

Email from Pembrokeshire Home Educators to PCC Scrutiny Committee regarding a report drafted about Home Education by the Education Department of PCC.

Dear Chair and members of the Schools and Learning Overview and Scrutiny Committee,

As home educators in Pembrokeshire, we are sorry to have to bring to your attention significant and wide-reaching concerns regarding a report on elective home education (EHE) that is due to be discussed by the Schools and Learning Overview and Scrutiny Committee on 26th September 2024. We hope that the information we have provided will be used in tandem with any reading and subsequent discussion of the report. (<https://mgenglish.pembrokeshire.gov.uk/documents/s75907/2024.08.21%20OSC%20Report%20Elective%20Home%20Education.pdf?LLL=0>)

We would be grateful for the help of the scrutiny committee in addressing the considerable level of inaccurate and/or misleading information within this report. Likewise, we raise concerns over the tone of the report concerning home educating families and members of the community in Pembrokeshire.

Whilst it is not possible in a single communication to address all the issues raised by the incorrect information in this report, we trust the following comments on the most concerning points will aid the committee in giving appropriate scrutiny and in helping address and correct these problems.

We address these problems in the order they arise to be methodical in analysis, however, this does mean that the most concerning features are not addressed immediately.

So, in particular, we would like to draw your attention to:

- **The mistaken belief that there is “new legislation”.**
- The misunderstanding of the lawful duty of local councils concerning EHE children, including the **mistaken assumption that there is a legal basis to monitor** home educated families.
- The **repeated false and discriminatory conflation of EHE and “safeguarding”** issues.
- **Considerable confusion in the conflation of informal enquiries** under section s436A of the Education Act and **formal enquiries under s437** which are permitted if there is reason to believe suitable education is not being provided.
- An enduring tone conveying that an increase in the numbers of home educating children should be considered a matter of **concern**, that it is a **burden or nuisance** that requires increased state input, **rather than a positive feature** in

society, with parents taking increased involvement in their children's lives and education to be celebrated and respected.

- A **discriminatory tone** that **more than implies that home educating parents cannot be trusted with their own children or to communicate honestly**, including **slurs that false evidence is likely to be provided**.

To reference the most concerning points and paragraphs in that report:

Paragraph 1.1.

Several aspects are raised by this paragraph:

- EHE is also not known as “**homeschooling**”, that is a different concept and term, although the two are often conflated in the general media. “*Homeschooling*” is a term that refers to “school-at-home” such as “lockdown learning” or home based EOTAS provision, or is a term used in other nations. Elective home education is a different concept.
- It must be noted that education is **always the responsibility of parents**, they just may choose to delegate the act of delivering that educational provision to schools.
- EHE families **do not need to design or follow an “educational curriculum”**, as the 2023 WG guidance confirms
- The use of the term “**in theory**” is inappropriate, as it connotes the intention to raise a question on the practice, without delivering any evidence to suggest this is not the case. The use of this term **can readily imply a bias**, suggesting or conveying the appearance of an inclination to disbelieve families' experiences. Even if there is no such inclination in the minds of the authors, the use of such terminology risks demonstrating a conscious or unconscious bias regarding home education.
- The use of the term “**teaching**” also can be read as **reflecting a disconnection with the community** and with the **practice of home education**. EHE may often not involve adult-led “*teaching*”, a term that reflects a school-centric concept of education, but can often involve co-learning and facilitation of learning rather than didactic “teaching”.

Point 1.3.

The phrasing of this point is unhelpful. For example, the use of the phrases “*right to request access*” and “*allow access*”, with these risking conveying negative and damaging connotations in relation to parents and children.

It is more appropriate to say that education departments do not have the right or duty to insist on going into homes or insisting on meeting with home educating families without voluntary invitation that is based on fully informed consent.

Point 2.1

It is **misleading** to state that “*if a child is home educated, there is an obligation on parents to cause their child to receive an efficient and suitable education,*” because the responsibility for doing so belongs to ALL parents, not only those who home educate their children.

The responsibility does not belong to the state or the local council.

Even if a parent chooses to delegate the act of educating their children to a school, the **responsibility for this provision lies with the parent.**

This is why a parent cannot sue a school or LA that fails to provide a suitable and efficient education because it was the parental choice to send that child to the school. Indeed, a parent would be failing in their lawful responsibility to ensure their child receives a suitable and efficient education if they keep their child in a school when they can see that this is not being provided.

Point 2.2

This point does not convey the full meaning of the concept of “*so far as it is possible to do so*”. This phrase is a legal term to remind the reader that no existing laws or legal principles should be broken or overridden in any attempts to fulfil such a duty.

This article is a very helpful summary of the meaning of this phrase:

<https://he-byte.uk/england/so-far-as-it-is-possible-to-do-so/>

Point 2.2 also **inappropriately links** the fully lawful and beneficial option of EHE with a range of “problem areas” such as “*CME*”, “*vulnerable children*” and “*welfare*”.

Whilst it is often the case that those who are expected to make informal enquiries to EHE families may work in the same department as those who deal with the other issues listed here, and sometimes a council may even expect an employee to cover more than one role and split duties between making informal enquiries about EHE and dealing with the other issues as listed, the wording here without clarification can read as a **conflation of EHE as being another one of the "problem areas"**.

The report would greatly benefit from clarification and assertion in content and in tone that home education is not a safeguarding or wellbeing concern, rather than depicting a false conflation of such issues.

Point 2.6

The phrasing of this point is somewhat misleading, in stating that “*balanced **against***” a family’s decision is an “*expectation*” that local councils can “*assess the suitability of education*”. As addressed elsewhere, the LA does not have a legal duty to assess the suitability of all children’s education, but simply to make arrangements to identify those who appear not to be receiving an education. The use of the term “*balanced against*” **connotes a conflict** between families wanting to home educate and local authorities’ opinions of this.

Point 2.7 contains a fundamental error.

This **mistakenly** states that “*parents or guardians are typically required to notify their local authority when they decide to educate their child at home. This notification is meant to provide basic information about the intended home education*”.

Parents or guardians are not required to notify the LA when they decide to educate their child at home, let alone to pre-emptively offer information about such provision in the absence of any informal enquiry.

This error is fundamental because **home education is the default setting** in the UK, parents opt out of home educating their young children when they register them in schools. School is not the default setting, plus as education is a parental responsibility there is no duty to have to inform the LA that they are automatically fulfilling that responsibility.

Furthermore, even if parents do choose to assist local councils in discharging their duty by providing some written information about their educational provision, **there is no duty to provide future plans** about that provision. The duty of the LA is to establish the identities of those who are not receiving or have not received a suitable education, **not those who may possibly not be in the future**, so as stated elsewhere, **future plans are not relevant or required**. Indeed, for a parent to fulfil their duty to provide an education that is geared towards each individual child’s age, aptitude and ability including any special educational needs they may have, firm future plans cannot be made as the provision is tailored according to each individual child’s naturally growing and changing needs, interests, aptitudes and abilities.

Point 2.9 would greatly benefit from the addition of the vital point that consent to remove a child from the roll of a “special school” **should not be reasonably withheld**, to ensure that the reader can appropriately appreciate that the decision to home educate still rests with the parents with the requirement for consent not being a means of control over the family’s choices.

Point 3.1

We understand that the format and drafting of the Welsh Government’s 2023 guidance on EHE is somewhat confusing and misleading. The 2023 guidance has the misleading title of “*statutory*” on the first page, which can, as here, cause some confusion for LA staff, however, the next page clarifies that it contains both statutory and non-statutory elements. There are no new statutory elements in the 2023 guidance, as there is no

change in primary legislation. There are no new “**musts**” in the 2023 guidance. The various “*mays*”, “*coulds*”, and “*shoulds*” all relate to non-statutory guidance. Indeed, the report by David Wolfe QC, submitted to the Welsh government by home educators during the preparation of this guidance, **demonstrated that the use of the term “*should*” risks being inappropriately misleading as could risk conveying the impression of a duty on local authorities that they do not lawfully have.**

Likewise, there is not a lawful duty on LAs to ensure all children and young people have a suitable education, but **simply a reactive one to identify those who are not.**

Point 3.3.

Interestingly, the authors have gathered the impression from the 2023 guidance of an aim and intention to try to reduce the number of EHE children in Wales. This of course would be an unlawful aim, whether it is from a government department or a local authority, as home education is of equal standing in the eyes of the law to school-based education, and it would be an infringement of human rights for a government or council to interfere with a child’s right to education, wherever that may be.

Guidance concerning “*suitable evidence*” has to be vague, as mentioned in this point of the report, because the legal basis for expecting any form of evidence is somewhat dubious and based on old case law that predates human rights and data protection legislation, alongside that, in law, education is the responsibility of the parent rather than the state, it is, then the parents who are responsible for determining suitability, not the state.

Points 3.4 and 3.5.

These points are highly problematic and misleading. Enactment upon them as if they were a requirement for home educating families and LAs risks the LA acting unlawfully.

It is vital to note that **there is no new legislation**. This is an extremely misleading comment. Please see our comments about point 3.1 of the report, above.

As previously stated, the Welsh Government’s 2023 guidance on EHE has the misleading title statutory on the front cover, which can as here cause some confusion for LA staff, however, the next page clarifies that it contains both statutory and non-statutory elements. There are **no new statutory elements in the 2023 guidance, as there is no change in primary legislation.**

In particular, the references to **visits or samples of work are all non-statutory elements**. They are “*shoulds*”, “*coulds*”, and “*mays*” – but not “*musts*”. Local councils are expected to **pay heed to such non-statutory advice and be able to give a reason**

if required for not following them. Those parties involved **not giving explicit and fully informed consent to comply with requests and demands when there is no lawful duty to do so is a very valid reason**, especially because local authorities would be acting unlawfully if they overrode the principle of informed consent, especially if there were a **routine policy** to do so.

The concept of the requirement of home educators to provide evidence that their education is suitable is a very problematic concept legally. Home educators in Pembrokeshire have generally been extremely obliging and cooperative in engaging with local authority requests as a goodwill measure. This report is likely to be **counterproductive** as despite having been extremely obliging and having often provided local authorities with more than has been legally required in response to informal enquiries, the impression now being conveyed is that home educators' goodwill was being taken advantage of.

There is a misunderstanding of the concept of the written responses that home educators have previously provided in response to informal enquiries from the local authorities. These have not been "*statements of intent*". Indeed, as previously stated, it is normal practice to not provide future plans or intentions when responding to local authorities. Instead, written responses are retrospective accounts of learning that has taken place. They are a statement of provision. A person's statement stands as evidence even in a court of law, let alone in a situation where informal enquiries under s436A of the Education Act of 1996 are simply meant to be a short screening situation to enquire if a child is home educated or not.

Whilst samples of work are not a requirement or a necessity for local authorities to discharge their duties in identifying children who are not in school and not being home educated, the concept of a perceived necessity that children must be witnessed producing such samples in order to be convinced that the parents are not falsifying any such samples is a profoundly offensive one. This insinuation is highly insulting to home educating families.

Thankfully there is no such requirement in law (or in practicality) and informed consent cannot be overridden to try to enact such a derogatory practice.

There are many reasons why such a practice would be counterproductive and damaging to children's wellbeing and to the process of home education, reasons we would be delighted to explore with you on another occasion. However, for the purposes of this meeting, an appreciation of these reasons is not the relevant issue – the relevant issue is that such **opinions are discriminatory** and any intentions to try to introduce such practices as if a requirement, without clearly establishing via a process of explicit and fully informed consent that such "inspections" would be purely voluntary and not a requirement, would be both **counterproductive and unlawful**.

LAs do not need to be "*satisfied*" as part of informal enquiries under S436A of the Education Act. The concept of being satisfied is related to **notices to satisfy, which should only be issued if there is reason to believe provision is not in place in an individual case, not in all cases as initial informal enquiries.**

There is also **conflation** within this report in terms of the **roles** of local authorities. The **lawful role is not to offer guidance or interfere with choice and style of education**, especially as it is lawfully the role and duty of parents to determine whether a child's education is suitable as the ones who are legally responsible for it. The role of the LA is **simply to determine the identities of those who are not in receipt of a suitable education, i.e. those who are not being home educated.**

It is also important to note the section of the Education Act 1996 that is usually referenced to justify informal enquiries (s463A) was never intended to be used to endorse or mandate "checking up on" or inspecting home educators. Indeed, when that act was first introduced, home educators were reassured that the section was only present for LAs to find those children who were not in school but where parents had not made the decision to home educate, not as a way to check up on what home educated parents are doing. It is important to be mindful of the original intention of this legislation.

The concept of "*advisors*" preparing home educators to provide such samples of work comes as news to home educators in Pembrokeshire.

The report also mistakenly conflates the concept of "*examples*" and "*samples*". The word "*examples*" is used, a term that relates to descriptions of examples of learning that families may kindly provide to aid the local authority in discharging their duty, but the term is used to describe "*samples*" of learning instead. Whilst of course, a council may ask for these, **there is no duty to provide them, nor is there a need.**

The duty of the LA is to identify children not in receipt of a suitable education, **not to monitor or inspect those children who are being home educated.**

Point 3.6

It is inappropriate to complain about the workload of writing reports on visits when visits are not a requirement but are conveyed elsewhere in the report as if these are the definitive way to undertake informal enquiries. Parents often choose to respond to any informal enquiries with their own written responses instead of choosing to have a "visit".

Point 3.8

This risks **increasing the presumption** of “visits”, of “annual” provision of evidence being requirements.

Point 3.9.

Deregistration and removal from the school is an instruction not a request, with immediate effect. It is not a process for those in mainstream schools. If a child is still on the school roll, then issues fall under the remit of EWOs. If a child is not on the school roll, then there is **no requirement for any intermediaries** between a school and the family.

Point 4.5

This point not only **conflates** EHE with safeguarding issues but also conflates the role of an LA employee making informal enquiries about education provision with someone responsible for investigating the entire family well beyond educational provision, and well beyond lawful duty in relation to education. It **conveys the presumption** that this would routinely apply to all children moving to the area, implying that all home educated children are at risk unless can be proved otherwise. If there were genuine concerns with social services about an individual family who were moving, then that would be a matter for social services to address.

Section 5 – entitled “Risks of Elective Home Education”

Point 5.1

The title “*Risks of Elective Home Education*” is a particularly inflammatory one, especially in the context of the tone and content of the rest of the report, and a section that conveys a rather negative bias towards EHE. There is not even a token gesture attempt to mitigate the slurs and inferences with any hints of acknowledgement of positivity or benefits.

Again, the use of the inappropriate term “*homeschooling*” further demonstrates a disconnect with the community in general. Again, there is a demonstration of a mistaken understanding of the lawful duties of the department in referencing a belief of a proactive “duty to ensure all children receive a suitable education” rather than the lawful reactive duty to identify those where “*it appears*” this is not in place.

Point 5.2:

This states that “*some parents may fail to notify the LA of their intent to home school (sic) or may not provide sufficient information about the educational plan*”.

As there is no legal requirement for parents to notify the local authority that they are raising and educating their children, the use of the concept of “failing” to do so is misleading and can have accusatory connotations. Again, the use of the term “*homeschool*” is not appropriate and demonstrates a lack of engagement with the home educating community.

Information is not required about any “*plans*” as this connotes future plans. The duty is to identify children who have not been educated, not children who may not be in the future, so **there is no mandate to request future plans**.

The reference to “***inconsistent communication***” is interesting, as, once a local council is aware that a child is electively home educated and is not a child who is missing education, then their **lawful duty has been discharged** and there is no requirement in primary legislation for ongoing communications of whatever level of consistency.

There is no lawful duty or mandate to monitor home education. There has been considerable misunderstanding of home education and its associated legalities in this statement.

The Welsh Government’s guidance on CME clearly states that “***There is no legal framework for the LEA to regularly monitor provisions of home education***”.

(Point 7.35 <https://www.gov.wales/sites/default/files/publications/2020-09/statutory-guidance-help-prevent-children-young-people-missing-education.pdf>).

By comparison, the English guidance on EHE, based on exactly the same primary legislation as the Welsh, clearly states “*Your local authority has no formal powers or duty to monitor the provision of education at home*” (5.1) and also that any consideration of duty towards the concept of safeguarding “*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*”.

Thus, the legal positions on these issues are already clearly established.

Point 5.3

It is inappropriate to complain about the lack of resources for “***oversight***” of home education when **there is no requirement to oversee home education**.

LAs have a duty to identify those who are not in receipt of a suitable education. When it is known that a child is electively home educated and therefore not missing education, the **lawful duty of the LA has been discharged. There is no requirement for continued oversight**.

If there were a genuine desire to obtain further funding from the local authority for use in relation to home education, then it would be far more appropriate to engage with the community to see how, as public servants, the community’s wishes and needs could best be respected and enhanced, rather than to seek funding to fulfil perceived roles that are necessary and not required duties.

Point 5.4

There is further **false conflation** of home education and “*safeguarding*” in this point, alongside seeming confusion about the lawful duties and role of employees in relation to home education.

Any duty to make informal enquiries about provision by home educators does not convey a role or duty equivalent to that of social services. The role of a council employee making informal enquiries is not primarily a safeguarding one, even the Welsh guidance states that home education is not a safeguarding concern. Safeguarding issues only becomes relevant in a reactive sense, but **proactively looking for safeguarding issues is not their remit.**

Such local authority **employees do not have a remit to assess the overall wellbeing of each child.** Their duty is to react should they have reason to believe education is not being provided - and as any other citizen to notify the appropriate authorities if there is good reason to believe there are safeguarding concerns.

Point 5.6 states “*We have to intervene if there are educational gaps or deficiencies in a child’s learning*”. However, the role is to intervene if a suitable education is not being provided and even with suitable provision there are often gaps and deficiencies in children’s learning if measured against school-based standardised statistically derived criteria, including for children who receive their education in school. **Children do not necessarily learn according to adult-derived trajectories** and the determination of suitability of provision lies with the parents.

Point 6.2

The emphasis on identifying children not known, rather than identifying those who are missing education, is inappropriate. The two are not the same thing. Parents have no duty to inform the LA that they are electively home educating, and it would be **more appropriate and productive for the department and the committee to reflect on the reasons why loving parents choose not to invite LA oversight of their family life, despite temporary financial inducements to do so.** Given the points we highlight to the committee here about the misleading nature of the content of this report and the tone towards home educating families, the committee members may be able to start to draw some conclusions on these reasons.

Section 7

This relates to the proposals for databases of children in Wales and is too large a topic with too many concerning, damaging and counterproductive implications to be addressed here. We would be delighted to be able to discuss these further with the committee members.

Point 7.3 concludes, “If the LA does not know about a child it is responsible for, it is unable to undertake its duties in relation to safeguarding and welfare, and cannot be certain that the child is not at risk of harm”.

There is so much that is incorrect and misleading in this single sentence. The concept of LAs being “responsible” for home educated children is misleading.

LAs are not responsible for ensuring the safeguarding and welfare of all children.

If they were then they would be legally liable for all the instances where children’s wellbeing and welfare have not been safeguarded or provided for. The duty to ensure welfare and safeguarding is the parents’/ families’, not primarily that of the state.

Indeed, research has shown that home educated children are at lower risk of abuse or neglect within the home than school-attending peers, despite increased levels of scrutiny (scrutiny often due to inappropriate social services referrals due to discriminatory attitudes) <https://www.educationotherwise.org/home-education-and-the-safeguarding-myth-analysing-the-facts-behind-the-rhetoric/>

Likewise, there is no way of being “certain” that a child is not at risk of harm. Children in school are seen day in and day out and are still at risk of harm, not only from within the home but also from within schools themselves, with alarmingly high rates of physical, emotional, psychological and sexual abuse and harassment now acknowledged within the school system. <https://www.bbc.co.uk/news/uk-wales-politics-57428624>

The conclusion of that sentence being the concept of a child not being at risk of harm confirms that the authors are assuming, without lawful basis, a concept of being “responsible for” all children, not just of having a duty to a child at risk of significant harm.

Point 7.4

It is **not appropriate to use section 175 of the 2002 Education Act** to try to justify such duties. This section does not apply to ALL children, certainly not to home educated children, but **only to children where parents, by placing their children in schools or FE colleges, have thus conferred the governing bodies** with a degree of being in loco parentis. Furthermore, S175 only recommends that such governing bodies “have a view to” the issues of wellbeing and safeguarding, it does not give grounds to assume they are the ones responsible for a child’s global wellbeing.

Point 7.5

Whilst the government has completed a consultation phase, there are still considerable legal and ethical issues about mandating breaching confidentiality of healthcare by requiring data sharing from healthcare sources without consent. These ethical issues

are not just hypothetical but relate to the potentially counterproductive nature of these proposals. We would greatly appreciate the opportunity to explore such issues with you further before considering implementing any such measures in the county.

Point 8.1.

The issue of access to exam centres is too large a topic to adequately address here. However, it is notable that the tone of this paragraph inadvertently or not conveys an almost begrudging approach to tackling this issue. If the relevant department believes that it has a “*duty to ensure that all children have a suitable education*”, then ensuring access to exam centres would not be a distraction from that role but an integral part of it. As already addressed, there is no such legal duty, however, the tone conveyed is one of **seeing accommodating the needs of home educated young people as something of an inconvenience rather than a public service.**

Point 8.2

It is most saddening and inappropriate to see the reference to the tragic case of Dylan Seabridge here, as this poor lad was known to social services who did not use **existing safeguarding powers** to act on concerns that they were aware of. It can be saddening to see the case of this poor boy at times be weaponized in attempts to justify desires to increase the oversight of home educating families.

Point 10.1

There is no statutory requirement for visiting home educating families. As already addressed, the references to visits and meetings, alongside the concept of viewing samples of work when doing so, have been confirmed by the Welsh Government to be part of the non-statutory part of their guidance.

Home education is not a safeguarding risk. The evidence already cited has clearly demonstrated this. To claim it is would be **contrary to the Welsh government guidance that confirms that home education is not a safeguarding risk.** To repeat such a false conflation is to perpetuate misinformation and propagate discriminatory attitudes towards children of a minority group in Wales.

Having “*eyes on*” a child does not protect children, as “*eyes*” are “*on*” school children, yet so many school children experience not only domestic abuse and neglect but also abuse and educational neglect within the school system itself.

Point 10.4.

It is obviously extremely worrying to consider the sources of the misinformation and attitudes seen in this report may be responsible for training others, and we request that the committee exercises its powers to ensure that any training provided is non-

discriminatory, evidence-based, and grounded in a deep understanding of EHE and the lawful duties of LAs including the boundaries of those duties. Good practice dictates that such provision and training should ideally be provided by those with lived experience of the subject in question, i.e. those with personal experience of home educating children, and **at the very least be directly influenced by input from those with such lived experience.**

Conclusion

Home educators in Pembrokeshire have traditionally been very open and obliging when LAs have made informal enquiries. However, the tone and content of this report have had a profound impact on the community, **significantly damaging trust.**

We would like to be conciliatory with the authors of this report. However, this can only be on the basis of **addressing and correcting the issues raised by the paternalistic and disrespectful tone and misleading content.**

We all have the same aim of happy, healthy, well educated children who will grow into successful adults. The claimed aim of “*positive collaborative relationships*” is not supported by the “us and them” attitude of this report.

While we appreciate that the existing EHE officer has worked hard with a good attitude and has spent years building a good relationship with our community, this attempt to expand the LAs duty beyond their remit may well undo all her hard work and unnecessarily increase departmental costs significantly.

We seek the help and input of the Scrutiny Committee in ensuring that **attitudes and conduct towards home educators by public servants in Pembrokeshire are not discriminatory, demeaning or overstepping, but lawful, respectful and transparent.**

Yours truly,

Pembrokeshire Home Education Group.