and/or individual officers' implementation practices, which have significant and often negative consequences for families. The lack of homogeneity with its roots in stakeholder and societal unease (specifically potential risks from parents') has led to calls for a comprehensive review of EHE and for more robust powers, be it registration, assessment or welfare checks.

This study has evidenced the lack of homogeneity in LAs and officers' implementation of EHE-policy *which has moved from the imperative (obligatory requirements) to one of ultra vires practices and officious intervention in the lives of EHE-families*. Therefore, the legislative duties and responsibilities between State and parents have become disturbed. The failure to implement current policy (as detailed within the EHEGLA, 2013) has caused home-educators to view LAs and officers with suspicion, engendering a climate of mistrust and non-engagement.

The needs of EHE children and the trust of families can only be met if those who exercise authority practice good governance. The detrimental impact to families of poorly conceived and badly executed policy, now or in the future, should not be underestimated by decision makers. Policy decisions which impact home education are all too frequently made without the input of home-educators' experience of the LA service in their area; a national issue recognised by the Education Select

Committee (2013) when it called for an audit of Local Authority performance and the information they publish regarding home education. Six years later and still no audit has been undertaken. Local Authority performance and published information continues to be free from any constructive or productive criticism let alone proper oversight by OFSTED or the DfE. This ongoing omission is felt daily by home-educating families throughout England given that so very few Local Authority areas are compliant with national law and published guidance. This research addresses the gap, highlighting how and why Local Authorities get it wrong, thus providing a sound evidential basis for policy makers to consider before making further decisions on home education policy.

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# APPENDICES

**Appendix 1** - Freedom of Information Request.

**Appendix 2** – Newham, London Borough of, letter to home-educating parent.

**Appendix 3** – Example of LA Job Advertisement and Job Description.

**Appendix 4** – Interview Documents

- Officer letter of Invitation
- EHE-officers and Advocates Information Letter on day of Interview
- Officer Interview Schedule
- Advocate Interview Schedule
- EHE-officers and Advocates Interview CLOSING REMARKS

## APPENDIX 1 - Freedom of Information Request

Dear Sir/Madam

### Freedom of Information request.

I am a doctoral research student Lancaster University, Department of Education Research. I am undertaking research into *“professionalism perceptions of elective home-education: how this impinges on both professional practice and professional relationships with home-educating families.”* The professionals in question are local authority education officers who carry an Elective Home-Education (EHE) caseload. The research has ethical approval from my institution. As part of the research process I am making Freedom of Information Requests to 55 of the 152 English local authorities. I am requesting background information relating to the local authority, teams carrying an EHE caseload, officers with an EHE caseload and EHE children.

I am requesting answers to the following questions; for ease of clarity I have listed the questions under subheadings.

#### **Section 1 - Local Authority: policy and practice**

1. Are the officers with an EHE caseload: employees, self-employed or is the EHE service contracted from outside company or organisation?
2. If contracted from outside the LA please give the name of the company or organisation?
3. Please indicate the local authority’s annual budget for elective home-education?
4. What are the local authority procedures when the authority first becomes aware of a child not on a school roll or a child who has been removed from school roll to be home-educated?
5. If a child has been removed from school roll to be electively home-educated (as defined by Section 7 of the Education Act 1996). Please indicate what team/officer would make initial enquiries e.g. EWO (education welfare officer), CME (children missing education officer) or EHE officer?
  - What would be the nature of on-going contact?

6. Please give details of EHE training provided by the local authority undertaken by each officer with an EHE caseload, either internally or externally?
7. Does the local authority actively work with local home-educators, i.e. by consultation, meetings, workshops? Please give details.

### **Section 2 - Local Authority Teams**

(note, this section is to be answered if officers with an EHE caseload work as part of the team, rather than independently).

8. Please give the title that teams with an EHE caseload are known by?
9. What other work does a team with an EHE caseload do e.g. Children Missing Education (CME), Special Educational Needs (SEN), Gypsy, Roma and Traveller (GRT), excluded pupils?

### **Section 3 - OFFICERS with EHE caseload**

10. How many officers within the LA currently hold an EHE caseload?
11. Please provide the job title of all officers holding an EHE caseload?
12. Please detail any additional caseload an officer holds beside EHE e.g. Children Missing Education, Special Educational Needs, Gypsy, Roma and Traveller?
13. Please provide the previous employment background of education officers with an EHE caseload e.g. teacher, social worker, uniform services?
14. If an officer, with an EHE caseload, has previously worked in teaching did they have ever undertaken the role of school Safeguarding or Child Protection Officer, SENCO, deputy or head teacher?

### **Section 4 - EHE Children**

15. What is the total, current, number of known EHE children within the LA?

16. How many EHE children are from the Gypsy, Roma, and Traveller community?
17. Please provide the current number of EHE children who have Special Educational Needs?
- How many have statements of Special Educational Needs?
18. How many EHE children are 'children in need' (S.17 Children Act, 1989)?
- Or on Child Protection Plans (S.47, Children' Act, 1989)?
19. Please provide the number of EHE children, since 2008, referred by education officers to Children's Social Care (Social Services)?
20. Has a Serious Case Review been undertaken within the authority since 2008, where EHE is a factor in the child's life
- please also give year?

These questions have piloted, successfully, with another local authority. However, if you need any further clarification please do not hesitate to contact me or my Supervisor Dr Jo Warin.

Dr Jo Warin

Department of Educational Research  
Lancaster University, Lancaster, LA1 4YW

Tel: +44 15245 #####

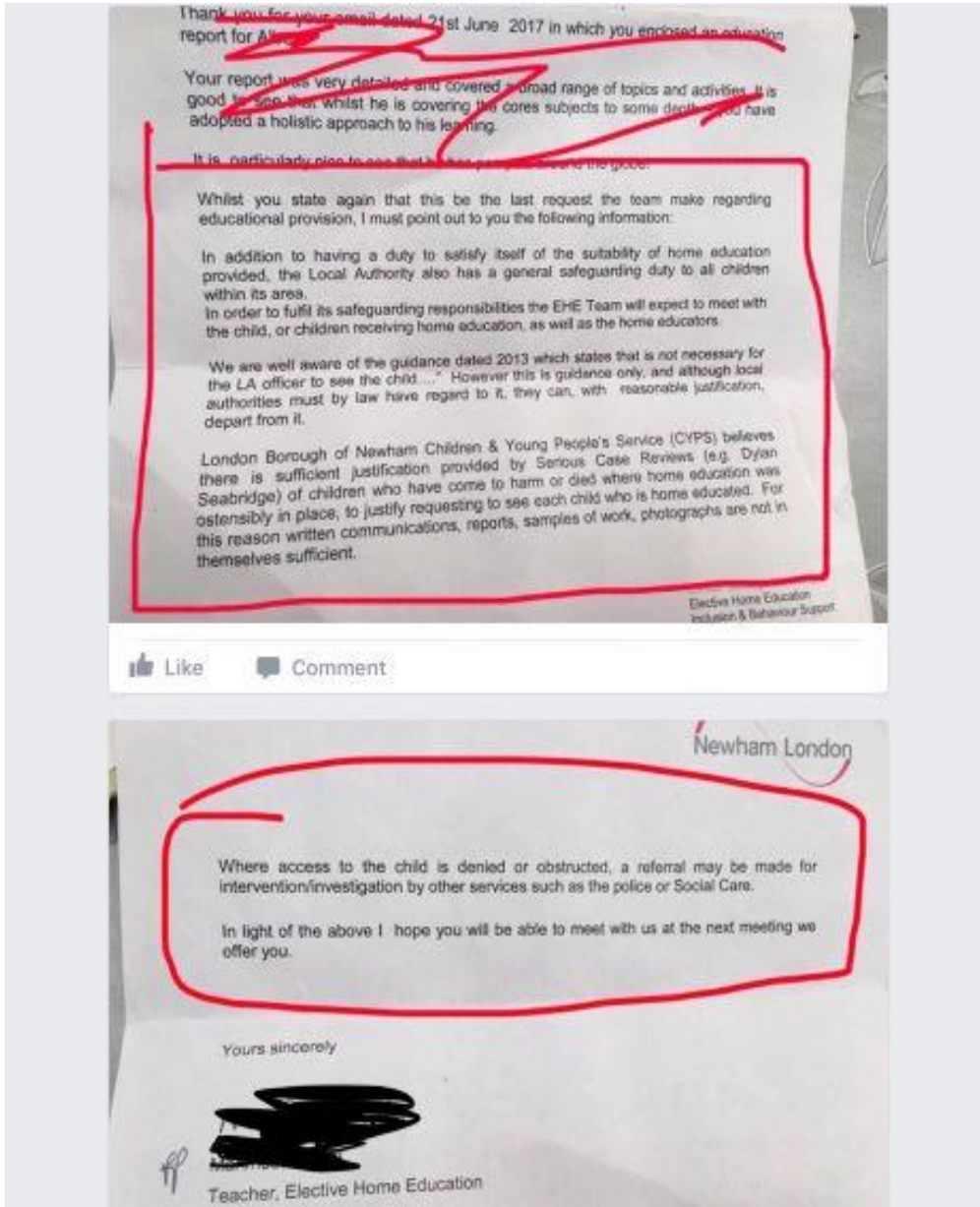
Email: [\\*\\*\\*\\*@lancaster.ac.uk](mailto:****@lancaster.ac.uk)

Yours faithfully,

Fe Mukwamba-Sendall  
BA (Hons), MA, MBASW  
HCPC registration SW9235  
Trustee of Education Otherwise Reg. Charity # 1055120

Department of Educational Research  
Lancaster University, Lancaster, LA1 4YW  
Tel: +44 15245 ##### Mobile: +44 ##### #####  
Email: [f\\*\\*\\*\\*\\*@lancaster.ac.uk](mailto:f*****@lancaster.ac.uk)

APPENDIX 2 – Newham, London Borough of: letter to home-educating parent





## Elective Home Education

### Introduction

Throughout this document the term 'parent or parents' should be taken to include all those with parental responsibility, including guardians and carers.

Parents have a legal responsibility to make sure their children receive a suitable full-time education. They may choose to educate at home rather than at school. Home education occurs when parents choose to assume the responsibility for planning, implementing and evaluating their child's learning, in place of school. It is a serious, long-term commitment. Parents who choose to educate their children at home must assume full financial responsibility, including bearing the cost of any public examinations.

### Legislation

Section 7 of the Education Act 1996 states that: 'The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable:-

- a) to his age, ability and aptitude, and
- b) to any special educational needs he may have, either by regular attendance at school or otherwise.'

Section 437 [1] of the Education Act 1996 places a legal duty on the local authority to take action where it appears that education is 'not efficient and suitable'.

### Information sheet

Newham Local Authority encourages constructive and positive dialogue with parents who wish to home educate their children. The Local Authority recommends that parents wishing to home educate complete and return an "Elective Home Education Child Information Sheet". The information sheet asks parents to outline educational objectives, arrangements for study, proposed resources as well as information on the hours and organisation of learning.

Whilst there is no legal obligation to do so, parents are asked to complete the sheet before meeting with an officer of the authority.

### Meeting with parents

Where the necessary information has been provided, or after a period of 10 days, a meeting will be arranged with the parent alongside a request that the child being home educated is present. This will enable the teacher to obtain both the child's and the parent's views on home education. Although parents are not obliged to cooperate with these visits, if the child is not seen for whatever reason, the Child Missing from Education (CME) Officer will be notified in line with Newham's safeguarding procedures. Other agencies may be then involved as necessary.

The initial meeting will include an assessment of the suitability of the home environment for delivery of the programme proposed by the parent.

### Determining Suitable Education

The factors that Newham Local Authority uses to determine whether home education is suitable are:

- **The home educator's aims and purposes for home education**  
The philosophical and educational basis of each family's choice of home education.
- **The intended programme of study**  
This might include a programme in literacy and numeracy, individual goals, details of materials and resources, methodologies and the opportunities that might be provided for social interaction with other children.
- **Record-keeping**  
This could involve a parent or student diary, weekly timetables, samples of work, test results and photographic records
- **Space to study**  
The arrangements made for a quiet, dedicated space to work with appropriate equipment and resources e.g. internet access

As part of this the Local Authority will consider if the arrangements are efficient for the child.

### Reviews of home education

If Newham Local Authority decides that the home education provided by parents is efficient and suitable, it will seek to review the provision at least annually. New arrangements for home education may be monitored more frequently. Individual instances of home education may also be reviewed more frequently if an officer feels that this is appropriate.

### Preparing for adulthood

From the age of 16 parents should ensure that any child who has been home educated is in receipt of education and training until the age of 18.

### Special Educational Needs and Elective Home Education

Newham Local Authority can name Home Education in a statement of Special Educational Needs or an Education Health and Care (EHC) plan. If the Local Authority agrees to this then a review and appeals process will follow as outlined in the SEN and Disabilities Code of Practice: 0-25 Years.

A parent of a child with a Statement of Special Educational Needs or an EHC plan who is considering elective home education must not withdraw their child from school without agreement from the Local Authority. Requests can be considered at an annual review of the statement or EHC plan.

## **Safeguarding Children**

Where a tutor is employed parents should ensure that appropriate police checks have been made by asking for up to date evidence of clearance from the Disclosure Barring Service (DBS).

Newham adheres to the following guidance as outlined in the Children Act 2004 (Chapter 31, Part 2, Section10):

'A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.'

Where a home-educated child is on a Child Protection Register, Newham Local Authority may query the suitability of home education.

### **Where an adequate education is not taking place**

*If Newham Local Authority feel that an efficient or suitable education is not in place the Local Authority will first seek to address the situation informally with parents.*

*If the situation is not resolved to the satisfaction of the Local Authority a "Notice to Satisfy" will be sent to the parents requiring them to satisfy the Local Authority within the period specified in the notice that the child is receiving such education.*

*If after serving a 'Notice to Satisfy' there is still no evidence of suitable education being provided the Local Authority may then issue a School Attendance Order. Failure to comply with such an order may result in a prosecution for non-attendance at school (Education Act 1996 Sections 437-443).*

*The Local Authority pursues prosecution via a School Attendance Order only as a last resort and when it believes that all reasonable steps have been taken to try to resolve the situation.*

*At any stage following the issue of the Order, parents may present evidence to the Local Authority, or the court, that they are now providing an efficient and suitable education and apply to have the Order revoked.*

*The Local Authority may decide that home education is not suitable or efficient where a student has been referred to Newham's Borough Attendance Panel or to the Youth Offending Team.*

# APPENDIX 3 – Example of LA Job Advertisement Job Description

## Appendix 3 – Example of LA Job Advertisement and Job Description



### NJC Job description

Job title:	Elective Home Education Officer
Directorate:	Children's Services
Section division:	Access and Inclusion Service
Grade:	
Date prepared:	January 2016
Reports to:	Team Leader Access and Inclusion Service

Job purpose:
To track and monitor children living in Central Bedfordshire to identify, receive referrals for and engage with electively home educated (EHE) children and their families. To ensure that Children in Central Bedfordshire receive their legal entitlement to education and to support the effective discharge of related local authority statutory duties.

Main duties and responsibilities: <i>(what are the MAIN deliverables that the jobholder has and how are these achieved?):</i>			
To act on behalf of the local authority to secure children's legal entitlement to education. To liaise with schools and other agencies including social care, health and the police to identify and keep accurate records of children identified as EHE. To undertake casework with families/children where they appear to be CME and work to return them to	<table border="1"> <tr> <th>Management expectations of successful achievement</th> </tr> <tr> <td> <ul style="list-style-type: none"> <li>• positive engagement with other services</li> <li>• children out of education identified</li> <li>• success in returning/re-engaging children in education</li> </ul> </td> </tr> </table>	Management expectations of successful achievement	<ul style="list-style-type: none"> <li>• positive engagement with other services</li> <li>• children out of education identified</li> <li>• success in returning/re-engaging children in education</li> </ul>
Management expectations of successful achievement			
<ul style="list-style-type: none"> <li>• positive engagement with other services</li> <li>• children out of education identified</li> <li>• success in returning/re-engaging children in education</li> </ul>			

education.	
1. To develop relationships with schools and other agencies where there are deficiencies in information sharing and to increase the number of alerts to children where it appears EHE maybe CME.	<ul style="list-style-type: none"> <li>• Profile of CME and a school's responsibilities to be raised</li> <li>• Increased number of referrals for schools and other agencies.</li> </ul>
2. Identify the current educational provision of children who are taken off the roll of CBC schools and alert other Local Authorities where appropriate or to investigate the situation further and instigate appropriate legal interventions.	<ul style="list-style-type: none"> <li>• regular contact and accurate information sharing</li> <li>• effective and accurate tracking of children from/into education</li> </ul>
3. Engage with parents who have chosen to educate their children at home, offering advice and guidance where appropriate and to develop a respectful and supportive relationship with them, although maintaining their understanding of the clear responsibilities and duties of the Local Authority.	<ul style="list-style-type: none"> <li>• Positive feedback from EHE parents and an increased willingness to engage with the LA</li> <li>• Identification of resources and support outside of the LA that EHE parents can be directed towards</li> </ul>
4. Inform the Team Leader Access & Inclusion where it appears that a child is not receiving a suitable education and where further legal action is required to ensure that this happens	<ul style="list-style-type: none"> <li>• Reliable, timely and accurate information presented to Team leader.</li> </ul>
5. Provide evidence for the Team Leader if a School Attendance Order is required and appear as a witness at the Family/Magistrates Court where appropriate.	<ul style="list-style-type: none"> <li>• Evidence compiled in a form that is admissible to court and results in a satisfactory legal outcome.</li> </ul>
6. To develop Training/Awareness Raising resources for professionals related to both CME and EHE children	<ul style="list-style-type: none"> <li>• Training and information is made available for a wide range of professionals</li> </ul>
7. To undertake safe and well visits	<ul style="list-style-type: none"> <li>• Undertake relevant training</li> </ul>

#### Person specification

	Essential Criteria	Desirable Criteria
Qualifications	Teaching Degree/Equivalent or NVQ 4 LDSS (Learning, Development and Support Services for Children, Young People and those who care for them).	Relevant professional qualification e.g. teaching/ social work/ counselling

<b>Relevant Experience</b>	<p>Experience working with children/ young people in a school/social care/social welfare setting. This should include work with statutory school age children and their families</p> <p>Experience in working with other agencies</p>	<p>Experience of working in a school setting</p>
<b>Skills and Abilities</b>	<p>Demonstrate ability to communicate and liaise effectively with pupils, parents, school's senior management and a wide range of professionals.</p> <p>Ability to challenge others in a professional and appropriate manner</p> <p>Knowledge of relevant legislation affecting the work of the Access and Inclusion Service. e.g. Children Act 1989; Education Act 1996; Human Rights Act; Child Employment legislation.; Anti -Social Behaviour Act 2003 and Keeping Children Safe, Counter-Terrorism and Security Act 2015</p> <p>Ability to provide training for staff in schools to raise awareness of CME and EHE issues</p> <p>Ability to work under pressure with effective organisational and time management skills.</p> <p>To demonstrate a good level of IT literacy</p> <p>Effective analytical skills and ability to analyse data</p> <p>Effective assessment skills</p> <p>Ability to write clear reports and effective record keeping skills</p>	<p>Ability to Chair meetings</p> <p>Experience of implementing legal processes/procedures relating to education law</p> <p>Experience of using a range of media in preparation for and use in presentations</p> <p>Use of Excel and other Service Databases</p> <p>Experience of working with both families and professionals who maybe challenging</p>
<b>Behaviours</b>	<p>Self-motivated and ability to work without direct supervision with an awareness of when to refer for advice.</p> <p>Committed to ongoing professional self-development, including necessary training.</p> <p>Committed to a child's right to access education</p> <p>Committed to hearing the child</p> <p>Able to travel across the authority as required and to undertake home visits: Valid driving licence</p>	

	<p>An understanding and commitment to equality principles and practices.</p> <p>Willingness to work flexible hours</p>
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<p><b>Work Related Travel</b> (Please indicate as appropriate)</p>	<p><input checked="" type="checkbox"/> Valid driving licence and use of car insured for business purposes, mileage allowance</p>
<p><b>Health &amp; Safety Risk Assessment</b> (Please indicate which are applicable)</p>	<p><input type="checkbox"/> Manual Handling activities</p> <p><input checked="" type="checkbox"/> Regular exposure to mental pressures and demands</p> <p><input checked="" type="checkbox"/> Visual Display Equipment – regular use</p> <p><input type="checkbox"/> Exposure to substances hazard to health</p> <p><input type="checkbox"/> Exposure to infection</p> <p><input checked="" type="checkbox"/> Risk of verbal abuse</p> <p><input checked="" type="checkbox"/> Risk of physical assault</p> <p><input checked="" type="checkbox"/> Working alone</p> <p><input checked="" type="checkbox"/> Adverse environmental conditions</p> <p><input type="checkbox"/> Use of dangerous machinery</p> <p><input type="checkbox"/> Driving PSV/HGV vehicles</p>

## APPENDIX 4 - Interview letters and interview schedule

### Officer letter of Invitation

#### Appendix 4 – Interview Documents

#### Officer letter of Invitation

Our Ref: FEM1/JW



Fe Mukwamba-Sendall  
Department of Educational Research  
Lancaster University, Lancaster, LA1 4YW  
Tel: +44 15245 ##### Mobile: +44 #####  
Email: [f.mukwamba-sendall1@lancaster.ac.uk](mailto:f.mukwamba-sendall1@lancaster.ac.uk)

23<sup>rd</sup> June 2014

Dear,

I am writing invite education officers with an elective home education (EHE) caseload to take part in PhD research into officer perceptions of EHE? Details of the study can be found below. If you are willing to take part please contact me by email or telephone to arrange a mutually agreeable time. If you are unable to participate but know an appropriate colleague who might be interested I would be grateful if you would pass this invitation to them.

#### WHO AM I

I am a PhD student at the University of Lancaster within the Department of Educational Research. I am a registered Social Worker with experience of child protection work. I am also a retired home educator and Trustee of the home education charity Education Otherwise.

#### WHY SHOULD I CONTRIBUTE

Although research into elective home education has been conducted, rarely has consideration been given to the voice of the education officers who are tasked with working with home



educators. This research seeks to understand the perceptions of education officers. I hope you would find this to be an interesting experience and one which would give you an opportunity for self-reflection. If you agree to be interviewed I can provide you with a letter thanking you for your contribution which can be used as evidence for CPD purposes.

#### **BACKGROUND TO THE STUDY**

My PhD research aims to understand your perceptions of home-education as the implementers of EHE policy. Examining factors which influence your professional practice with home educating families

I have ethical approval for this research from the University of Lancaster. The research is supervised by Dr Jo Warin.

#### **WHAT IS INVOLVED?**

The interviews will be around 90 minutes in length and can happen a place that is most convenient and comfortable for you, for example, in your office or at an alternative local venue.

Whilst a face to face interview is preferred if this is not convenient, due to time or distance I can arrange the interview by telephone or Skype. I will need to audio record your interview for transcription purposes and seek your permission for this.

#### **WHAT HAPPENS AFTER THE INTERVIEW?**

The recorded interviews will be typed up verbatim for analysis purposes. It is important to make you aware that in the write-up some direct quotes from your interview may be used. However, all personal details, including the local authority will be anonymised to ensure it is not possible for those reading the analysis to identify you or your employer. All data will be held in the strictest confidence and stored securely.

#### **RIGHT TO WITHDRAW**

You will have the right to withdraw from the study without having to explain your reasons at any time and up until one month after your interview. If having completed the interview you decide that you wish to remove yourself from the research, all data will be destroyed and not included in the study.

#### **HOW DO I TAKE PART?**

If you are interested in taking part in the study please email me at [f.mukwamba-sendall1@lancaster.ac.uk](mailto:f.mukwamba-sendall1@lancaster.ac.uk). If, at any time, you would like to know more about the study or have any further questions please do not hesitate to contact me.

Should you have any further queries or complaint, please feel free to contact my supervisor

Dr Jo Warin  
Department of Educational Research  
Lancaster University, Lancaster, LA1 4YW  
Tel: +44 15245 #####  
Email: [j.warin@lancaster.ac.uk](mailto:j.warin@lancaster.ac.uk)

#### **FINALLY**

If you agree to take part in the research I will provide you with a thank you letter which can be used as evidence of CPD purposes.

Please contact me if you have any questions or concerns about taking part in the study which I would be happy to discuss with you. I would be extremely grateful if you would acknowledge this letter even if only to decline; for monitoring purposes a brief reason, while not necessary would be informative.

Yours faithfully

Fe Mukwamba-Sendall

BA (Hons), MA, MBASW  
HCPC registration SW9235

## Day on Interview Letter

### EHE-officers and Advocates Information Letter on day of Interview

Fe Mukwamba-Sendall  
Department of Educational Research  
Lancaster University, Lancaster, LA1 4YW  
Tel: +44 15245 ##### Mobile: +44 ##### #####  
Email: [f.mukwamba-sendall1@lancaster.ac.uk](mailto:f.mukwamba-sendall1@lancaster.ac.uk)

Name of interviewee:

LA/Advocate

LA:

Face-to-face/telephone/Skype

Date:

time: started

time: finished

Hello, my name is Fe Mukwamba-Sendall and I am a research student from Lancaster University. I would like to thank you for agreeing to talk to me; the interview should take no more than two hours; can I just confirm this is ok with you? Also, if you need to stop for a break at any time let me know. (if telephone call: check it is still a good time for them and wait for a response). The interview will be recorded be for transcription purposes only and will not be shared with a third party. This is so that I can get an accurate record of the interview and can later transcribe conversation. If you wish I can offer you the opportunity to check for inaccuracies, subject to a two-week period for corrections. The data collected from this interview will be used solely for the purpose of this study and will be anonymised and collated so neither you nor your authority will be identifiable.

Can I remind you that you have the right to withdraw from the study without having to explain your reasons up until one month after this interview? If having completed the interview you decide that you wish to remove yourself from the research, all data will be destroyed and not included in the study.

Because of the way the interview schedule is constructed it is possible that I might appear to be asking the same question in different ways. Please bear with me; it is not to trick you but to help me in transcribing.

Can I confirm you are still happy to be interviewed? Yes/No

Would like a copy of the interview once I have transcribed it? Yes/No

Signature agreeing to interview:

Copy given: Yes/No

## Officer Interview Schedule

### Questions Specific to interviewee

1. **Please could you state your current job title, and the length of time you've worked in this role?**
2. **What is your employment or training background?**
  - What are your qualifications?
  - If you have ever worked in a school what was your role?
  - HOW LONG WHERE YOU EMPLOYED as ...
  - What additional roles did you hold e.g. SENCO ...
3. **Can you describe your current job role (EHE-officer)?**
  - Do you deal with other categories of children besides EHE?
4. **Are you attached to an EHE-team or a MDT**
  - If MDT what is the officer-role make-up of the team
5. **Can you tell me what training you have had in respect of EHE?**
  - What did it cover?
6. **What other training have you had?**
  - What did it cover?
  - Was EHE included?
7. **Do you have regular contact with other EHE-officers, with the LA, regionally or nationally?**
  - What form does this take?
8. **How do you specifically go about developing a rapport with home-educated families as a successful relationship with families often succeeds or fails on the personal approach of the officer?**

### EHE children

9. **Do you think the number of EHE-children known to your LA is true reflection of the number of children who are home-educated?**
  - Do you think it should be addressed and why?

**10. Why do you think some electively home-educating families choose not to make themselves known to the local authority?**

- What reasons have EHE-families given you for not wanting contact with the LA?
- Would you like to see families legally required to notify the LA?
- Would you like to see a system of registration?
- Do you think the ongoing integration of IT systems within LAs will inevitably result in all children becoming known? e.g. the merging of HV and School Nurse databases.

**Educational Provision**

**11. Do you feel it is your role to be satisfied that a child is receiving a suitable education?**

**12. Have you come across situations where you feel the education provided is not 'suitable' and how do you respond?**

- Can you tell me what factors would make you concerned that an EHE-child may not be receiving an education?
- Please could you provide a brief outline of the approach you use to ensure/judge this?
- What evidence would you want or would accept to verify an EHE-child is receiving a suitable education?
- What is your opinion of educational philosophy or report submitted by the parents as evidence?

**13. How do you distinguish between a child being EHE and a child receiving no education(CME)?**

**Visits and Monitoring**

**14. Do you feel that it is necessary to undertake home visits as part of your role?**

- How often do you/LA feel it is necessary to visit and or conduct a review?
- What would be your response if a family refused a visit and/ or to meet with you?
- Are you aware of the local SCB giving any direction re: visits?

**15. Do you feel there should be a duty to monitor the quality of the education being provided?**

- Are there any other monitoring procedures you would like to see implemented, what would they be?

16. **Would you like to see EHE-children?**

- **Having to follow a prescribed curriculum?**

17. **Offered regular health monitoring/vaccinations as provided within schools?**

#### **PARENTS/carers**

18. **Thinking of EHE-parents:**

- Do you think parents have the ability or expertise to home-educate their children?
- Do you think that an education conducted by parents can be successful?
- *Do you think that education should be left to the professionals?*
- Have you come across situations where you have been concerned about the EHE-parent's motives and/or abilities? How have you handled this?

#### **SOCIALISATION**

19. **Concerns are often raised about EHE- children missing out of the socialisation aspect of schooling.**

**What is your opinion?**

- Have you come across children where you feel this is an issue?
- How have you handled this?

#### **LEGISLATION/Guidelines/Policy**

20. **What is your overall view about the current legislation and national guidelines regarding elective home-education?**

- Do you think the existing elective home-education legislation and guidelines 'balance' the rights and duties of the parent while being sufficient to protect the rights of the child to an education?
- How does the child's voice factor in this?
  - Are you able to take note of that voice?
  - *What would enable you to take note of the child's voice?*
- If you think current legislation and guidelines are not sufficient what additional powers do think are needed?

21. **In respect of your LAs published policies and guidelines ....**

- Have these been formulated in consultation with local home-educators?
- Are they reviewed regularly

**22. What is the LAs policy when it becomes aware that a child is not on the school role?**

**23. Once a child is identified as EHE what is the LAs procedure? e.g. send out a letter, with forms and/or appointment for a visit. Call by and leave a card**

- Do you try and visit the family?

#### **SAFEGUARDING**

**24. Concern has been expressed about the EHE-child being at increased risk of possible neglect or abuse. What is your opinion on this?**

- Do you feel an electively home-educated child is any more prone to abuse and or neglect than a child within school? If so why?
- Have you had any experiences where you have felt an electively home-educated child was at risk?
- Do you think home-education a risk factor in that case?
- was the child already known to services as possibly or definitely being at risk when you became aware of them?

**25. Can you provide a brief overview of situations, behaviours, or activities that would cause you safeguarding concerns?**

- If so what action would you take if you felt the child was at risk?
- Do you feel that you should have the authority to see an electively home-educated child, so as to monitor/assess the child for child protection or safeguarding reasons?

#### **Advocate Interview Schedule**

- 1. Please could you state your own home educator background: e.g. how long, number of children etc.**
  - 2. What is/was your employment or training background?**
  - 3. Please could you describe your advocacy roles, or previous roles, and the length of time you've worked in these roles?**
- What would you say the main issues and concerns are that you deal with?

4. **What is your overall view about the current legislation and national guidelines regarding elective home-education, is it sufficient?**
  5. **LAs, officer and others have concerns exiting Statute ability to balance of rights and duties of the parents without subsuming the rights of the child and concerns about the child's voice not being heard within EHE. What are your thoughts?**
  6. **What are your views on calls for changes in EHE legislations and/or guidelines, e.g. compulsory:**
    - notification or registration,
    - home visits and seeing the child,
    - monitoring and assessment of the suitability of education.
1. **What is your overall view and experience of LA and officer policies and practices?**
  2. **How do you think local authorities should fulfil their duty to identify all children in their area who are not receiving an education?**
    - How do you think officers should first approach families i.e. what would be appropriate or best practice?
    - What is your opinion of local authorities who say they need to maintain annual contact with home educating families?
  3. **Why do you think some families choose not to make themselves known to local authorities or reject further contact?**
  4. **What is your opinion of the job titles given to EHE-teams and/or officers and do you think these titles can affect the way they actually practice and how they see their role or affect how home educators themselves see the officer?**
  5. **Overall what is your view of LA administration and officer practice towards home-educators?**
  6. **re there any particular bad policy and/or practices you hear of time and time again, are there common threats that keep coming up?**
    - How do you think these could be resolved?
  7. **Many EHE-officers come from a teaching background, what is your view?**
    - **EHE training:** do you think that officers get adequate and appropriate training on EHE once they are appointed to that role: e.g. on legislation, guidelines, nature and practice of home-education, the various forms it can take?
    - **Safeguarding training:** nearly all officers get annual training in safeguarding and now Prevent. How do you think this could impact on officer practice?
    - **Conflation:** do you find that local authorities and their officers conflate home-education and welfare?
      - how can it be remedied?
    - Is there confusion or conflation in respect of an EHE-child versus a child missing education?
  8. **Cause for concern:** what is your understanding of LAs, officers and 'concerned others' anxiety in respect of EHE e.g.
    - unknown children



- Issue of socialisation and isolation
- quality of educational provision
- Welfare, and risk/cover for 'harms'

- Do you think home-education can ever be a cause for concern, and what circumstances?

**9. Do you think the powers as currently exist are sufficient to deal with any welfare concerns?**

**10. Are you aware SCRs where EHE was a factor in the child's life?**

- And any recommendations made in respect of elective home-education e.g. calls for safe and well visits, monitoring of education?
- Some LSCB have directed LA to refer home-educated children to Children Social Services if parents deny home visits and/or access to the child. What is your opinion of this?

**11. Do you think the current status quo in relation to home-education will be allowed to continue?**

## Closing Remarks to both officers and advocates.

### EHE-officers and Advocates Interview CLOSING REMARKS

Thank you very much for speaking with me. I remind you that the data collected from this interview will be used solely for this study. The data will be anonymised so no identifying information will be included in the thesis. You have the right to withdraw from the study without having to explain your reasons up until one month after the interview . If having completed the interview you decide that you wish to remove yourself from the research, all data will be destroyed and not included in the study.

Do you have any questions?

Any concerns, you have my contact details ...

