Position statement

This position statement sets out the policy of the London Borough of Croydon in respect of the extent, and limits of, its obligations, to provide education to children and young people not otherwise receiving it.

This note should be read in conjunction with the London Borough of Croydon's published policy statements, most obviously *Educating children & young people unable to attend school due to medical or health needs Section 19 of the Education Act 1996 dated September 2020*.

As in the case of all local authorities in England, the London Borough of Croydon is subject to a duty pursuant to s.19 Education Act 1996[1] to make arrangements for the provision of suitable education who may not be receiving it for a number by reason of illness, exclusion from school or otherwise.

This duty is, by its very nature, a fallback position to ensure that children and young people are not deprived of education as a bottom line.

The ultimate duty under the Education Act 1996 to cause children of compulsory school age to receive efficient suitable full-time education is on the children's parents. That position is set out in statute pursuant to s.7 Education Act 1996[2].

Schools also have a number of statutory duties, including, most obviously, a duty to make arrangements for supporting pupils at the school with medical conditions pursuant to s.100 Children and Families Act 2014[3].

The London Borough of Croydon expects those duties to be complied with; while recognising that the overwhelming majority of parents and schools within its area do so conscientiously.

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[1] https://www.legislation.gov.uk/ukpga/1996/56/section/19
[2] https://www.legislation.gov.uk/ukpga/1996/56/section/7
[3] https://www.legislation.gov.uk/ukpga/2014/6/section/100

However, the London Borough of Croydon has encountered a number of occasions in recent months where, in its view, a child or young person is not attending school or other forms of suitable education; and its obligations under s.19 Education Act 1996 are called upon electively, rather than as a matter of last resort.

This approach is unacceptable, in that it avoidably disrupts the education of children and young people; and places an intolerable strain on resources otherwise required for those in the most serious need.

The Department for Education guidance *Arranging Alternative Provision A Guide for Local Authorities and Schools February 2025*[4] at p.13 makes it plain that the overall focus of the delivery of s.19 Education should be the reintegration of the child or young person into mainstream education, i.e. in existing school placements:

When it is decided that a child would benefit from alternative provision the placement should focus on enabling them to overcome any barriers to learning they may have and to assist them back into mainstream education or into a sustained post-16 destination. As such, the commissioner should always ensure that a placement will address the individual needs of the child as well as providing education in line with that of their home school to better enable re-integration.

The corollary of this position is naturally that it is preferable for the child or young person to remain in existing school placements if reasonably practicable to do so.

This position is consistent with the findings in *R (on the application of G) v Westminster City Council* [2004] EWCA Civ 45[5]:

46 In any case where a child is not receiving suitable education it is necessary to consider the whole picture in order to decide in what respect, if any, this is attributable to a breach of duty by the local education authority. If there is no suitable education available that is reasonably practicable for the child, the authority will be in

[4] https://www.gov.uk/government/publications/alternative-provision
[5] https://www.bailii.org/ew/cases/EWCA/Civ/2004/45.html

breach of section 19. If suitable education has been made available which is reasonably practicable, but for one reason or another the child is not taking advantage of it, the local authority may well be in breach of duty in failing to exercise its powers to ensure that the child receives that education. It will not, however, be in breach of section 19.

47 The fact that parents have misconceived objections to their child attending a particular school does not make the situation one in which it is not reasonably practicable for the child to receive education so as to give rise to an obligation on the part of the authority to provide alternative arrangements: in assessing what is reasonably practicable, the parents' unreasonable objections must be disregarded.

48 It is possible to envisage exceptional situations where, although a school satisfies the criteria in section 19(6) and there is no physical impediment to the child attending that school, it is none the less not reasonable to expect the child to attend that school. Imagine, for instance, a situation in which three other children in the school were facing criminal charges, which they denied, of sexually assaulting that child. In such circumstances it might not be reasonably practicable for the child to continue to attend the school. The local education authority would then come under a duty under section 19 to make alternative arrangements.

Where reasonable education is made available, and the child or young person for whatever reason is not availing themselves of it, does not fall within the s.19 duty. The duty on the local authority, in that case, is to enforce attendance, not make alternative provisions.

It is also noted that the threshold for what is required to demonstrate that it is not reasonably practicable for a child or young person to attend their existing schooling is a very high one, albeit in the hypothetical example in *R (G) v Westminster CC*. This high threshold was reiterated in *R (on the application of HR) v Medway Council* [2010] EWHC 731(Admin)[6]:

[6] https://www.bailii.org/ew/cases/EWHC/Admin/2010/731.html

58… As for the observation in the addendum report that the fact that School B is H's preferred option and this is an important factor in considering a placement which presents less risk to her mental health, the issue here is not which school presents less risk, but whether H's mental health would be actively put at risk by returning her to School A to such an extent as to make it unreasonable for her to go there. I do not believe that Mr Holme is suggesting that unless H is allowed to choose her school her mental health will suffer.

Once established that an otherwise suitable and accessible place is available for the child; the London Borough of Croydon expects to see very strong evidence that all reasonable steps have been taken to ensure that children or young people receive suitable education in the school places ordinarily available to them before engaging its responsibilities under s.19 Education Act 1996.

While, of course, the London Borough of Croydon will continue to facilitate attendance as far as is reasonably practicable, and does recognise that s.19 education is a necessary fallback in some cases, it expects to see all reasonable alternatives exhausted internally by schools and parents before such measures are implemented.

Such education is not primarily intended to be a permanent solution, and the focus of such education will be the long-term re-integration of the child or young person into mainstream education where possible.

Parents and schools are reminded that local authorities, including the London Borough of Croydon, has extensive civil- and criminal- powers to enforce school attendance under Part VI Chapter II Education Act 1996[7].

As pointed out in *R (G) v Westminster CC*, if the place is suitable and accessible, bearing in mind the high threshold, but the child does not attend for other reasons, the local authority will often be under a duty to exercise these more coercive powers as a matter of first preference. While these measures remain available, the London

[7] https://www.legislation.gov.uk/ukpga/1996/56/part/VI/chapter/II

Borough of Croydon will always prefer more a more collaborative approach if possible and it is hoped that there will be no need to use them in the foreseeable future.