

October 2024

**Feedback on Caerphilly County Borough Council Elective Home Education Policy  
from Home Ed Cymru**

FAO all with a remit of EHE in CCBC,

Further to our previous correspondences, we welcome your invitation to provide feedback on the Caerphilly EHE Policy:

[https://www.caerphilly.gov.uk/caerphillydocs/schools/elective\\_home\\_education\\_policy.aspx](https://www.caerphilly.gov.uk/caerphillydocs/schools/elective_home_education_policy.aspx)

As you are aware, Point 2.27 of the 2023 Wales guidance on EHE confirms that home educators should be involved in reviewing local procedures and practices.

2.27 As a matter of good practice, local authorities are advised to regularly review all of their procedures and practices, including those in relation to home education. Home education organisations and home educating parents and children should be involved in the review process. Effective reviews, together with the sensitive handling of any complaints, will help to build and secure more effective partnership.

This ensures that home educators are given a voice and share their valuable lived experience of home education to help shape the policies and procedures that most affect them. It also helps to address any inaccuracies, as well as highlighting how both tone and content are perceived by the home ed community.

We have drawn together views, opinion and concerns of the community to construct this feedback document. As you will see from the attached, as well as recognising the positive and supportive aspects of the policy, we have highlighted several areas of concern and/or errors, which require urgent revision.

We trust that the opportunity to reflect on the amendments to CCBC's presently drafted policy on EHE, noted by the home educating community, is a positive and constructive one, and we look forward to the respectful modifications of this policy in light of this feedback.

As a preface to the policy feedback, we would also draw your attention to some brief feedback on several errors in phrasing in the report on EHE to the Scrutiny Committee of October 2023, which we assume was based on the same premises as the policy itself and which we trust will be addressed before the next report is submitted.

Kind Regards,  
Home Ed Cymru

## **REPORT TO SCRUTINY MEETING FEEDBACK**

The following report was produced to the committee on 17<sup>th</sup> October 2023:

<https://democracy.caerphilly.gov.uk/documents/s46751/Rep840.pdf>

We highlight some inaccuracies in the document in its current version:

4.1 The LA is responsible for ensuring that children who are electively home educated receive a suitable education. In this regard members of Scrutiny Committee must be aware of this cohort of young people.

This section conflates the legal duty of the LA in relation to home education. The LA is NOT responsible for ensuring ALL children who are electively home educated receive a suitable education. According to the Education Act, LAs have a legal duty to act if “it appears” a suitable education is not in place. This duty is a reactive one, and only applicable in the presence of concerns about suitability of education.

5.6 There is a clear process (in line with Welsh Government guidance) for ensuring that the LA is aware of children who are EHE. There is a requirement to write to the LA/school to inform them that the child will become EHE. Upon receipt of this notification, safeguarding checks are made and the EHE Officer contacts the family to establish reasons for the decision to EHE, and to offer support to re-engage with education via the LA or receive an initial visit to discuss the provision of a ‘suitable’ education. Where no further contact is requested by parents, the LA must be satisfied that there are no safeguarding concerns. If a child has a Statement of Special Education Needs (SEN) or IDP, the process of review remains in place and is undertaken following the LA’s formal person-centred planning (PCP) process. Families are made aware that they can approach the LA at any time to review their decision or seek advice.

This point contains multiple inaccuracies and misconstrues the legal duty of the LA, as well as responsibilities of families:

- There is no requirement for parents to inform the LA that a child will be home educated. Where children are previously registered at school, the parent is only legally obliged to contact the school to inform them of their decision to deregister. It is the responsibility of the school to inform the LA in these instances. Where children have not previously been registered at school, there is no legal duty to inform any bodies of the intention to home educate. This is in accordance with the Education Act, Section 7, which accords equal legal standing to both educational options.
- This section references “safeguarding checks” – there is no remit for LAs to conduct safeguarding checks in the absence of any pre-existing concerns.
- There is no legal requirement for the EWO to make contact with families, unless there are grounds to believe a suitable education is not in place.
- There is certainly no requirement for parents to provide such information about personal reasons for deregistration. Although the LA might seek to establish these reasons for their own purposes, families are under no obligation to share reasons for home educating, especially in light of the proposals given in the recent CME database consultation in relation to use of parental reasons for

deregistration and possible higher levels of scrutiny of certain families who have deregistered for the Welsh Government’s seemingly arbitrary list of “negative reasons”. A family’s reasons to home educate are private and should only be shared on the basis of an informed consent process.

- The suggestion that support will be made to “re-engage with education” is disrespectful to families who have made a personal and lawful choice to home educate. This paragraph is about elective home education, not school refusers or EOATAS pupils. Home education **is** engaging with education!
- This section is misleading in that it does not clarify that families have no legal obligation to receive an “initial visit” from the LA. Welsh Government have confirmed that visits/meetings are not mandatory. Any such visits and meetings must only be offered on a purely voluntary basis and as part of a process of fully informed consent of all involved.
- This section also implies that the LA have a duty to ensure suitability of education for all children. Again, this is not a legal duty, especially at deregistration or the informal enquiry stage. The LA has only a reactive duty to act “if it appears” a child is NOT in receipt of a suitable education.

#### 8. FINANCIAL IMPLICATIONS

8.1 With the emphasis now placed on LAs to support the reintegration of learners into education including, where appropriate, EOTAS provisions, there are likely to be increased demands on alternative provisions.

The language here is derogatory to home educators. By mentioning the drive to “support the reintegration of learners into education”, implies that EHE is not itself “education”. There is also the refereed intent to reduce the numbers of home educators . It is important that all official documentation is written without bias or discrimination and with respect for the community.

We trust that these inaccuracies will be noted and amended going forward to ensure that communications about EHE are transparent, respectful and accurate.

## **EHE POLICY FEEDBACK - POLICY DOCUMENT WITH ANNOTATIONS**

### 1.0 Introduction

#### 1.1 Defining Elective Home Education

Elective Home Education (EHE) or Home Education are terms used to describe when parents choose to educate their children at home instead of sending them to school.

It would be helpful to note that EHE is not just a parent's choice, that it is often the choice taken together as a family, and it is often the child who is the one who requests elective home education, with the parent then facilitating the child's choice and preference. Sadly, occasionally communications can be seen that speak of balancing parental choice against children's rights, as if the two are at odds with each other. Such a concept is a divisive and demeaning one, as well as not being representative of the majority of home educating parents and families. It is beneficial to ensure that phrasing does not create or perpetuate any such connotations, even if doing so inadvertently.

It is also important to note that ensuring education is the parent's legal duty and helpful to note that the government provides the service of schools for those who wish to opt in to that service.

EHE or Home Education will reflect a diversity of approaches to learning experiences.

Children who are home educated are not required to follow the national curriculum or any other specified curriculum or meet criteria for the number of learning hours. The home education approach can be anywhere on a continuum from a formal, structured, schedule-based and mostly within the home environment, through to autonomous or child-led education. Moreover, it can vary over time and subject. For example, a child might move from a more autonomous approach when younger to one that is more structured for GCSEs (if the child chooses to sit them).

It is, of course, essential to note the continuum and spectrum of approaches to home education so it is encouraging to see this paragraph has been included in local policy. We appreciate that it is difficult to encapsulate this diversity of home education in a few sentences. It may be helpful to note or be aware that autonomous and structured are not necessarily opposites, for example, some children may autonomously choose and prefer a structured or semi-structured approach.

Whilst it is of course encouraging to see such wording within the guidance, these concepts would be of no benefit unless evident in daily practice "on the ground" – that this respect and appreciation of diversity of approach is translated into the communications and interactions between LA staff and the home education community.

'Our National Mission: high standards and aspirations for all' sets out the Welsh

Government and the education system's priorities to ensure the success, high standards and wellbeing of all learners. The principles set out in 'Our National Mission' apply to all children, including those who are home educated.

It is important to note that as education is a parental responsibility, it is not the role of the local authority to either support (or undermine) aspects of home education.

It is highly inappropriate to attempt to apply the principles and objectives set out in "Our National Mission" to home education. Home education is a parental responsibility, not the responsibility of the state, and not the responsibility of the local council. "Our National Mission" is a list of political ideologies and is aimed at state education. It is not a legal requirement or duty. There is no lawful basis to insist on applying or imposing its principles and objectives on home educating families. To attempt to do so would be counter to human rights legislation and could be conceived as an attempt to blur the lines of who is responsible for a child's education.

Foundational to any concept of "support" for families is, of course, the appreciation that this should only be a voluntary offer, provided when requested by the family, and not used to undermine the family's own approaches or privacy. Support should be inherently voluntary and respectful of those with lived experience, and not overriding, authoritarian or paternalistic. We trust that/appreciate that the relevant departments of Caerphilly County Borough Council seek to increasingly cultivate such an honouring approach.

## 1.2 Purpose of the Policy

The purpose of this policy is to encourage good practice by clearly setting out the legislative position and the roles and responsibilities of the local authority, schools and parents/carers in relation to children who are electively home educated.

This is different to home tuition provided by a local authority or education provided by a local authority other than at a school (EOTAS). This policy is intended for use in relation to EHE only.

The local authority takes a supportive approach to ensure that all parties involved in elective home education should be aware of their roles, rights and responsibilities. The local authority continues to promote mutual understanding, trust and respect as we build positive and effective relationships with home educators to safeguard the educational interests of children and young people.

It is important to clarify and correct that last sentence of this section. Education and safeguarding are the responsibility of parents, not the LA. Additionally, schools do not have any "*legislative responsibility...in relation to children who are EHE*" beyond understanding their duty to deregister with immediate effect, which is not specific to home education.

Whilst it may appear beneficial to have the approach of the local authority documented as being supportive and of “*promoting mutual understanding, trust and respect*” in relation to home education, (and of course, the connotation of a respectful approach in all instances is imperative), this statement is potentially misleading about the exact “relationship” required between LAs and home educators. The only lawful duty of the council that intersects with that of the education provided by home educating families is the duty to identify those who are not in receipt of a suitable education, and only enquire further “*if it appears*” that a child is not being educated. Thus whilst “understanding, trust and respect” should be foundational to all interactions of public servants with members of society, there is the risk that such statements can connote the need for an obligatory ongoing interactive relationship even when it is known that a child does not fall under the council’s remit under s436A of the Education Act 1996.

It is of course vital to continually appreciate that the role of safeguarding educational interests lies fundamentally with the parents and family, and ensure that, as already referenced, there is no inadvertent development of any potential clouding of understanding of this or development of unconscious bias of suspicion towards home educating families.

There can be a significant risk of conflation by association in linking concepts such as safeguarding and home education. It is clearly established that home education is not a safeguarding risk. This has been reiterated clearly by the Welsh Government in their May 2023 guidance for Home Education. Indeed, home educated children are at lower risk of abuse within the home than school educated peers, and also are not at risk of the significant rates of school-related abuse (including physical, emotional and sexual abuse and harassment by peers or adults). Here are some links to support this:  
<https://www.educationotherwise.org/home-education-and-the-safeguarding-myth-analysing-the-facts-behind-the-rhetoric/>  
<https://www.bbc.co.uk/news/uk-wales-politics-57428624>  
<https://www.bbc.co.uk/news/uk-wales-67546071>

Obviously, the benchmark for the measure of whether relationships between LAs and home educators are “*respectful*” would be by surveying the community on their views on such interactions. It would be helpful for policies to include information about how the community can provide feedback on practices, as well as how they can be involved in the shaping of policies.

## 2.0 Key Guidance and Legalisation

This policy takes into account Welsh Government, statutory guidance on EHE (document 292/2023 issued in October 2023) and observes the principles of the Well-being of Future Generations (Wales) Act 2015. This policy also recognises the United Nations Convention on the Rights of the Child (UNCRC).

In taking into account the guidance on EHE published by the Welsh Government in 2023, including the updated version following legal challenge by the charity Education Otherwise, it is of course essential to note that whilst the front page may carry the misleading title of “statutory guidance”, there are no new “statutory” elements to this guidance. Primary legislation has not changed, there is no “new legislation”. The second page clarifies that the guidance contains both statutory and non-statutory elements. A local council is not bound to follow the “shoulds”, “mays”, “cans” and “mights” of the guidance (and, of course, must not when there are good and overriding reasons not to, such as when doing so would erode other rights and responsibilities).

It is encouraging to see that the UNCRC is recognised. We trust that all Articles of this document are fully respected. The UNCRC’s aim is that children grow up amongst an approach and attitude of peace, dignity, tolerance, freedom and equality, and we trust these attitudes are always extended to home educators. The UNCRC was compiled to help prevent totalitarian states on the global stage from interfering with and hindering the wellbeing rights and education of children, and of course was not intended to be a tool to be used in any context against families. It was, of course, not written to be used in a context that would imply a conflict of interests between parents and children but rather to help ensure that states respect the integrity and benefits of the family unit. Thus, we trust that any references to individual articles are always appreciated in this light, without individual articles or sections being quoted or applied out of context.

### **3.0 Definitions**

- Throughout this document the term parents should be taken to include all those with parental responsibility, including guardians and carers.
- The term child used throughout this policy should be taken to include a child or children, a young person or young people.
- Elective home education (EHE) will be used throughout this document to refer to all variations of the process of home education.

### **4.0 Reasons for Elective Home Education**

Elective home education is a term used to describe when parents choose to take a direct responsibility for educating their children instead of enrolling them in a school. This education may take place within a variety of community settings, as well as at home. The home educating community in Wales is a diverse population with families choosing to home educate for a variety of reasons. These may include:

- ideological or philosophical
- health (including emotional health, well-being and bullying)
- cultural
- religious
- additional education provision
- language choice
- length of school journey
- awaiting a place in the school of their choice

- flexibility and tailoring of teaching approach.

It is helpful to note both in policy and in communications with home educators, that families are under no obligation to give their reasons for choosing to home educate, either to the school on deregistration, or to the local authority.

If parents do choose to voluntarily share such reasons, this can provide extremely helpful information and feedback that can be used constructively to improve or modify provision for children who remain on the school roll. Provision of such information could be a profoundly useful learning experience, if the information is used appropriately.

It is also very helpful to note that whilst parents may indeed initially deregister for what Welsh Government may term “negative” reasons, research and experience demonstrates that parents often choose to continue to home educate for “positive reasons”. The reasons why a given family choose to home educate can and often do change over time and with experience, as demonstrated in the following research:

[https://learnwhatyoulive.substack.com/p/why-do-families-choose-home-education-267?fbclid=IwY2xjawF6bNdleHRuA2FlbQlxMQABHZWyYVRFiNGcOJJDAWhXl6RcWmWtX6UFwqZdLbUG5e6V647ka8Yhgf4g2A\\_aem\\_8UL2zM0JXJ2PmzC2jyLWNA](https://learnwhatyoulive.substack.com/p/why-do-families-choose-home-education-267?fbclid=IwY2xjawF6bNdleHRuA2FlbQlxMQABHZWyYVRFiNGcOJJDAWhXl6RcWmWtX6UFwqZdLbUG5e6V647ka8Yhgf4g2A_aem_8UL2zM0JXJ2PmzC2jyLWNA)

Unfortunately, parents will naturally likely be much more reluctant to discuss their private reasons for choosing EHE having seen the intentions of the Welsh Government to consider children where they deem the choice to EHE has been made for what they term a “negative reason” to be more likely to be labelled or deemed “CME” (missing education) and therefore at risk of greater levels of scrutiny and involvement from LAs. Thus, it would be the lawful as well as respectful approach to ensure that parents are informed that they do not have to share their reasons for deregistration or for choosing EHE, either to schools or their local authority, given the potential use of this information and data and the possible use and implications of such data sharing.

This is of course a very sad recommendation, but a necessary one given the counterproductive nature of the proposed policy of using parental reasons for deregistration in a manner that further penalises and negatively impacts families who so often have been failed by the state school system, rather than as a way to improve the school system that has so often failed such families. It would of course be highly ironic, as well as damaging to the education and wellbeing of children, if a system that had failed to provide a suitable education were to use that to justify further public servant intrusion.

## 5.0 The Law Relating to Elective Home Education

Parents have a right to educate their children at home. Section 7 of the Education Act 1996 indicates that:

*‘The parent of every child of compulsory school age shall cause him to receive efficient full-time education a) suitable to his age, ability and aptitude, and b) to any special educational needs or additional learning needs he may have, either by regular attendance at school or otherwise.’*

Article 2 of Protocol 1 of the European Convention on Human Rights states that: *‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.’*

It is essential that not only is the statement that authorities must ensure they “*respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions*” written into local policy, but that this principle is reflected in all approaches to and interactions with home educators. Again, it is to be remembered that the ECHR was also compiled to ensure that totalitarian states did not inappropriately interfere with or obstruct children’s access to education, including to remind them that it is parents (and not the state) who make the decisions on suitability.

Parents may decide to home educate their child from a very early age and so the child may not have been previously enrolled at school. They may also decide to home educate at any stage up to the end of compulsory education age. While parents must provide a full-time education, they do not need to follow school hours or term times as contact time is almost continuous and opportunities for learning can arise at any time. Home education does not need to look like school and may incorporate a variety of different approaches, including more autonomous and child led learning.

These of course are fundamental principles that must be fully appreciated and are therefore appropriate to include in policy, principles we trust will increasingly be seen incorporated into practice in any communications or expectations in relation to home educators.

## 6.0 Children’s Rights and The Voice of the Child

The Welsh Government has adopted the United Nations Convention on the Rights of Child (UNCRC) as the basis for all its work for children and young people. Article 12 of the UNCRC provides a right for children to be able to express their views and for due weight to be given to those views, in accordance with the age and maturity of the child. This does not, however, give children authority over parents. Wherever possible, when parents have chosen to electively home educate, the views of the child should be obtained. All children have a right to participate in decision

making that affects their lives and their views relating to the suitability of their education should be given due weight in accordance with their capacity as per Article 12 of the UNCRC. This will help the local authority to meaningfully take into account the views of the child when making a judgment as to the suitability of education.

Great care is needed in expressing terms such as “making a judgment as to the suitability of education”, as whilst the council has a duty to identify those who are not in receipt of education, it does not have the mandate to pass judgement on those that are. The council’s duty in relation to home education is to identify children where there is neglect, not to be inspectors of provision where it does not “appear” to be such a situation.

The legal duty to make the “judgement as to the of suitability” of a child’s education is the parent’s as per Section 7 of the Education Act 1996. It is not the legal duty of a council employee, nor is a council employee in a better position to make such a judgement even if it were a duty. Public servants do not have the capacity nor legal right to “judge” a law abiding citizen ~~who is~~ enacting their own legal duty, only to confirm that it does not appear that there are reasons to doubt the parents’ original statement that they are home educating as per their legal responsibilities.

This paragraph requires rephrasing, as it greatly risks connoting an intrinsic assumption that parents cannot be trusted to be listening to their children and do not do so, in the absence of any reason to believe this in each case.

It is interesting to note that the department is keen to appreciate the voice of the child, as this also requires that children’s wishes must be treated with full respect in all areas, without negative repercussions.

It must be noted that the statement “The views of the child should be obtained” contradicts the UNCRC. To state that, on the one hand, a child’s view should be respected and, on the other hand, states that a child’s view “should be obtained” would be a contradiction.

As the Welsh government has adopted the United Nations Convention on the Rights of Child, the use of the word “should” would be incorrect as it heavily implies that the child has no right to refuse to give their views.

In fact, the child has every right to refuse to give their views, and to refuse to show their “work”, even if their chosen style of learning could be considered to be “work”.

The views of the child, or examples of their “work”, should not be obtained unless the child specifically requests this course of action. It is important that local policy does not misquote the UNCRC here. The very purpose of the UNCRC is to uphold children’s rights – coercing a child to share information he/she does not choose or wish to share or implying that there is a legal duty or responsibility to share such information, contravenes the very rights the articles seek to promote.

Children are very unlikely to understand the wider implications of a conversation with a public servant which has the potential to be used against their family in court. This is

why the parents and not children respond to any informal enquiries. Parents are the legal advocates for children, as with medical matters.

Person centred approaches will underpin discussions with parents and children, but individual circumstances will be discussed on initial contact with the family.

Article 28 of the UNCRC states that all children have a right to an education and that primary education should be compulsory and free. Article 29 states that education should develop each child's personality and talents to the full. However, one of the underlying principles of the UNCRC is the best interests of a child, and Article 3 of the UNCRC requires all adults to think about how their decisions will affect children and to do what is best for the child.

Of course, the presumption has to be that parents are upholding such rights, unless there is good reason to believe otherwise.

Regarding references to the UNCRC:

As discussed earlier, it is of course important to appreciate the context in which the UNCRC arose, in order to apply them correctly, namely, to prevent totalitarian governments in different countries from obstructing or overriding children's rights and placing themselves as determiners of child's lives and education rather than the parents and families.

In terms of education, these articles were written to try to prevent governments from obstructing access to or interfering with the quality and availability education, not to facilitate governments taking control of education or believing it is primarily the government's responsibility. Thus, in their correct context, these articles should be seen to encourage plurality and diversity of education and that the state is present in a reactive and supportive but not an authoritarian, controlling or paternalistic role.

Likewise, all articles must be taken together not used in isolation.

Therefore Article 16 – *“Every child has the right to privacy. The law should protect the child's private, family and home life”* is just as applicable as right to education and therefore it would be appropriate to cite this too.

Other articles, such as Article 30 – *“Every child has the right to learn and use the language, customs and religion of their family, regardless of whether these are shared by the majority of the people in the country where they live”* are also very relevant and helpful to quote to ensure a balanced understanding and perspective.

It is of course vital that Article 28 in its entirety is kept at the forefront of the mind of any local authority employee who engages with elective home educators, as measures and pressures from staff risk readily interfering with children's rights to the education that they and their family find most appropriate. Whilst much of the phrasing of this Article is directed towards management of schools, and therefore is not applicable to home education, the focus on dignity and on respect of both the children and the parent are fundamental.

UNICEF themselves state that, *“It's important to remember that the Convention must be seen as a whole and so articles 28 and 29 should not be looked at or considered in*

*isolation. Particular regard should be paid to the General Principles and other closely related articles for example: article 16 : protection of privacy, article 24 health (including health education), article 31 rest, leisure, play, recreation and culture”.*

<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-right-to-education/> .

The Article says that “State Parties” must “recognise the right of children to education”, and as part of that make provision available, not take over responsibility for it. or presume that parents are not providing it.

The letter of the law and the content of the 2023 guidance, particularly the amendments to that guidance, demonstrate that each child must be considered as an individual and each case treated with the greatest respect.

This includes ensuring that any communications are correct, appropriate and fully relevant to that individual case before it is sent. It would be extremely helpful to ensure that this is included into local written policy and prioritised in daily practice and approach.

#### 7.0 Roles and Responsibilities of Parents

Parents may decide to exercise their right to home educate their child from a very early age. This may mean that the child may not have been enrolled at school and therefore will not be known to the local authority. Parents may also elect to home educate at any other stage of their child’s education up to the end of compulsory school age.

Again, as referenced earlier, it would be helpful to consider the choice to be that of families, not just of parents. This is because sometimes communications from the Welsh government have regrettably and unhelpfully been phrased as if to offset “*parental rights*” to choose against “*children’s rights to a suitable education*”, as if the two should be assumed to be in juxtaposition. Home education is not a case of parents asserting rights over that of the child, and whilst this is not being said here, terminology that helps avoid an inappropriate concept of such opposition is useful. The use of the term “families” includes the respectful appreciation that home educating parents involve their children in their choices and decision making regarding their mode and style of education.

Parents who choose to educate their children at home must be prepared to assume full financial responsibility, including bearing the cost of any public examinations. Examinations must be taken at an approved examination centre, identified by the local authority, to enable home educating families to access WJEC examinations.

**This sentence is rather confusing, and we would be grateful for clarification.**

The wording of this paragraph implies that exams can only be taken at centres identified by the LA. Whilst examinations can indeed only be taken at approved examination centres, home educators are not confined to only using ones that the local authority have identified. Indeed, parents often sadly have to travel further afield than their own local authority to find examination centres that can accommodate their examination boards, subject choices and child's needs. Likewise, that statement about being enabled to access WJEC examinations is confusing, as home educated students do not often take WJEC exams, in fact, on the whole, WJEC examinations are often inaccessible to home educators because of the requirement to complete coursework or practical elements, thus the majority of home educators opt for alternative examination boards. It is unhelpful and perhaps misleading, especially for new home educating families, to mention only WJEC in policies.

Section 6.7 of the 2023 Welsh Government guidance on EHE, when referencing "*ways in which local authorities might choose to support home educating families*", include reference to "opportunity to sit examinations in an identified examination centre" with no reference to this being WJEC only.

Whilst there is a singular mention that the Welsh government have worked with local authorities to enable home educating families to access WJEC examinations at an identifiable centre in point 6.14 of the guidance, the only reference to WJEC in the guidance, points 6.15 and 6.15 do not specify that it is WJEC examinations that therefore must be prioritised, especially to the exclusion of other more appropriate examination boards and qualifications for home educated young people. Indeed, the semantic field of points 6.14-6.16 connote an encouragement to "work with", "open up", "accommodate". Therefore, appreciating the needs of home educators in relation to examination centre access must be a priority, and therefore promoting a range of examination centres that can facilitate access to a variety of examination boards is most compatible with the guidance on the area of access to examinations.

The Welsh Government's handbook for home educating parents (2023) does not mention WJEC at all, rather Points 5.11-5.15 of that handbook explore the benefits of accessing examination centres that can facilitate international GCSEs instead of GCSEs.

Therefore, review and clarification of the sentence, "*Examinations must be taken at an approved examination centre, identified by the local authority, to enable home educating families to access WJEC examinations*" would be beneficial.

Parents must also ensure that their child receives suitable education for as long as they are being educated at home. Parents do not need any qualifications to home educate. The first contact between local authorities and home educators often occurs when parents decide to home educate and approach the school (at which the child is registered) and/or the authority to seek guidance about withdrawing their

child from school. Parents will need to state their intentions to home educate in writing to the school.

Parents are, of course responsible for ensuring their children receive a suitable education whether that is provided in the home or by delegation to a school. This is why a parent would be failing in their duty if they do keep their children in a school where the provision is not suitable despite their best attempts to try to access better provision.

It is helpful that policy states here that “*parents do not need any qualifications to home educate*”, including using the phrasing “*home educate*” rather than “teach their children”. This helps mirror and propagate an appreciation that home education often does not involve didactic adult-led teaching.

It would be helpful to clarify that whilst a parent is required to state their **intention** to remove a child from the school role, and clarification that this is in order to home educate means that the child is therefore known to not be a child missing education, there is **no legal duty for parents to provide or explain their reasons for deregistration**. Indeed, as discussed earlier, parents may be understandably increasingly cautious of providing such information given the potential of any disclosed reasons being used in a way that they may feel to be detrimental to their family’s wellbeing and to the education of their children.

#### 7.1 Efficient and suitable education

Parents are required to provide an efficient, full-time education suitable to the age and ability of the child. The term ‘efficient’ refers to an education that achieves what it sets out to achieve. The approach home educating parents take to ensure their child is receiving a suitable education is likely to be dictated by their own philosophy or views, and in many cases, the absence of formal assessment may be a feature of the education provision. Progress, over the long term, may take a variety of forms.

There is no lawful remit to insist on demonstration of an expected concept of “*progress*” by home educated children and young people.

It is also very helpful to reflect on how “*progress*” is not necessarily something that can be readily measured when considering deeper development and when adopting alternatives to school-like approaches to education.

It is also helpful to note that “*progress*”, or natural child development as it could be more helpfully termed, is not linear.

Especially when child-led approaches are used, there can appear to be little change in some areas for a considerable period of time, sometimes children can even give the appearance of the opposite. This does not mean that education is not suitable but can often be an indication of deeper learning process and/or of a child being allowed to

develop along their own, individual and natural trajectory rather than any attempts to force conformity according to statistically derived expectations.

There is currently no legal definition of 'full-time'. Children normally attend lessons between 22 and 25 hours a week for 38 weeks of the year, but this measurement of 'contact time' is not relevant to elective home education where there is often almost continuous one-to-one contact and education may take place outside normal 'school hours'.

It would be helpful to clarify that it is "*Children in a school setting normally attend lessons...*".

It is indeed very helpful to appreciate this continuous and one-to-one learning experience. Much more can be gleaned in a short period of 1:1 input than in a traditional classroom setting. In addition, many home educating parents find that the most significant learning occurs outside of any formal setting, even when formal approaches are also utilised. Therefore, it is helpful that it is noted that it is meaningless to try to quantify hours spent in learning for home educated children and therefore pointless (as well as an obvious overstep of legal duty) for LA staff to request demonstration of such from home educating families.

Learning can take place in a range of locations, including the home. It can also be supplemented through other experiences such as visits to places of interest and facilities such as libraries, museums and galleries. A feature of home education is the ability to be flexible and adapt to events and circumstances on a daily basis.

This is indeed one of many reasons why it is inappropriate for LA staff to ask home educators for future plans, as to do so risks damaging the unique flexibility that home educating affords. To create (or be held to) any such future plans, risks damaging the benefits of home educating families having the freedom and autonomy to be continually modifying education and expectations according to each individual child.

## 7.2 Suggested characteristics of a suitable and efficient education

The local authority's position on EHE is in line with that of the Welsh Government and UNCRC in that a suitable education aims to ensure that the child is able to develop the skills to participate and function in society.

Regardless of the approach taken to deliver a suitable education, it is important for all to consider whether the approach implemented is suited to the needs of the individual child which means efficient education suitable to the child's age, ability and aptitude and to any SEN/ALN the child may have.

Home educating parents should provide education that offers opportunities for the child to develop their physical, intellectual, emotional, spiritual, moral, social and

cultural development. It would include provision in numeracy, literacy and language skills, suitable to the child's age, ability and aptitude and to any SEN/ALN the child may have. Suitable education is not simply a matter of academic learning but should also involve opportunities to develop social skills in their interactions with others. These are essential in preparing the child to participate and function in society. Some possible characteristics that a suitable education may provide, develop or include:

- Language, literacy and numeracy skills
- Consistent involvement of parents or other significant carers
- Responding to the needs and the best interest of the child, taking into account areas of learning that interest the child, and should enhance the child's potential
- Ensuring the child has opportunities to engage in a reasonably broad range of learning experiences
- Providing opportunities to develop personal and social skills to help prepare them for later life and become engaged citizens
- Ensuring the child has opportunities to develop basic skills (taking into consideration any SEN/ALN they have)
- A philosophy or ethos with parents showing commitment, enthusiasm, and recognition of the child's needs, attitudes and aspirations
- Opportunities for the child to be stimulated by their learning experiences
- Involvement in a broad spectrum of learning opportunities and activities appropriate to the child's stage of development
- Access to appropriate resources and materials
- Opportunities to develop digital literacy
- Opportunities for an appropriate level of physical activity and play
- Opportunities to interact with other children and adults.

Whilst many of these may well be interesting or facets of education that families may choose to consider or include in their educational journey, it is damaging to autonomous and/or individually focused education to place any particular expectations on a given family or child.

For example, many families choose to deliberately not include digital literacy until much later than would be expected in school-based environments, as they feel this can be damaging to deeper and alternative learning, and it would be a contravention of the UNCRC and EHRC to expect parents and families to act otherwise.

It must of course be noted that “*suggested characteristics*” as included in the Wales guidance and in this policy are personal (and often, also politically-charged) opinions of the guidance authors of the time and thus not legal requirements. Legal proceedings or formal enquiries cannot be lawfully commenced for provision not aligning to a subjective viewpoint and concept. Such a list of ideas cannot be used as an effective or appropriate checklist to somehow “measure” or estimate home education. It is imperative that LA staff understand and appreciate this important point so that home educators are not “held to account” or required to demonstrate features of their education that are not part of their lawful responsibilities.

There is no expectation that home educators will:

- Teach according to the Curriculum for Wales
- Have a timetable
- Have premises equipped to a particular standard
- Mark work done by their child
- Set hours during which education will take place
- Have any specific qualifications
- Cover the same syllabus as any school
- Make detailed plans in advance
- Observe school hours, days or terms
- Have formal lessons
- Reproduce school type peer group socialisation
- Match school age specific standards.

It is extremely positive that all these points and areas in relation to elective home education are acknowledged in local policy as well as in national guidance, and it would be helpful to keep these in focus throughout any engagement with home educators. It must be noted that these concepts of course, whilst positive, naturally have their limitations.

For example:

- there is no requirement to use any syllabus, not just the same as in school.
- There is no requirement to make any plans in advance, let alone detailed ones.
- There is no requirement that children's learning should be in the format of "work", let alone that this is "mark(ed)". Children do not have to learn by doing "work", let alone have any such "work" marked in a school-like manner.
- There is no requirement for parents to "teach". Some parents may indeed choose to adopt a more school-like and adult-led approach to home education where the term "teach" may be appropriate, however the lawful role of parents is to ensure their children receive a suitable education, and adult-led "teaching" is only one of a wide range of ways in which a child may acquire learning, indeed many home educating parents choose to cultivate a rather different approach to learning.

The local authority's information booklet for parents provides information and advice on all aspects of EHE. Parents will receive a copy of this at the initial home visit by the designated Elective Home Education (EHE) Officer. It is also published on the local authority's website [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk) .

Whilst such a handbook may provide some relevant information, best practice would prioritise the insight and knowledge of those with lived experience. Questions have naturally been raised on the usefulness of a handbook for home educators when written by those who have not home educated, and without involvement of those that have.

Additionally, it would be appreciated that it was clarified here that there is no expectation or requirement for an “initial home visit”. This sentence implies that this is expected practice and overstates the role of the LA.

## 8.0 Roles and Responsibilities of Schools

### 8.1 Removing a child from the school admission register

When schools become aware that parents may be considering elective home education it is good practice to meet with parents to discuss the reasons for their decision and notify the local authority.

Although schools may sometimes choose to offer a meeting to parents who are deregistering, this must not be portrayed as a requirement or that deregistration cannot happen without such a meeting, be that with EWOs or school staff, and that there is no requirement for parents to complete forms on deregistering their child.

Whilst the reasons for deregistration could provide beneficial feedback to help improve school provision for others, the decisions of families must be respected without coercion or manipulation. It must be made clear to schools, parents and local authorities that any such meetings are purely voluntary, that parents are under no obligation to meet, or to provide reasons for their decision. Should parents choose to do so, it would be unethical to allow personal opinions to cause any undue influence on families’ choices.

As previously addressed, given the Welsh Government’s stated intention to consider families who have provided “negative reasons” for deregistration to be less likely to be providing a suitable education and more likely to be placed onto their proposed “CME databases”, it will be expected that families will choose to exercise their lawful rights to keep such personal reasons and decision-making processes private.

Parents must be informed that if they wish to electively home educate their child, they must confirm this in writing to the Head Teacher of the school.

Upon receipt of written notification from the parents the school must remove the child's name from their admissions register unless the child attends a special school. In this case, consent must be obtained from the Local Authority.

Schools must immediately notify the local authority (giving the child's name, address and the ground upon which their name is to be deleted from the register) as soon as the grounds for removal are met. They should also copy the parents into the notice to the local authority.

The reference to “*as soon as the grounds for removal are met*” is rather puzzling. Please would you kindly clarify what is meant by this statement, as the only requirement

required for deregistration from a mainstream school is parental instruction, it is not a decision that schools need to deliberate, evaluate nor approve.

It is helpful to provide this advice to schools that the name of the child MUST be removed. Sadly, families can face barriers to deregistering caused by schools failing to understand their legal duty when a family has chosen to home educate or placing unnecessary and unlawful barriers to them doing so.

It may well also be helpful to highlight to schools that it is unlawful to delay enacting the parental instruction to deregister a child, and that there is no “process” for deregistration from the family’s perspective, rather it is an instruction with immediate effect.

If legal proceedings are already in process that relate to irregular attendance at school parents should be advised that removal from the school roll may not prevent the process from continuing.

Whilst this is of course true in theory, it is of course essential for the school and the LA to reflect on the purpose of such fines.

Fines for non-attendance are meant to be a method of reducing non-attendance and increasing a child’s attendance at school.

When a child is deregistered, there is now no longer any such aim of increasing school attendance, so the purpose of the fine no longer exists.

Therefore, it would be very helpful for schools and LAs to reflect on the punitive nature of continuing to issue fines for non-attendance when a child has been deregistered.

On no account should parents be encouraged to remove their child from the school register to avoid exclusion or prosecution for failing to ensure that their child has attended school or to improve school performance results.

This of course is a very important point to make and helpful to include in local policy.

**The following section relates to ALNs and IDP- we will provide feedback on these issues separately to allow focus on the issues already highlighted. We are engaging with stakeholders on this to ensure the most productive feedback.**

A child with a Statement / IDP, or a child that attends a special school

If a child has a Statement / IDP or attends a special school, parental rights to home educate remain the same. It would be beneficial for a school to notify the LA if a child has a school based IDP, so that any necessary arrangements to transfer to a LA maintained IDP can be undertaken, if required. This should not delay the removal

of the child's name from the school's register.

Where it is brought to its attention or otherwise appears to a local authority that a home educated child (other than a looked after child) for whom it is responsible, may have ALN, the local authority must decide whether or not the child has ALN and, if it decides that the child has ALN, prepare and maintain an IDP and secure the additional learning provision (ALP) described in that plan.

A local authority preparing or reviewing an IDP for a home educated child, should work with the child and child's parent to identify the appropriate ALP and then secure it. This involves identifying the type of ALP called for by the child's needs and whether the parent will be able to deliver it (either directly or by arranging for someone else to deliver it). Subsequently, if the parent is to deliver it as part of the child's home education, in order to secure the ALP set out in the IDP, the local authority will need to satisfy itself that it is being delivered. Where parents are not able to provide all of the ALP called for by the child's needs, the local authority will need to consider how the ALP can be secured.

A LA may only stop maintaining a Statement of SEN / IDP if it is no longer necessary for them to maintain it in respect of an EHE child. The determination of whether or not this is the case will depend on whether the parents are able to make suitable provision for the child's additional needs. That provision may be different from that outlined in the Statement / IDP. Parents need only provide an efficient education suitable to the child's age, ability and aptitude, and to any SEN /ALN the child may have, as set out in Section 7 of the Education Act 1996.

If it is satisfied that the parents' arrangements are suitable, the LA may be relieved of its duty to arrange the provision specified in the Statement / IDP. If, however, the parent's arrangement falls short of meeting the child's needs, then the parents are not making suitable arrangements then the LA is not absolved of its responsibility to arrange the provision in the Statement / IDP. In some cases, a combination of provision by parents and the LA might best meet the needs of the child. At any point in this process, once the young person transitions to post-16 provision, they can withdraw their consent to the IDP.

While the Statement / IDP is maintained, it must be reviewed annually, following the procedures set out in Chapter 9 of the Special Educational Needs Code of Practice for Wales / Section 23 of the ALNET (Wales) Act 2018.

Where it is brought to its attention or otherwise appears to a local authority that a home educated child (other than a looked after child) for whom it is responsible, may have ALN, the local authority must decide whether or not the child has ALN and, if it decides that the child has ALN, prepare and maintain an IDP and secure the additional learning provision (ALP) described in that plan (section 18.21 of the Additional Learning Needs Code (ALN Code), within a 12 week timescale.

## 9.0 Roles and Responsibilities of the Local Authority

The local authority EHE process is attached as Appendix 1. The local authority will maintain a register of children who are EHE and complete an annual summary report, which includes a range of information including numbers of known pupils electively home educated over the academic year, breakdown of numbers of EHE pupils by gender and age and reasons given for EHE.

Whilst of course local authorities may wish to keep some form of record of those children it knows to be electively home educated, as long as this data collection is consensual and compliant with GDPR principles, the use of the term “*register*” here is unhelpful. This is because the term “*register*” carries connotations of a requirement to “*register*” and/or of being somehow accountable to the ones who hold such a “*register*”. As home education is legally the default position in the UK, with parents having to choose to register their children in school, it is inappropriate and inaccurate to connote there is a need to “be registered” or “to *register*” a child as electively home educated. It is therefore an unhelpful term as risks giving members of staff or of the public a misleading impression of the duties of LAs and parents alike.

In terms of reasons for choosing to electively home educate, parents are under no duty to provide schools or local authorities with such private and personal information. Any such information, if derived from second hand data or obtained inappropriately, is likely to be an inaccurate reflection of actual experiences and circumstances. Likewise, the reasons for choosing to electively home educate can be manifold and very often change over time, thus reliance on any reasons originally given or presumed may no longer be relevant even if were originally a reasonable reflection of the opinions of each family.

In accordance with data laws, when it is known that the LA has no lawful duty towards a child as the child is not missing education, there is no lawful remit to routinely hold data without consent.

When a decision is made to educate electively home, a designated local authority officer will contact the parent(s) to discuss this and explain the support available, including advice on guidance on how families can access universal services. Parents and children are not currently legally obliged to meet in person, but the local authority has a duty to establish that a pupil is receiving a suitable education.

As previously addressed, **the legal duty of the local authority is not to ensure all children receive a suitable education**, but rather to make arrangements to identify, as far as possible, those who are not in receipt of one, as per the Education Act of 1996. This is profound difference. **There is no legal duty for an LA to proactively ensure every child has a suitable education, only to react if it appears this is not the case. It is imperative that policy and practice reflect this legal position.**

The local authority aims to work with parents to support a suitable education, should they so wish, whilst being open and sensitive to individual teaching approaches.

The use of the term “teaching” here does not correlate with previous references to an appreciation of a wide range of approaches to home education. Adult led formal “teaching” is only one of a range of approaches to home education. Unfortunately, it can be very common for communications from local authorities to inadvertently reflect such school-based preconceptions of home education, so it can be very helpful and positive to reflect on the use of such terminology in developing a more holistic and appreciative understanding of home education. It might be more appropriate to alter this section to refer instead to “learning approaches”.

It is of course vital, as you have done so, to emphasise that any “support” is only if families “so wish”. Elective home education is, of course, a parental responsibility, not a co-partnership with the council. Whilst the policy here implies a respectful relationship between LAs and families, it is important that wording does not overstate duty. Home education is not something that is “work(ed)” out between families and councils, unless there are exceptional circumstances where, for example, EOTAS with a duty of council input and provision would be a more appropriate pathway instead of elective home education.

In order for a local authority to satisfy itself of the suitability of education provided by the parents, the local authority may see and communicate with the child, though there may be occasions where it is not in the best interests of the child, or in some circumstances, the local authority can conclude without seeing and communicating with the child that they are receiving a suitable education. It is for the local authority to decide in each individual set of circumstances whether it needs to meet with the child.

In some instances, it may be possible that the local authority can satisfy itself of the suitability of the education on the material provided by the parent/guardian, at the request of the local authority. Where such a conclusion is reached, the LA will set a date for a review to take place and inform the parents and the child.

It is vitally important that the above section is clarified and contextualised as, in its current format is misleading and overstates the duties of the LA. It is important to note that the council does not have a routine duty to be “satisfied” about educational provision. This is terminology that relates to formal enquiries under section 437 of the Education Act, not to informal enquiries. This approach, and any descriptions of a need for the LA “to be satisfied” about provision, should only be used if there is already good evidence and reason to believe “it appears” that suitable provision is NOT in place, not in terms of making initial approaches to home educators to ask if a child is being home educated rather than missing education under s436A.

We appreciate that, unfortunately, the rather confusing format and wording of the 2023 guidance (in part due to revisions made to the wording of the guidance here in response to a legal challenge by Education Otherwise) can add to a false conflation of these two areas and sections, which is why clarification is needed here.

Likewise, there is no legal duty on parents to evidence their innocence. Whilst there can be a tendency to rely on old case-law to suggest that lack of provision of evidence may cause LAs to assume that education is not being provided, this legislation predates GDPR and human rights legislation, and the presumption of innocence along with respect for parents in the absence of known reasons for concerns about education provision must also be brought into play.

We appreciate that the wording of the 2023 guidance contains some contradictions that can add to confusion in such policies. An example is seen here where it is misleadingly stated that it is for LAs to decide whether or not to meet the child, when informed consent is required from parent and/or child for such a meeting to take place, and where meetings are not a mandatory requirement.

Likewise, it would be nonsensical to consider that it would only be in “*some instances*” that it would be possible for LAs to discharge their lawful duty without a meeting, when that duty and the law have not changed since the Welsh guidance and LAs have been fully able to discharge that duty without such requirements previously. Again, this wording is taken from the non-statutory section of the guidance and reflects personal opinions rather than legislative requirements.

It is interesting and encouraging to note here and elsewhere that an individualised approach must be taken to contact and communications with families.

This, of course, is essential as education has to be suitable for the age, aptitude and ability of the child and not a standardised approach as seen in school-based education.

Parents may choose to communicate through other means, such as email, or in writing, to provide evidence of a suitable education.

There are a few points to clarify in this statement.

It is positive that the policy states that families can communicate with LAs in a manner of their choosing.

However, it should be clarified that there is no duty on parents to prove suitability of education. The duty is on the LA to identify those cases where education is not being provided. An appreciation of this is most helpful in ensuring understanding that any information that parents chose to provide to aid the local council in understanding that their children do not fall under the council’s remit of “missing education” is a courtesy measure and in ensuring that such information would obviously therefore be treated with respect and courtesy in return.

It is important to clarify that the method of communication between LAs and families should be in a manner of the family’s choosing.

Seeing the child to discuss their education provision and access to resources accords with a number of articles in the UNCRC, such as a child’s right to an education and to

fulfil their potential, including their rights to express their views and to receive appropriate information in order to make informed choices, to support and provision, to play and leisure activities and to be kept safe.

Insistence on or pressure to see a child when the child or young person does not consent or where the parent as their representative is aware that this is not in their best interests runs counter to the rights of children and of families, including Article 16 of UNCRC, namely the right to privacy including of family life. Furthermore, any insistence on routinely “seeing” a child runs counter to the principle of presumption of innocence, which is why it is not lawful to insist on this or to consider educational provision unsuitable for not having been able to “see” the child.

Should a child decide that they do not wish to meet with a local authority EHE Officer, the local authority will need to decide whether it is satisfied of the suitability of the education provided by the parents / guardian on the information available.

It may well be that having decided to request a meeting with a child on the basis it was necessary to make a decision about suitability, if that request is refused the local authority may not be in a position to be satisfied that the education being provided is suitable.

Where the local authority’s request to meet with a child to make a decision regarding suitability has been refused the local authority may not be in a position to be satisfied that the education being provided is suitable.

Here again, the presumption of innocence must be paramount, alongside a correct appreciation of the Education Act of 1996.

Indeed, it should also be appreciated that, when that Education Act was first introduced, home educators were promised that S436A and s437 would not be used in relation to home education.

Furthermore, the concept of being “*satisfied*” does not apply to S436A enquiries, which are simply a measure to see if “it appears” a child may be under the LA’s remit of being a child who is missing education. So “*position to be satisfied that the education being provided is suitable*” is not the appropriate terminology here. Rather, phrasing along the lines of “**do not see reason to believe a child is not being home educated**” or words to that effect would be more appropriate.

Terminology such as requests for meetings being “**declined**” rather than “**refused**” would be **more progressive and respectful** in relation to honouring the rights and privacy of family life of home educating families.

A child’s right to privacy and to their preferred mode of delivery of education must not be overridden in any wishes to meet with a child without consent.

The local authority will provide at least one EHE review and support meeting from a

local authority officer per year. This meeting is designed to offer support to the family, as well as obtain details about the planned education and the pupil's progress. A summary report containing this information will be sent to the parent after the meeting.

It is paramount that not only is it made clear to parents that any such “offers” or “suggestions” of meetings are purely just that, that they must be voluntary. In particular, it must be made clear to parents that would be no negative outcome or undue repercussions for exercising their lawful rights to not meet in person. To not make this clear in all correspondence risks giving a coercive or manipulative impression to communications, which we are sure is something that local authorities would seek to avoid.

Likewise, there is no duty to elicit future plans, or duty of parents to create them. Indeed, for elective home education to be truly suitable to each individual child's age, aptitude and ability, future plans are not relevant, as the educational provision will be constantly modified to suit each individual child. If there were a requirement to provide future plans, which there thankfully is not, it would limit the flexibility and individuality of home education, and also tend to favour more structured and school-like approaches, which could be very damaging to the optimal educational experience and provision of many children for whom such approaches are not suitable or favoured.

The use of the word “*pupil*” here is incorrect as this term relates to a child on a school roll. In addition, the use of the term “*pupil*” infers a school-like conceptualisation of learning and thus risks negating previous references to appreciating a diversity of approaches to education.

Again, it would be helpful for policy writers to seek the opinions of experienced home educators when penning local policies, regarding how phrasing may be perceived to avoid not only inaccuracies in legal duties, but also terminology which may be offensive, or contain unconscious bias or discrimination towards home educators.

If a child has a Statement of SEN / IDP, additional visits may be required to ensure the ALP identified remains appropriate and the annual review / PCP meeting will be arranged in line with guidance in the SEN / ALN Code of Practices for Wales.

There are a number of issues regarding aspects of this policy in relation to children with additional learning needs and the role of IDPS. Feedback on these aspects of this policy will be provided separately for the sake of succinctness.

## 10.0 Privacy Notices

Information received by the EWS, together with any additional information received from schools, pupils, parents/cares or other organisations, will be recorded and

processed by the LA in accordance with the legal obligations placed on CCBC and our duties under the Education Act 1996, Education and Inspections Act 2006 and The Children Act 1989.

Further information on how the information will be processed and used is available in the form of a full privacy notice and can be found at [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)

## 11.0 Monitoring Arrangements

As indicated in section 8 the local authority will undertake at least annual monitoring visits to children who are electively home educated.

There sadly seems to be some considerable confusion here.

Firstly, the use of the word “*will*” connotes that this must take place, as if there is a duty to do so, whereas it is acknowledged elsewhere that the local authorities have no legislative power to insist on visits/meetings with EHE families, or to take further or repercussive action if families exercise their lawful duty to decline these.

To state that any such visits must be to “children” is also inaccurate.

Furthermore, local authorities have **no legal duty or empowerment to monitor elective home education**. They may make informal enquiries and when it is known that a child is not a child who is not in receipt of a suitable education, that enquiry and duty ends, with education being a parental responsibility. In the absence of evidence to believe otherwise, there is no reason to believe that a EHE child suddenly becomes CME.

The Welsh Government’s own guidance on CME confirms that there is no legal basis for monitoring elective home education. Point 7.35 states, “*There is no legal framework for the LEA to regularly monitor provision of home education nor an automatic right of entry to the parental home to check the standard of education the child or young person is receiving*”.

<https://www.gov.wales/sites/default/files/publications/2020-09/statutory-guidance-help-prevent-children-young-people-missing-education.pdf>

Whilst education is a devolved matter, the same primary legislation that any guidance should be based on applies in England and in Wales. Thus, it is helpful to note that the Department for Education in Westminster have frequently stated, including in their 2019 guidance on EHE that “*Your local authority has no formal powers or duty to monitor the provision of education at home*”.

Indeed, the same documentation from the DfE, based on the same primary legislation, also states:

“5.11 regarding safeguarding duties

“*This duty does not entitle a local authority to insist on visiting a child’s home, or seeing the child, simply for the purposes of monitoring the provision of home education*”

And that, following completed informal enquiries, local authorities may be “*likely to want to update periodically the information it has on your child*”. Note this is to simply

periodically update information, not to reevaluate “suitability of education” or assume that the child is missing education unless evidenced otherwise.

[https://assets.publishing.service.gov.uk/media/5ca21e22e5274a77d9d26feb/EHE\\_guidance\\_for\\_parentsafterconsultationv2.2.pdf](https://assets.publishing.service.gov.uk/media/5ca21e22e5274a77d9d26feb/EHE_guidance_for_parentsafterconsultationv2.2.pdf)

There is no reference to monitoring of elective home education in the 2023 Welsh guidance or in the Welsh government’s handbook for home educating parents. Indeed, even if there were so, there would not be a lawful basis for this. So, references in local policy to concepts of monitoring, either in the explicit use of the word or in concept or inference, must be removed. It clearly would not be consistent with the stated aim of collaborative working and engagement with the community for such references and concepts to remain.

Furthermore, the use of the command word “**will**” inappropriately connotes that visits “**will**” happen, ignoring the lawful situation that visits are not mandatory, that informed consent would be required for any such visits/meetings and that legal proceedings cannot be instigated for families exercising their lawful rights to communicate via other means.

If it appears that parents are not providing a suitable education the local authority has powers under Section 437(1) of the Education Act 1996 to intervene. This section states that: *‘If it appears to a local education authority that a child of compulsory school age in their area is not receiving suitable education, either by regular attendance at school or otherwise, they shall serve a notice in writing on the parent requiring him to satisfy them within the period specified in the notice that the child is receiving such education.’*

If the local authority considers that a suitable education is not being provided, then a written report of the findings will be made and copied to the parents within 10 days of the contact with the designated local authority officer. The report will specify the grounds for concern and any reasons for concluding that provision is unsuitable. Parents will be given a reasonable opportunity to address the identified concerns and report back to the authority.

**It would be helpful for this section to be clearly labelled as formal enquiries or similar so that la staff and families understand that this is the next stage and not routine.**

It is extremely helpful to see clarified in local policy that, *“a written report of the findings will be made and copied to the parents within 10 days of the contact with the designated local authority officer. **The report will specify the grounds for concern and any reasons for concluding that provision is unsuitable. Parents will be given a reasonable opportunity to address the identified concerns and report back to the authority.**”*

If there is legitimate reason to believe education is not being provided for a given child, then any requests for further information must be specific to identify grounds for concern in that particular case and “any reasons for concluding that provision is unsuitable” MUST be clearly delineated. If information has been provided that is felt to

be lacking or concerning, then the exact rationale for believing this on each point of concern must be listed to allow parents opportunity to address such concerns.

The local authority is expected to make all reasonable efforts to provide help and/or support to the family. This may include providing parents with information about preventative services and where appropriate gaining parental consent for a referral to those preventative services available locally. This is an offer of support, and the parents are under no obligation to accept it.

If the local authority has continued concerns about the suitability of education, it will need to consider whether to see the family on a more frequent basis to assure itself that the child is receiving a suitable education. The local authority may need to liaise with other relevant partners of the local authority dependent upon the circumstances of the child when deciding on the frequency of meetings with the family.

It is of course vital in any such considerations to hold in the forefront of considerations that all manners and approaches of home education must be respected, including when this is guided by the religion or philosophies of the family, alongside the guiding principle of the presumption of innocence meaning that staff should consider that there will not be concerns about educational provision unless there is reason and evidence to believe otherwise. Again, it would be helpful to clarify that this is under formal proceedings and is not routine.

If parents fail to address concerns the local authority is required to consider sending a formal notice to the parents under section 437 Education Act 1996 before moving on, if needed, to the issuing of a school attendance order.

A school attendance order will only be served after 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 that they are now providing an appropriate education and apply to have the order revoked (see School Attendance Order flow chart, Appendix 2).

It is of course vital that notices to satisfy are only issued as a very last resort. They should certainly never be issued because information provided has been overlooked in some way, or because parents have chosen to communicate in a given way. They can never be lawfully issued because parents have declined to provide “samples of work” or utilise LA-designed forms, for example.

It is helpful to reflect on the wording here. Indeed, SAOs should be a measure of last resort, for the sake of all concerned, most especially the child. The phrasing in relation to evidence that parents are “now” providing a suitable education would need adjustment, as this connotes the presumptions both that there was conclusion that suitable education was not in place previously and that this conclusion was a correct one. As it is only a judge in court who can determine whether educational provision is suitable or not, if and when any SAOs are contested, it is helpful that terminology

reflects that any conclusions reached by LA employees are based on impressions that may or may not have been accurate or may or may not have been based on an understanding of the full nature of the provision. It could well be in such scenarios that suitable provision was in place all the time but had not been appreciated/understood by the LA for whatever reason. Provision does not become suitable at the point where a LA employee considers it to be so. If provision is suitable, it was so even before an employee came to understand and appreciate this. Of course, educational provision may be suitable whether or not the child is known to the LA and whether or not the LA have fully appreciated or understood it.

It would obviously be inappropriate to use threats or potentials of SAOs to persuade parents to comply with providing information in prescribed formats (eg via “samples of work”) rather than in formats of the family’s choice, or to provide types of information that are not requirements and not appropriate, such as future plans. It would be helpful for staff and public alike to see this clarified here.

## 12.0 Safeguarding Children and Young People

According to the Welsh Government, there is no evidence to suggest that home educated children are at greater risk of neglect or abuse than children who are educated at school. Schools and education settings play an important role in safeguarding children. It is important, therefore, that all children enjoy the right to be safe, regardless of how and where they receive their education.

**It is imperative that this policy clarifies that there is no duty, requirement or expectation for professionals, such as health care professionals, to inform the local authority if they are aware of a child who is being electively home educated, and that indeed doing purely for the reason of the child being home educated in the absence of clear and case-specific concerns risks both breaching professional codes of conduct and confidentiality and unlawful conduct for breaching GDPR.**

A number of home educating families will naturally disagree with the concept of schools playing an important role in safeguarding, if their children have sadly had the opposite experience and been victims of bullying or abuse, be that sexual, physical or psychological, within the school environment. It would be very helpful to reflect on and amend the phrasing here to respect the experiences of those where children have experienced safeguarding issues in school, including where families feel the schools did not adequately address safeguarding issues and needs. There is also the risk of this phrasing connoting an image that schools are safe places and that are somehow safer or better at safeguarding than family homes. To do so would, of course, be discriminatory.

Not only is home education not a safeguarding risk, but research has shown that home educated children are LESS likely to experience abuse or neglect within the home despite an increased level of scrutiny. <https://www.educationotherwise.org/home-education-and-the-safeguarding-myth-analysing-the-facts-behind-the-rhetoric/>

In addition, as mentioned above, home educated children are not at risk of the heartbreakingly high and clearly unacceptable levels of abuse and trauma in relation to physical, sexual, racial, emotional and psychological abuse, harassment and bullying that an unacceptable number of school children may be subject to.

<https://www.bbc.co.uk/news/uk-wales-politics-57428624>

<https://www.bbc.co.uk/news/uk-wales-67546071>

<https://research.senedd.wales/research-articles/sexual-harassment-in-and-around-secondary-schools-we-don-t-tell-our-teachers/>

(It is interesting to note that school-children do not appear able to use their voice, let alone have it heard in such environments and situations).

Evidence does not conclusively demonstrate schools to be protective for mental health either. Some 200 school-children a year commit suicide in the UK, an average of around 4 children every week. Research elsewhere has demonstrated a concerning correlation between term-times and incidents of child-suicide.

<https://www.nber.org/papers/w30795?fbclid=IwZXh0bgNhZW0CMTAAR35W9PETv0bntSzyreBaUwuMmhs8T8vE->

[btgi0EmA4pBhleZ3Uhzekt4\\_aem\\_3mZYaqLS1Me7XACrGZ7row](https://www.nber.org/papers/w30795?fbclid=IwZXh0bgNhZW0CMTAAR35W9PETv0bntSzyreBaUwuMmhs8T8vE-btgi0EmA4pBhleZ3Uhzekt4_aem_3mZYaqLS1Me7XACrGZ7row)

Thus, it is imperative that no claims are made in local policy that are not evidence based or risk a false conflation.

A parent's decision to home educate is not considered, in itself, a ground for concern about the safety and well-being of the child. However, as with any child regardless of where they are educated, there may be circumstances which, individually or combined, give practitioners cause to seek further information about a child.

There may be circumstances where a child has not had direct contact with universal public services for a significant period of time. This is not in itself evidence that a child is at risk of harm but should make practitioners think about what further action they may need to take in discussion with the senior officer responsible for home education.

This must not be seen to give permission to practitioners to inform the LA of families contact details only because they are home educators. It must be made clear that to do this would be an inappropriate and unprofessional breach of duty, one that risks disciplinary processes when confidentiality had been wrongly breached, and one that has profound implications for home educators' ability to feel safe in accessing universal services. Lack of such clarification risks placing barriers to home educators feeling safe in accessing universal services. So, this would seem an excellent opportunity to be able to ensure no such barriers are placed, in clearly stating here that confidentiality of home educators must be maintained unless there is a clear reason not to, as defined by the

appropriate professional bodies, and being aware that a child is home educated not sufficient grounds for breaching confidentiality.

A recently published research report addresses the impact on families of inappropriate breaches in confidentiality and discriminatory attitudes when accessing health care services.

[https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9Yeb4azD8gqyFC4lxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw\\_aem\\_AbUQJjInURcDPVoMIEwZaZATbGG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwlzi\\_Sn1llngsFJVgzWVx](https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9Yeb4azD8gqyFC4lxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw_aem_AbUQJjInURcDPVoMIEwZaZATbGG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwlzi_Sn1llngsFJVgzWVx)

It may be helpful to reflect on the experiences and findings documented in that report in appreciating the usefulness of this opportunity to provide helpful clarity for all involved on this point.

The welfare and protection of all children is of paramount concern and is the responsibility of the whole community. The local authority EHE process (Appendix 1) highlights the steps that will be taken if there are any concerns regarding the welfare and safeguarding of a child being electively home educated. In accordance with EHE statutory guidance, the EHE Officer will ensure they comply with All Wales procedures.

The welfare and protection of all children is of paramount concern and is the responsibility of the whole community. In accordance with EHE statutory guidance, the EHE Officer will ensure they comply with All Wales procedures.

Whilst any employee must naturally act if there is reason to believe abuse or neglect are taking place, there should not be an automatic screening of each family on the presumption or anticipation of this being the case. As with education, the role of the authorities is reactive.

### 13.0 Elective Home Education and Gypsy, Roma and Traveller Communities

Caerphilly Local Authority is sensitive to the distinct culture, ethos and needs of Gypsy, Roma and Traveller communities. GRT parents have the same right to educate their children at home as other families and will be treated in exactly the same way as any other families.

The local authority will take a broad and holistic view of the education being provided with reference to their communities' culture and lifestyle, when considering the suitability of the education. Caerphilly Local Authority will therefore seek to positively assist traveller families (in the same way as other families) who do not appear to be providing a suitable education for their children, before taking action.

It is encouraging to see that staff are encouraged to not treat GRT families differently to any other home educating families, especially in the light of the highly questionable Ivatts' report being discussed in Welsh Government hosted training sessions for LA staff in 2023. It would be helpful to glean the experience of the GRT community to ensure that there is no discrimination or unconscious bias in relation to any choices of members of the community to electively home educate.

It is still concerning to see that a separate paragraph on the GRT community has been deemed necessary. Sadly, the last sentence gives a highly presumptive tone including in its choice of grammar, in assuming there are such families rather than addressing practice to be considered IF there were such instances.

#### 14.0 Child Employment

Regulations regarding child employment apply to all children of compulsory school age, whether they attend a school or are home educated. Children may not work until they reach the age of 13 years and even then, they cannot work during school hours. Before a child commences any form of employment, they must be in possession of a work permit, which the child's employer should apply for.

#### 15.0 Children in Entertainment

Regulations regarding children in entertainment apply to all children of compulsory school age whether they attend a school or are electively home educated. A performance licence is required if a child is engaged in paid work in modelling sport or in theatre, film or television performances outside of school hours. A licence is also required if the engagement is unpaid and takes place during normal school hours, whether this is a one-off event or an on-going commitment.

#### 16.0 Flexi Schooling

Flexi-schooling or flexible school attendance is an arrangement between the parent and the school, where the child is registered at school in the normal way but attends the school on a part-time basis. The remainder of the time the child is home educated but remains on the school roll.

Flexi-schooling is generally a short-term measure to address a particular issue or concern, with the best interests of the child at the heart of decision making and may address potential challenges with:

- Reintegration into mainstream education
- Transition into school for the first time
- Emotionally Based School Avoidance (EBSA)
- Anxiety related to school attendance
- Pervasive neurodiversities and / or social communication

- Physical / medical conditions

The decision and provision of flexi-schooling is an arrangement between the parents and the school, often with agreement from the LA. It is the Head Teacher's decision whether this arrangement is made.

It is a shame that flexi-schooling is considered a short-term measure, as diversity of approaches to education is surely a positive thing for society and for children. Whilst most home educators chose to not utilise the school system, there may be families who feel they would benefit greatly from a long-term blended approach to education, rather than a binary one.

### 17.0 Review of the EHE Policy

This policy and associated documents will be reviewed every two years to ensure that current legislative requirements are reflected and to see if improvements can be made to further develop efficient and effective working practice. The review will be achieved through the involvement of key stakeholders including home educating parents.

As previously stated, our feedback on the aspects that specifically relate to children with additional learning needs will be provided separately, to allow sufficient focus on addressing the issues raised in this feedback initially, and following feedback from our community stakeholders.

It is unfortunate that home educators, as the key stakeholders in these issues, have not been involved in the development of this policy. However, it is noted and welcomed that CCBC have requested our feedback on the policy and we sincerely hope that our constructive suggestions are utilised going forward.

We hope that the attached comments, along with previous correspondence from Home Ed Cymru to all LAs regarding the Welsh Government's out-dated and legally inaccurate EHE supplementary materials, are given the important consideration and amended with urgency so that any legal errors are addressed.

## **Appendixes and annexes**

CCBC have chosen to add these various charts and templates as additions to policy. Unfortunately, many of these documents are based on non-statutory documents, provided as templates by the Welsh Government, which contain a series of errors, misassumptions and misinformation. Home Ed Cymru attempted to bring these errors to the attention of CCBC in a letter to all LAs in Wales in February 2024. However, CCBC would have received this after the local policy was initially drafted and unfortunately the connection does not seem to have been made between the errors in those materials and the addition of these appendices and annexes to the drafted policy prior to engagement with the home educating community. In response to our communications on the issues with the templates being used by (thankfully only a few) LAs across Wales, Caerphilly confirmed that, where used in communications with home educators, it would be made clear that the templates were non-mandatory. Whilst this is, of course, more helpful than attaching them to communications without this preface, the stating of the non-statutory nature of the templates does not negate the errors, misinformation and questionable lawfulness of their use.

We thus request that these appendices and annexes are immediately withdrawn to allow full reflection on these errors and misinformation.

### **Appendix 1**

There are multiple errors and over-stating of legal responsibility in this document:

- The document assumes that a meeting with parents is lawful and mandatory
- The document incorrectly assumes that parents must provide reasons for choosing to home educate
- The document references the education “*planned*” by the family. It should be noted that parents do not need to “plan” extensively in advance (in order that education can be flexible, adapting to the needs of the child), nor do they need to provide any such plans to the LA
- The document confers a duty on the LA prior to any formal enquiry stage that there is a requirement on them to determine “*suitability*” of education. There is no such legal duty on LAs at the informal enquiry stage. The LA need only to satisfy themselves that the child is not missing education.
- The document assumes that LAs have a legal duty to assess education yearly, even in the absence of any evidence that the education provided is no longer suitable.

### **Appendix 2: (Attendance Order and Education Supervision Order flow chart)**

This appears to be taken from Annex 1 of the supplementary materials.

As stated in the letter to LAs in Wales from Home Ed Cymru in February 2024:

This document lists a number of steps beginning with “Are you satisfied that the child(ren) are receiving a suitable, full-time, efficient education?” and concluding with either “yes” or eventual prosecution. However, at each step, “yes” cannot be achieved without evidence being provided, even though **the Education Act places no duty on parents to evidence their educational provision.**

In this flow chart the course of action outlined is to threaten parents with School Attendance Orders and ultimately Care Orders if a meeting does not take place, even though the Education Act only gives lawful duty to local authorities to **act “if it appears” that educational provision is not in place following any informal enquiries. There is no legal requirement for parents to meet with the local authority.**

This document thus grossly misrepresents the law.

- Note that this flow chart starts with a faulty initial premise. The question should not be “are you satisfied?” The LA does not have the legal role of overseeing the education of ALL home educated children, in the absence of any concerns to the contrary. Nor does the LA need to be “satisfied” of educational provision at the informal enquiry stage. Rather the question here should be, “Is there reason to believe this child is not receiving appropriate education, is there reason to believe there is educational neglect?” The LA are not inspectors of educational provision - the duty of the LA is to establish the identities of those who are not in receipt of suitable education, not to be satisfied about all those who are. This is an important legal distinction, and to work from the premise as indicated in this document, risks LAs acting unlawfully and overstepping their legal responsibilities.
- In addition, **SAOs should only be issued if it is expedient to the child; if it is in the child’s best interests.** Even if the educational provision is considered suboptimal, this has to be balanced against whether the education received and the child’s wellbeing would be improved by attendance at school or not, and that is not a foregone conclusion. There may be many reasons why a child is not learning optimally, and school attendance does not necessarily solve these, and may indeed on occasions have the opposite effect.

### Annex 3-5

These are a series of template letters for local authority education employees making initial contacts with home educating families that appear to be based on Annexes 2a, b and c of the non-statutory supplementary materials.

As previously stated in the letter from Home Ed Cymru to LAs in Wales regarding these supplementary materials:

These templates all seek to conduct the LA's informal enquiries exclusively by means of arranging a meeting between the LA and the home educating family. Aside from the fact that these templates are both dictatorial and impolite in that they seek to arrange meetings that parents have neither requested nor consented to, none of the templates make clear that there is no legal requirement for families to meet with the LA, that parents and children are free to decline these optional meetings. Furthermore, there is no reassurance given that there would be no negative repercussions for families who (lawfully) decline such meetings. To give the impression that meetings are a requirement, and to do so without following the appropriate process of informed consent, risks authorities acting unlawfully. Moreover, the use of repeated follow up letters only reinforces the misleading appearance of a meeting being a necessary requirement. It should be further noted that these letters are to families as part of initial informal Section 436a enquiries, to families where there are no legitimate reasons for concern about their parenting and educational provision.

Annex 5 (which appears to be based on Annex 2c of the supplementary materials) also contains a false claim that, "*The local authority has a legal obligation to ensure that all learners are receiving a suitable and full-time education, which is why we request a meeting and information about the education you are providing.*" The local authority has no such legal obligation, as explored in the summary above, and using such a false claim of legal duty in communications only increases the inappropriate portrayal of a position of power over parents, thus acting in a way that could readily be perceived as deceitful, manipulative and coercive. Not only is there no such legal duty on authorities to ensure all learners are receiving a suitable and full-time education (of course, local authorities would be legally liable for all children who failed to receive a suitable and full-time education through state schools or LA EOTAS provision if that were the case), but these initial letters to parents represent informal enquiries (section 436a) to establish if a child is either CME or home educated, and not part of s437 proceedings where a LA has a duty to act "if it appears" such an education is not in place (and only at this point would more detailed enquiries be appropriate). Under Section 436a enquiries, the LA only needs to be satisfied that a child is not deemed to be not in receipt of a suitable education. This statement and its demands are therefore utterly disproportionate and inappropriate.

### Annex 3: “Initial EHE letter”

This initial letter is misleading and sadly, not an example of the transparent or respectful communications that the LA seek to foster.

- It does not make it clear that a meeting or visit is an offer, a voluntary option, a non-mandatory way of engaging with the local council. By then announcing such a meeting, it gives the impression that such meetings are a requirement. This is misleading and counterproductive to any trust based relationships.
- The letter proposes a date and time to meet. It is highly impolite, disrespectful and inappropriate for the LA, or anyone for that matter, to arrange a (non-statutory) appointment without first seeking consent of the parties involved. It also presupposes that, even should the family wish to meet, that they are available at any given date and time – times when they are very likely to be engaged with home educating their children.
- Again, suggesting that, should the stated date/time not suit, that the family must contact to arrange an alternative appointment, increases the impression that such a meeting “should” and “will” happen, rather than being an option. Likewise, the concluding paragraph of the “officer” (an official sounding title) saying they “look forward” to meeting “you and (children)” increases the conveyance to the recipient that this is something that “will” and therefore “has to” happen. There is no process of informed consent here.
- To engineer situations where a person feels forced or pressurised to meet – and to introduce their children to strangers for questioning – without being given all the information in advance, risks eliciting information without fully informed consent. This would result in a breach of data protection laws if this flow-chart were acted upon. To demand a meeting, without stating that this meeting is voluntary and can be declined without any negative consequences, and without sharing the full implications of both meeting or not meeting, risks the LA acting unlawfully.
- Moreover, for those home educators who are aware of their legal rights and responsibilities, communications presenting such meetings as mandatory (when they are fully aware that they are not), gives the impression of manipulative or coercive behaviour, thus alienating said home educators and creating a climate of mistrust.

Therefore, this template, if used at all, must be changed to ensure that the recipient is fully aware that:

- The offer of a visit is only an offer, that there would be no negative consequences of refusing, and that many home educators chose to communicate via other means.
- Likewise, that forms do not have to be completed, as above that home educators often chose to communicate via other means.

#### Annex 4:

The letter in Annex 4 is even more inappropriate and, if used, risks the LA acting unlawfully.

- The tone of the letter is unacceptable; both intimidating and disrespectful to families – far from the relationship CCBC have stated they would like to develop with the home educating community.
- The letter is manipulative, coercive and not lawful to imply that children and parents are required to “consent” to such meetings, as that is not “informed consent” but action under duress and misinformation.
- There is no indication in the letter that there is any other way for families to respond to informal enquiries, implying that meetings are the only acceptable way for families to engage with the LA.
- Moreover, the way the letter seeks to reprimand the family for not meeting (as is their lawful right) is highly inappropriate.

This letter must be changed.

- It must reflect that there are a range of ways in which parents may respond to informal enquiries and that all are equally acceptable.
- It must not imply that visits/meetings are a requirement when this cannot be enforced legally.

This letter creates increasing level of mistrust amongst the home educating community, gives them increasing cause to believe that they cannot trust communications from the council to be lawful and accurate.

#### Annex 5: Second follow up letter to initial EHE letter

This second follow up letter is even more unacceptable and coercive.

- It is inappropriate to say “we arranged to meet on...” when the parents did no such thing, but rather there was an attempt to impose a meeting on them.
- The local authority does not have a **legal** obligation to ensure that all learners are receiving a suitable and full-time education, even if it were to believe it has a moral one. This is providing misinformation, rather than stating the actual legal duty of establishing the identities of those who are not in receipt of a suitable education.

- This letter threatens legal action, giving the clear impression of the only option to avoid this is to agree to a meeting. That is not true and is coercive. This creates an even deeper climate of mistrust.

As with the previous two letters, this letter must be changed to avoid unlawful and disrespectful communications.

- It must reflect that meetings are only an offer, an option.
- It must make clear that there are no negative repercussions of communicating with the LA in modes other than via meetings; modes which may be more effective and appropriate, and, of course, these preferences will be unique to each family and each child.

### Annex 6: Template for parents

This appears to be based on Annex 3 of the misleading and non-statutory supplementary materials.

To reference the letter sent from Home Ed Cymru regarding those supplementary materials:

There are many issues with this form, the first being that it does not state that completion of the form is optional. As we know, parents can choose to respond to an LA's informal enquiries in any way they choose. Providing a form without clarifying on that form that its completion is non-mandatory is unlawful and inappropriate. Information gathered without fully informed consent would not be valid. The form also fails to identify how the requested information would be processed, stored and shared, and therefore does not comply with GDPR.

The form also asks for information which parents are not legally required to provide, without making it clear that there is no legal duty or requirement to provide such information. These forms include an array of subjective questions, some of which are philosophical in nature, about "hopes" and "opportunities for your child to... discuss personal, social, wellbeing and health issues..." "The form concludes:

*"Once we have taken into consideration the evidence you have provided, we will be contacting you:*

*(i) If we have concerns about the suitability of education provided for your child or*

*(ii) To arrange the next year's discussion where you will again be **required** (emphasis ours) to provide evidence of how you are delivering a suitable and efficient education in line with your child's age and ability and how you are providing for any ALN that they may have."*

The incorrect impression given throughout is that this is an official form which parents have a legal duty to complete. Furthermore, as explained in point 7 of the summary of the issues with this Appendix, the form gives a false impression that there is a legal duty to not only repeat informal enquiries but also that evidence is required each time authorities attempt to repeat this process, even when it has already been established

that said child is not a child not in receipt of a suitable education, and with no reason to believe “it appears” this may have changed. There is nothing in law that requires either of these actions.

### Annexes 7 and 8.

These templates to “secure child’s view” appear to be taken from the supplementary materials’ Annexes 4a and b “Template[s] to secure child’s view”

In these forms, personal information is being required of children without them being informed that they do not have to supply such information – this does not adhere with principles of informed consent. UNCRC Article 12 affords children with the right to a voice (something parents and local authorities would both seek to promote, of course), however the UNCRC is also very clear that these views should only be given freely and without coercion.

Moreover, there is no explanation of the potential implications or possible repercussions of any information a child may provide. This is particularly concerning given that these are documents that could be used in legal proceedings against the family in issuing of School Attendance Orders, based on what a local authority employee may interpret the child to be saying.

There is no reference to why the data is being collected, nor how it will be processed, stored or shared, and thus breaches data protection laws.

### Annex 9

This annex appears to be taken from Annex 5 of the supplementary materials, entitled “local authority report”.

To quote the letter sent from Home Ed Cymru regarding the errors and misleading statements in those supplementary materials:

This form in its entirety is confusing and misleading for local authority employees as it conveys an expectation that they should elicit a series of information (including, but not limited to reasons for home educating, “evidence”, “plans” and planning documents, future aspirations of the child) that parents are not legally obliged to provide.

This form is assumed to be intended for completion following section 436a informal enquiries where the only legal remit of the authority is to identify if a child is missing education. Thus, the content and expectation here is disproportionate and inappropriate. The majority of the information on the report is not necessary for the

local authority to fulfil its duty, especially where there is no reason to believe “it appears” that a child is missing education.

In essence, only two fundamental questions are needed – (1) has the parent stated that the child is receiving a suitable education and (2) is there any reasonable cause to not believe the parent’s assertion that their child is receiving a suitable education?

If local authority employees are led to believe that they are expected to elicit all of the information noted in this report, this risks them feeling a sense of pressure to ensure that this information is provided and further risks them placing undue pressure on parents to (unnecessarily) divulge personal and private information. The yes/no format of this form also risks increasing a sense of concern in a local authority employee if they feel unable to give either answer accurately.

Of course, if parents do decide to divulge such information, this should be only on a purely voluntary basis and as part of a process of fully informed consent, where parents are made fully aware of the potential implications of any information they may or may not provide.

Furthermore, the validity of requiring parents and children to sign such a document is highly dubious. Parents and children do not require permission from or approval of local authorities to home educate, authorities are not there to be inspecting suitability, they are simply present in a reactive role to act “if it appears” a suitable education is not in place.

#### Annex 9: Local Authority Report

As above, the requests for information here are not appropriate with the depth of personal information requested overstepping what is required.

#### Annex 10: Annual EHE discussion contact letter

This annex 10 appears to be taken from Annex 6 – which bears the dubious title “annual EHE discussion contact letter”

To reference the letter from Home Ed Cymru regarding the errors in those supplementary materials:

This appears to be intended as a follow-up to a meeting which has already taken place, though it goes on to press for initial information about the education being provided. Once again, there is evidence of overstep in both the tone and assumption that, even if annual contact were a requirement, that this should be in the form of meetings, without suggesting any alternative forms of communication.

Furthermore, there is considerable overstepping in the concept that parents have to continually re-evidence their innocence of educational neglect in the absence of any

concerns raised to suggest this, as addressed in point 7 of the summary of issues with the appendix, provided above.

- Again, this is misrepresenting the lawful duty of the council, who has a reactive duty to establish the identities of those children not in receipt of a suitable education, but who do not have a legal duty to ensure that all children are receiving a suitable education. The former is based on the correct presumption of innocence, the latter based on an unlawful assumption that education is the responsibility of the council even in the absence of concerns, or of the parents delegating that duty.
- Likewise, this again asks for future plans and aspirations, which are not part of the lawful remit of whether a child has not been receiving a suitable education or is not receiving one. There is no lawful remit to establish if a child will be receiving a suitable education in the future, there is no prospective remit.
- Again, the communications from the council are misleading parents by only giving the option of meetings/visits as if these are the only satisfactory ways of responding.
- Furthermore, the basis for repeating informal enquiries is extremely dubious. Where a child is already known to be home educated and not CME, then the LA has discharged their lawful duty by confirming that the child is not a child who is not in receipt of a suitable education. Whilst LAs may check if the mode of educational provision for a child has changed if wanting to ensure its records are up to date, the basis for repeating informal enquiries and “reinvestigating” the child’s provision in the absence of any reason to believe that there are concerns that provision is now not in place, is extremely questionable.

#### Annex 11 and 12

These appear to be taken from Annexes 7, 8 and 9 of the supplementary materials.

To quote the letter from Home Ed Cymru regarding the errors in these supplementary materials:

The final three documents lead incrementally to the issuing of a School Attendance Order. Amongst other concerns, these documents mistakenly deem a (lawful) refusal to agree to a meeting between families and the local authority an automatic escalation to section 437 and even to subsequent legal proceedings against parents. As we have repeatedly highlighted, there is no legal obligation for home educating families to meet with the LA, and certainly not at the informal enquiry stage. Therefore, these templates are highly misleading for LA staff and parents alike and any attempts to implement such pathways and rationale for legal proceedings would cause the LA to act unlawfully.

### Annex 11: Initial school attendance order notice template

- This letter is shockingly inaccurate and overstepping and must be changed immediately, or those utilising it are at significant risk of acting unlawfully.
- A SAO cannot be issued because a parent did not choose to communicate in a certain manner – a SAO cannot be issued for declining a meeting/visit. Even more so given the fact that the initial letters did not clarify that there were other ways of communicating.

### Annex 12: School attendance order notice template (child without an IDP which names a school)

- Whilst this template does not address the way that parents may communicate with the LA to address any concerns, given the content of the previous templates for letters that would have been sent prior to this, it must be noted that this cannot be lawfully issued for not agreeing to comply with a demand for a meeting or visit.

### Annex 14.

Note that there is no indication if the “reason for EHE” is the school’s impression or version, or what has been specifically stated by the parent. Likewise, there is no way of knowing if the parent has felt able to fully disclose to the school why they have chosen to deregister. Furthermore, if a school wishes to portray the most optimistic view of their approach to families, an element of selection or interpretation can well play a part in the reasons put on such forms.

Any reliance on data derived from such forms from schools therefore is inherently unreliable, it is third-party data, and data obtained under circumstances where parents also may not have felt safe or felt it worthwhile explaining the issues further.

Given the damaging potential implications under the wording of the proposals in relation to construction of CME databases of parents disclosing “negative reasons” for deregistration, it is especially important that any requests for information on reasons for deregistration be part of an informed consent process, with no negative repercussions for families who choose to disclose what others may term “negative reasons” for deregistration.