
DEPARTMENT FOR EDUCATION CONSULTATION: OUT-OF-SCHOOL SETTINGS: VOLUNTARY SAFEGUARDING CODE OF PRACTICE

Response from Humanists UK, February 2019

ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 85,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We are an active member of many organisations working on education and children's rights. These include the Children's Rights Alliance for England (CRAE), the PSHE Association, the Sex Education Forum, and the Religious Education Council for England and Wales (REC), of which our Chief Executive is the Treasurer. We provide materials, resources, and advice to a range of education stakeholders including parents, governors, students, teachers, and academics.

We lead the national campaign for action on unregistered religious schools and work closely with former pupils of such settings, as well as current members of closed religious communities, to highlight their experiences and provide evidence to the authorities. We are motivated to do so because we recognise that children have a right to education should be able to form their own opinions on matters of religion and belief. Further, as the UN Convention on the Rights of the Child states, their upbringing should prepare them for 'responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups'.

Our work in this area includes through our whistleblowing website <https://faithschoolersanonymous.uk/> and through our apostate support programme Faith to Faithless. Our work has generated significant media coverage on this issue, including features on *Newsnight* and *BBC News at Six and Ten*. This coverage prompted the creation of Ofsted's unregistered schools team; we were the first external group to meet with that team, and the first to introduce them to pupils of such schools. It also prompted Hackney Council's own review of the issues involved. This work has led us to conclude that the law needs to change before these schools can be shut down.

CONSULTATION QUESTIONS ON THE CODE FOR PROVIDERS

1. Overall, is the layout of the code clear and easy to follow? If no, please say what is unclear and how it could be improved.

a. Yes

b. No

c. I don't know

Comments:

The document is set out in a reasonably clear manner and is split into intuitively organised sections on topics that ought to be of concern to all providers of out-of-school settings (OOSS). However, it seems to us that the most serious problems surrounding OOSS are the way such settings are used as a cover for illegal religious schools - predominantly yeshivas catering to the Charedi Jewish community, and some Islamic madrassas - and so our responses will largely focus on the extent to which the code is likely to help minimise this problem.

From this perspective, we should say from the start that any voluntary code of practice for out-of-school settings cannot hope to address the illegal schools problem, and worse than that it may potentially be used by some such providers to attempt to provide a veneer of legitimacy for their bad practice. In that sense the code could at worst be counter-productive. This overriding issue sits above all our other comments. It is something we return to in our response to questions 9 and 12 and in the interim we will simply respond to each question in their own terms.

From this perspective we are also concerned that the code sacrifices rather too much depth of content in order to preserve a simplified layout. The information provided within the text of the code amounts to little more than a basic introduction to each of the key issues: health and safety, safeguarding, staff suitability, and governance (we make no comment on financial management as this does not fall within our main areas of expertise). And, while the draft document includes a wide range of links to relevant legislation and resources, it offers only very general guidance on application or implementation (for example, while explicit reference is made to health and safety legislation, readers wishing to understand their duties on the issue are merely directed to a list of health and safety regulation leaflets on the HSE website). We fear that this lack of depth leaves providers to navigate their own way through quite difficult terrain, thus opening the way to error and misinterpretation.

This would be bad enough in cases where errors in health and safety or safeguarding occurred as the result of genuine mistakes. However, because the settings about which we are primarily concerned often operate by consciously exploiting loopholes between the independent, home, and supplementary education sectors, in these cases the code risks helping to give a veneer of legitimacy to bad practice by leaving providers too much leeway to interpret how regulations and good practice might be applied to the settings they operate.

Further, while the code claims to draw a clear distinction between the existing legal and regulatory requirements with which providers must comply and (non-compulsory) areas of best practice, this is not always the case. The code often states what providers 'should' or 'must' do, but it doesn't present these instructions in a manner which makes it obvious that, given the voluntary nature of the overarching code, these aspects are legally binding; e.g. by setting out

these basic duties in a clearly labelled box or bullet pointed list (like the one at the end of each section).

What's more, the document often uses legal language which, without additional explanation, the untrained reader may interpret as considerably more tentative than intended (e.g. 'you are *likely to be* legally responsible for taking *reasonable care* to ensure the environment is *reasonably safe*...'). This is something which could be remedied by providing more examples (e.g. regarding what *reasonableness* might mean in the context of various OOSS).

2. Is the code of practice written in an accessible way that out of school setting providers will be able to use? If no, what can be changed about the code to make it more accessible?

- a. Yes
- b. No**
- c. I don't know

Comments:

The language used in the code is clear and accessible but, as noted in our other responses, it is not accessible in the sense of giving providers all the information they need in a clear format and in one place. This lack of necessary substantive content threatens to undermine the understanding of providers.

3. Are the five sections set out in the code of practice (health and safety; safeguarding and child protection - including online and digital safety; suitability of staff; governance; and finance) relevant to out-of-school setting providers? Please add which areas are most useful and additional areas the code should cover.

- a. Yes**
- b. No
- c. I don't know

Comments:

In our view, the five key sections deal with content that is both necessary and appropriate for OOSS providers seeking to establish safe settings in which the welfare of children is paramount. We also welcome the fact that the section entitled 'Who is this publication for?' explicitly seeks to draw attention to the difference between OOSS and illegal schools.

Nevertheless, we do think that the paragraph on illegal schools needs to be expanded (and possibly added to a standalone box/ break out quote) to make it clear that, while full-time provision is not currently defined by law, DfE guidance generally considers 'an institution to be providing full-time education if it is

intended to provide, or does provide, all, or substantially all, of a child's education.¹

While the existing section includes (in parenthesis) a brief explanation to the effect that OOSS cannot operate on a full-time basis because to allow this would prevent the children educated in such settings 'from attending a properly registered school,' (p.4) the lack of a legal definition is currently noted in a footnote in a way that makes it appear as if there is considerably more room for interpretation than there is. The explanation of how the DfE interprets and enforces the law on these matters must be extremely clear so as to ensure that all providers are aware of how the distinction is drawn. It should also be made clear that this is an area the DfE is currently reviewing, with new legislation expected this year.

In addition, the document notes both that 'some OOSS are run part-time during school hours to help meet the needs of those in home education' (p.4) and later (on p.5) that, 'parents (including guardians and foster carers) who have elected to home educate their children, would not be considered to be an OOSS provider for the purpose of [the] code' and 'may wish to refer instead to the DfE departmental guidance for parents on elective home education' to find out more about their specific responsibilities in this regard. As with illegal schools, we welcome the fact that information on the boundaries between OOSS and home education has been included. However, once again, we are concerned that there is insufficient detail and clarity to ensure that providers who - accidentally or willfully - fail to pick up on the distinction are made sufficiently aware of the different legal responsibilities pertaining to each type of setting. Indeed, the current document doesn't even provide a link to the DfE guidance it references. Since both illegal schools and parents who are complicit in the operation of those schools may use the claim that they are elective home educators as a cover for their activities,² it is vitally important that the legislation is easily accessible in both the code and the accompanying guide for parents.

4. Does Section 1 (health and safety) set out clearly what out-of-school setting providers should do to keep children attending their settings safe from harmful practices, which could impact their physical or mental health, development or safety? If no, please say what additional guidance is needed in this section.

- a. Yes
- b. No**
- c. I don't know

Comments:

As outlined in our response to question 1, in its present form, the code is insufficiently detailed to properly ensure that all OOSS comply with their most

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/492259/Registration_of_independent_schools.pdf p.5

² As is frequently our experience with respect to the illegal schools in Stamford Hill, and was the case with the first of these schools to be successfully prosecuted, the Al-Istiqamah Learning Centre, Ealing (see: <https://www.bbc.co.uk/news/education-45959283>).

basic health and safety duties. The document includes a list of actions providers should take to make sure the environment in which they conduct their activities is 'suitable'. However, the list is extremely general and omits content which, whilst it may seem obvious to some, on the basis of our knowledge of the cramped, unclean and thoroughly inappropriate settings in which some yeshivas have been discovered to operate,³ must be explicitly stated rather than left to chance. At the very least, this content should include the stipulation that OOSS adhere to regulations regarding the maximum capacities of classrooms, have adequate ventilation, and adopt basic hygiene practices (particularly in areas where food is handled).

Further, the question above explicitly asks about whether the code clearly explains what setting providers ought to do to prevent harms that may impact upon physical *and* mental health. But the latter is not mentioned at all in Section 1 of the document. Indeed, OOSS providers will be responsible for ensuring that the activities they provide do not impact negatively upon the children and young people in their care, and are very likely to encounter mental health issues in at least some of the children they work with. But in spite of this fact, the only real reference to mental health appears in Section 2 (discussed below) where it is linked solely to abuse and injury. In our view this should be rectified, ideally by consulting with experts on child and adolescent mental health and adding a specific section on responsibilities and good practice in this area.

5. Does Section 2 (safeguarding and child protection, including online and digital safety) set out clearly what out-of-school settings providers should do to help ensure children's wellbeing is comprehensively addressed? If no, please say what additional guidance is needed in this section.

- a. Yes
- b. No**
- c. I don't know

Comments:

Section 2 contains a variety of information that will assist providers to begin to think about the wellbeing of the children who attend their OOSS. It is particularly good to see the inclusion of sections on peer on peer abuse, online safety, and radicalisation alongside the suggestion that providers give some attention to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) when drawing up their child protection policies. Nevertheless, akin to the rest of the document, the section is insufficiently clear about what constitutes a statutory duty and what constitutes best practice, and it offers little more than a starting point from which to consider these hugely important issues. For this reason we think it unlikely that providers will be able to adequately satisfy their duties by merely reading and following to the letter what is laid out here.

Of most concern is the fact that, while the possible manifestations of harm that may arise from peer on peer abuse and online are listed in a reasonable degree of

³ See e.g. <https://www.bbc.co.uk/news/uk-43126598>

detail, there is no such list pertaining to staff interactions with children (save for one reference to 'corporal and emotional punishment' in the 'questions a parent or carer may ask you' section on p.20). This must be altered to make it clear that physical punishment is not to be tolerated in any OOSS and to ensure that all staff members have a basic understanding of the difference between harmful and appropriate behaviour towards children in these environments.

6. Does Section 3 (suitability of staff and volunteers) set out clearly what procedures out-of-school settings providers should undertake when hiring and maintaining staff and volunteers? If no, please say what additional guidance is needed in this section.

- a. Yes
- b. No**
- c. I don't know

Comments:

While this section sets out the basic legal duties incumbent upon OOSS when employing staff, it says very little about suitability for working with children and young people in any sort of a broader sense. Instead the focus is on the DBS check, taking up of references, and checking immigration status (the latter of which currently occupies more space in the code than mental health, what constitutes physical or psychological harm, and fire safety). Although we agree that it is important to outline these basic legal duties, it seems peculiar that, given the voluntary nature of the code, there is no attempt to suggest a slightly more expansive set of expectations that OOSS providers might consider signing up to (similar to those governing the personal and professional conduct of teachers⁴ although perhaps, given the part-time nature of OOSS somewhat less rigorous).

7. Does Section 4 (governance) set out clearly what procedures out-of-school settings providers should undertake to help ensure strong governance of their setting? If no, please say what additional guidance is needed in this section.

- a. Yes
- b. No**
- c. I don't know

Comments:

While governance of OOSS does not fall within our area of expertise, we are concerned that the sentence stipulating that charity law includes the legal requirements pertaining to the safeguarding of at risk groups is insufficiently clear. These expectations should be listed in bullet-point format so that providers are made aware that charitable status will be withdrawn in cases where these basic standards are not met.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665522/Teachers_standard_information.pdf

8. Does section 5 (finance) set out clearly what procedures out-of-school settings providers should undertake to help ensure strong financial controls in their setting? If no, please say what additional guidance is needed in this section.

- a. Yes
- b. No
- c. I don't know

Comments:

No comment - this falls outside of our area of expertise.

9. To what extent will this code help providers deliver safeguarding in their setting?

Comments:

In the 'background and summary of responses' section of the call for evidence on OOSS conducted November 2015 to January 2016, it is noted that:

'Whilst there are many existing legal powers already in place to protect children in these settings, the lack of specific regulation for, and coordinated oversight of, out-of-school settings means there are concerns that children attending them may be more vulnerable to the risk of extremism and exposure to other forms of harmful practice.'⁵

In that call for evidence, the DfE proposed tighter controls on OOSS including a local authority register of settings providing 'intensive education' (defined as more than 6-8 hours per week), the requirement for the proprietors of such settings to provide their own details, plus information about the location(s), education offer and number of children who regularly attend, and a system of inspection.

Unfortunately, as the result of the responses to this consultation - in particular, a backlash from the major churches in spite of the fact that the proposals were specifically designed to avoid regulating Sunday schools⁶ - the Government decided not to proceed with the proposed model, but to legislate on a piecemeal basis 'where gaps in existing powers are identified' and to introduce a voluntary code of practice to 'set out clear standards for providers'.⁷

While we welcome additional legislation - particularly the provisions pertaining to greater powers for Ofsted to inspect and close illegal schools highlighted in the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698250/Out-of-school_education_settings-Report_on_the_call_for_evidence.pdf p.3

⁶ See e.g.

<https://humanism.org.uk/2017/12/08/archbishop-of-canterbury-admits-to-forcing-the-prime-minister-to-abandon-crackdown-on-illegal-religious-schools/>

⁷ p.19

recently published Integrated Communities Strategy Action Plan⁸ - we think this decision is to be regretted. A system of registration linked, where necessary, to some kind of inspection regime is the only way to ensure that OOSS are fully compliant with existing laws and regulations. By its very nature, a voluntary code of practice simply cannot replace such a system of oversight and, particularly in its current form, may prove actively harmful in cases where providers claim to be code compliant but, in fact, fail to comply with their safeguarding or other duties.

For this reason, unless at the very least it is fully amended, we think the code risks having a detrimental effect on the likelihood that OOSS providers will deliver good safeguarding in their settings.

10. What methods and channels would be most effective in raising awareness of the code among out-of-school settings providers?

No response.

11. What would be the most effective way of helping to ensure that the code is taken up by providers and that out-of-school settings meet the standards?

In the event that the substantive content of the code is improved to the degree highlighted in our earlier answers, the most effective way of ensuring that providers adopt the code would be to make it compulsory. Failing this, we would suggest that code-compliant settings ought to be able to gain particular advantages over other OOSS (perhaps in terms of appearing in an accredited directory or receiving additional funding and support). However, in order to avoid the problem of accrediting bad practice, these rewards should only be offered to settings that are prepared to open themselves up to registration and inspection.

12. Do you have any other comments on the providers' code of practice?

As previously mentioned, the code's overall usefulness is fundamentally stymied its voluntary nature. At best this means it will not achieve what it sets out to achieve and at worst it might give a kitemark to schools and other settings that are operating illegally. It is also in no way a substitute for legislative steps to shut down illegal schools. Ofsted, the Office of the Children's Commissioner, and Hackney Council are all clear that such legislation is needed, because without it they do not have sufficient powers to inspect or shut down such settings. We agree with them. There clearly is a loophole in the law, focused on the definition of what is an independent school, that these settings are exploiting. Such legislation must be brought in as a matter of urgency and this code can in no way be used to argue that it is not needed.

With that said, in its current state the code also fails on its own terms. The content must be considerably improved if it is to be fit for purpose even for those who are willing to sign up. And it must be linked to some kind of external accreditation process if it is to avoid providing a cover for practitioners who are actively failing to deliver on their safeguarding responsibilities.

CONSULTATION QUESTIONS ON THE GUIDANCE FOR PARENTS AND CARERS

13. Are the questions and example answers for parents clear and easy to understand? If no, please say what is unclear.

- a. Yes
- b. No**
- c. I don't know

Comments:

The language used in the document is extremely accessible and easy to follow. However (and as discussed in our response to question 14 below) we are concerned that this has been achieved by sacrificing content and the document is therefore not accessible in the sense of giving parents all the information they need in a clear format and in one place. This threatens to undermine the understanding of parents. In our view, the questions should be an appendix to a more substantive document similar (though not identical to) the code for providers.

14. Are the questions and example answers for parents and carers right and sufficient? If no, please say what further questions and answers should be included and/or what you would change about the current questions and answers.

- a. Yes
- b. No**
- c. I don't know

Comments:

Although the questions featured will act as a starting point for parents choosing an OOSS, they are nowhere near sufficient. For example, while the failure to provide a health and safety policy is listed as a 'red flag', there are no questions explicitly regarding health and safety, fire safety, hygiene, behaviour management (including sanctions), etc. The document should include questions pertaining to all of the important information featured in the code for providers.

15. Is the guidance presented in an accessible way that parents and carers will be able to use? If no, what can be changed about the guidance to make it more accessible?

- a. Yes
- b. No**
- c. I don't know

Comments:

See response to question 13.

16. To what extent will the guidance help parents' and carers' decision making about which OOSS they choose for their children?

In its current form, the guidance is not sufficient to help parents make a fully informed decision about the OOSS they choose for their children. What's more, although it is good that the document features a way for parents who are concerned about a setting that they have visited to report their observations, it seems odd that the DfE has entirely outsourced this responsibility to the NSPCC. It also reflects the fundamental lack of regulation of out-of-school settings. The DfE should be collecting this information to ensure better, more joined up oversight of out-of-school settings.

17. What methods and channels would be most effective in raising awareness of the guidance among parents and carers?

Via letters to schools and other education providers, as well as through OOSS themselves. As noted in our responses to the questions on the code for providers, if code-compliant settings were externally accredited, this could be linked to a listing in a directory and this could be distributed to all parents via schools alongside the (improved) guidance.

18. Do you have any other comments on the guidance for parents and carers?

It is good to see that, like the code for providers, the guidance for parents explicitly mentions illegal schools and the distinction between the (part-time) education offered by OOSS and what would be considered a school. However, in common with the way this is presented in the former document, this currently lacks sufficient detail to ensure that parents are fully aware of the law on these matters (see response to question 3).

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