

## Children missing education database

### Consultation response form

Your name: Home Ed Cymru – a national support group for home educators in Wales

Organisation (if applicable): Home Ed Cymru – a national support group for home educators in Wales

email/telephone number: [homeedcymru@gmail.com](mailto:homeedcymru@gmail.com)

Your address: members from every county of Wales.

Responses should be returned by **25 April 2024** to:

Equity in Education Division  
Public Services and Welsh Language  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

or completed electronically and sent to:

email: [CME.Consultation@gov.wales](mailto:CME.Consultation@gov.wales)

**Question 1** – Currently local authorities do not know about all children in their area but are still responsible for them. Do you think the requirements in the regulations will help local authorities to identify children not currently known to them or children missing education?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Don't know	<input type="checkbox"/>
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If you have responded no, please explain why you believe the regulations will not help local authorities to undertake this duty.

The requirements proposed in the draft regulations cannot help with this aim **because they cannot be ethically and morally enacted.**

To summarise why they cannot be enacted:

1. To mandating non-consensual, confidentiality-breaching data sharing from health care sources would be unethical, counterproductive and, overall, more likely to damage rather than improve the wellbeing of children. If barriers are placed to accessing healthcare then clinicians have less opportunities for natural safeguarding as part of their clinical roles, as well as service users having poorer quality experiences of healthcare if they are unable to communicate freely and confidentially with healthcare professionals.

2. There are clear precedents to indicate that such widespread, routine and non-consensual data-sharing from healthcare sources should not be permitted- because this is unethical and also unsafe – unsafe in terms of the impact on healthcare and the risks involved with data breaches.
3. The amount of information required for the databases as opposed to the initial lists is very extensive and unrealistic to achieve, let alone manage safely, plus the involvement of GP services in providing this is very unclear. But these proposals open the door to a far greater and unprecedented capacity to gather almost unlimited amounts of data from any source, as dictated by whatever minister is responsible for healthcare at the time. This is because of the section of legalisation that would need to be enacted to allow these database proposals. Some might argue that this legislative attempt is not purely about the data sought in this schedule but what can then later be mandated without consultation should these proposals be introduced.
4. The question is also highly misleading, as are the consultation documents, in asking for powers by inferring a responsibility that councils do not lawfully have, or by repeatedly mis-stating the lawful duties of local councils. Attempts to overstep the lawful remit of authorities even **before** such proposals are introduced makes such proposals even more worrying and unacceptable.
5. Furthermore, we fundamentally object to the use of data derived from healthcare records not only because the use of healthcare records is unethical but because even this very consultation fails to be transparent on the reality of what these databases will be. Of course, these databases are not truly databases of children missing education, because they do not contain the details of any children who are currently on school rolls but who are missing education for a myriad of different reasons, however they **will** contain data of home educating families who are providing a suitable education but who have exercised their lawful right not to involve the local authority in that provision. Presenting the database as something if and when the purpose is to create alternative records and databases would be at the very least unethical, poor practice and a move that would certainly not win the already damaged trust of the community.
6. The proposals are presumptuous. They presume school-education is always suitable even in cases where children are on the school roll but don't actually attend but treat home education as automatically not suitable until proven otherwise.
7. The requirement for the contact details of all adults who have a care or educational role in a child's life to be stored on such databases, alongside the unknown depth and frequency of enquiries that council employees would make of each person whose contact information is stored, in addition to the apparent lack of consent in this process, would greatly impact on the input from such sources into children's lives. Those who provide such educational enrichment or care may well be deterred from such involvement and families may also be less free to communicate openly with any providers for fear of miscommunication during any potential enquiries by a council employee.

8. Time, resources and attention could be much better used elsewhere, on supporting those with known but unmet needs.
9. These proposals essentially create a system where parents effectively require approval of local authorities to be able to home educate, rather than LAs being there in their lawful, protective and reactive role to step in only “if it appears” that a suitable education is not in place. As such the proposals are seeking to rewrite the law in a way that is discriminatory against law-abiding home educating families. The proposals create a situation where LAs are deemed to be the ones to decide if education is suitable, which is not the lawful situation. Education is a parental responsibility, not the responsibility of the state or local authorities. This is a marked overreach.
10. These points violate many articles of the UNCRC, including not only the rights to privacy in family life, but also the right to education, by intrusion into family life and interfering with the role of parents in fulfilling their duty to provide an education suited to each individual child’s age, aptitude and ability, by placing a council employee as a higher judge than the parent of suitability, even though that person does not know nor understand the child in question.

**To expand on the reasons why these database proposals cannot be enacted to fulfil this “duty”, even if such a duty existed:**

1. **To mandate data sharing by health care sources without consent of patients or parents would be:**
  - a. **Unethical**
    - i. GMC confirmed this in their response to the 2020 consultation, “Local Authority Education Databases”, stating that
      1. sharing even non-clinical data in such a way would be an unethical breach of confidentiality.
      2. voluntary routes should be used instead.
      3. proposed approach to the disclosure of personal information in the draft regulations is inconsistent with GMC guidance.
      4. that proposals do not allow room for professional judgment.
      5. that proposals would be inconsistent with the common law duty of confidentiality.
      6. *“Requiring doctors to share information about children and young people and their parents could cause some to disengage with health services, affecting not only their health but also potentially the health of their local communities”.*
      7. *“We expect doctors to make sure that patients know what information is being shared about them, and to obtain*

*consent to sharing, unless doing so would undermine the purpose of the disclosure”.*

- a. It should be noted that there is no provision in the consultation documentation for the mechanism or funding for this, or for any application of processes of informed consent or opt out measures.
  - b. Likewise, there is no form of redress when information is shared or documented inappropriately or inaccurately.
- ii. Further examples of legal and ethical precedents include:
1. The 2018 decision at Westminster to stop an attempt of non-consensual data-sharing from NHS sources on asylum seekers with authorities due to detrimental effect on access to health care.
  2. The 2024 Royal College of Obstetricians and Gynaecologists (RCOG) guidance to clinicians on safeguarding women by not breaching their confidentiality, even where the act in question in that case (self-induced abortion) is presently illegal.
  3. The abandonment of the “Contactpoint”, a database of children, that had been heavily criticised by a wide range of groups including the BMA for privacy, security and child protection reasons and because of risks of breaches of patient confidentiality. That had been based on the English equivalent within the Children’s Act 2004 of the s29 being used to justify the present Welsh government proposals.
  4. The ruling of the Supreme Court against the Named Person Scheme due to unwarranted intrusion into privacy and family life.

**b. against and override the principles of informed consent**

There is no mechanism proposed for redress for patients when their shared or stored data contains inaccuracies or misconceptions.

This undermines the clinician’s role and duty to be promoting and delivering health care.

**c. cause more harm than good as would be likely to cause patients to not feel they cannot safely access confidential NHS health care**

The attached recently released research report, “Confidentiality and Respect” provides more information and exploration of these issues. <https://selfmanagedlearning.org/wp->

[content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw\\_aem\\_AbUQJInURcDPVoMIEwZaZATbGG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi\\_Sn1lIngsFJVgzWVx](https://content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw_aem_AbUQJInURcDPVoMIEwZaZATbGG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi_Sn1lIngsFJVgzWVx)

d. **damage the trust-based confidential relationship between doctor and patient.**

The proposals would be likely to create the sense that people cannot be freely open with clinicians, creating a climate of mistrust on both sides which would place barriers to accessing health care.

- i. Clinicians can already report individual cases where there is specific concern of a risk of significant harm. That capacity would be hindered by the obstacles placed to accessing and engaging with healthcare, by the climate of mistrust created.
- ii. Widespread sharing of data of large groups of patients and whole sections of society where there are **no concerns identified** on a “just in case/you never know” basis is **not reasonable or proportionate**.

e. **likely to cause clinicians to wrongly view home education as an issue of concern**

Even though the suggested aim of the proposals is given as identifying children who are not in receipt of what the council may consider a suitable education, it inevitably involves data-sharing and scrutiny of home educated children.

- i. Instead of ensuring the wellbeing of children, the proposals reinforce and perpetuate negative stereotypes and any prejudicial misassumptions. The proposals promote discrimination of a minority group in a way that is unlawful.
- ii. The impact of any negative stereotyping, discriminatory attitudes and false information about home education on how safe home educators feel accessing healthcare is investigated and explored in the research report “Confidentiality and Respect” (link to report above).

f. **a breach of confidentiality**

Regardless of whether a member of healthcare staff is clinical or administrative, or whether the data is clinical or non-clinical, sharing data from healthcare sources is always a breach of confidentiality, but one where clinicians would bear the brunt of the consequences or could be assumed to be the ones at fault.

g. **would result in dangerous pilot studies if proposals followed.** The Welsh government have stated that they intend to run pilot

“evaluations” – but the only outcome measure they intend to look at from such pilots is how many children are identified, not the impact on access to healthcare of doing so or any other potential outcomes. This is unacceptable. Indeed, the impact on healthcare is immeasurable. Pilot evaluations alone would be damaging to health, education and the wellbeing of children, as well as also damaging relationships between families and local councils and increasing mistrust of the Welsh government.

2. The significant and unavoidable risk of **data breaches compromise the safety and wellbeing of children.**
  - a. LA data is not held as securely as NHS data, data-breaches from LA sources are common, and data on home educated children comes under Special Category data so warrants higher levels of data protection.
  - b. Moreover, there is no form of redress for patients if and when such data-breaches happen.
  - c. There is also significant risk of **inadvertent** “off the record” and thus inappropriate data-sharing beyond what was directly mandated, if GP services are seen as data-holders for the council, when council staff make contact with GP surgeries. In a recent poll of home educators’ experiences in Wales, out of 133 responses, only 4% of respondents indicated that “*all communications received from my LA have never had the potential to be misleading, all have been fully clear with no scope for confusion*”.
3. **The proposals would have a profoundly damaging impact on external educational input for home educated children. The extremely wide range and extent of data proposed on such databases, holding data on wide ranges of adults who have any degree or type of input into children’s lives could result in service providers and other adults disengaging and choosing to not provide that valuable input, to the detriment of children’s well-being.**

Awareness of the enormous range of data that could subsequently be mandated as a result of enactment of s29 if the Children’s Act 2004, the deterrent to providing enriching and care input for children in Wales only increases the deterrent effect of these proposals.
4. The databases would require **subjective opinions** regarding ALNs and the provisions perceived to be required as a result of any ALNs, without any clarity of how much of this data could be gleaned from GP surgeries rather than LHBs, or how much of this data would be considered to be required from the extensive list of contact details that the databases are mandated to hold. It is unclear as to whether the predominant opinion would be that of the parent, or the council employee, but if it were the latter then this is counter to the principle that education is a parental responsibility as denoted in law.

5. **This question (1) is also very misleading in its reference to a perceived “duty” of local authorities.**

- a. The consultation response questions do not state the true and actual legal “*duty*” towards children. Elsewhere in the documentation, the duty of local authorities is openly and misleadingly **misquoted**, claiming a proactive “*duty to ensure every child...*” – a duty that does not have a lawful basis.
- b. The **actual** duty of local authorities is a **reactive NOT a proactive one**,
  - i. to act “*if it appears*” (Education Act 1996) or to “*attempt to trace*” (CME guidance 1.24),
  - ii. neither provide a mandate to identify every child at any cost. Guidance does not say, and could not say, that authorities have a duty to track down every child. This may be likened to the role of the police who are not legally allowed to search just any home for evidence of a crime “just in case”, or simply because the person fits a certain demographic (that would, of course, be discriminatory and unlawful).
- c. Indeed, the proposals **reverse the process set out in the Education Act by considering CME to be the default setting unless evidenced otherwise. This is not lawful.**
- d. Likewise, the “child-friendly” pdf information sheet (provided by Welsh Government to selected groups but not published on their website) states, “*The Education Act 2002 says local authorities must: make sure all children in their area have an education and are safe and well in all areas of their life*”.

**This is an unacceptable misrepresentation of the law.**

- i. It refers to s175 of that Act, which states, “A [F2local authority] shall make arrangements for ensuring that [F3their education functions] are exercised with a view to safeguarding and promoting the welfare of children”. This states “*with a view to*”, i.e., be mindful of in what you do. It does not say or mean “must ensure”, nor does it say, “*all children*” or “*all areas of their life*”.
  - ii. In addition, the section this quote is taken from refers to those in school or further education, where parents have chosen to give schools a role in their children’s education.
  - iii. **It does not universally apply to ALL children, neither does it confer a coparenting role onto local authorities.**
- e. **Thus, even before such proposals are introduced, we are seeing authorities overstepping their role and remit – making the proposals in this consultation even more unacceptable and concerning.**

- f. **If local councils were actually legally responsible for the welfare of every child, they would very rapidly be bankrupt, and in the midst of a host of court cases for failings to do so.**
- i. We know that Wales currently has the lowest PISA scores in Europe. Many families with children with additional needs complain of difficulties accessing the required support for their children within the school-system. There is also considerable lack of provision by authorities for children who are still their “responsibility” but unable to attend school, (EOTAS provision by local authorities) with Estyn finding in their report that “very few local authorities provide more than 10 hours education per week. In only a very few local authorities, pupils access a full curriculum as part of the local authority tuition service offer” (<https://www.estyn.gov.wales/thematic-report/equity-curriculum-experiences-pupils-who-are-educated-other-school-eotas>)
  - ii. If local authorities did actually have a lawful duty to ensure the wellbeing of every child, then how does that correlate with their failings to look after other areas of child-welfare? For example, there are some 3,500 children homeless in Wales (nothing to do with home education and with families in desperate situations), with almost 140,000 people and families on waiting lists for social housing. Beyond the obvious impact on child welfare of being homeless, school attendance rates are known to be significantly lower for homeless children. **The proposed concept of authorities actually having to fulfil a legal duty to proactively ensure the welfare of every child in Wales, does not fit with present provision in all areas of life, including state-funded education and if this was indeed their true legal duty they would be found lacking on multiple levels.**

6. **These databases of “children missing education” are fundamentally not what they claim nor set out to be.**

- a. **EHE children are not the same as CME but are intrinsically conflated in these proposals. EHE children will inevitably find themselves on this database until the point that they can “prove” otherwise. Thus, the database will include significant numbers of children who are not truly CME.**

**Conversely schoolchildren are often not in receipt of a suitable education, but the proposals imply that this cannot be the case.**

- b. No school children who are missing education will be on these databases. Any child on a school roll is automatically assumed to have a suitable education and would not be included in such databases, even if their attendance were 0%. Any children where the LA is responsible for providing education outside of the school environment

(EOTAS) but who only have no more than a few hours a week of basic tuition (which according to Estyn's 2023 report on EOTAS in Wales is a frequent occurrence) would not be on these databases of children missing education. Any children who are unable to function or concentrate in school environments due to unmet ALN needs, or due to the stress of in-school bullying or abuse/harassment would not be on these databases of children missing education. Any children who repeatedly have difficulty getting to school because of lack of transport, or who have difficulty functioning and accessing education due to social, domestic or poverty-related issues would not be on these databases of "children missing education".

- c. However, families who are lawfully home educating but who have exercised their lawful rights to not involve the local authority in that education will be automatically put onto these databases.
- d. Thus, these proposals are discriminatory towards EHE and not compatible with the legal stance the EHE is equivalent to school education in law and that education is the responsibility of the parent not the state.
- e. The proposals create a bizarre situation where whether education is suitable or not does not depend on the education itself but on the opinion of a council employee- as the categorisation changes even though the educational provision hasn't.
  - i. The Welsh government, in their response to a complaint letter from Home Ed Cymru, stated that that "*If the local authority is unable to determine that the education provided is suitable, that child is CME, not EHE*". We note the "is", not even the "*potentially*" that see elsewhere in the proposals. But the very same educational provision for that child suddenly becomes suitable by the mere decision of a council employee even though the actual educational provision has not changed to when they were classified as CME. So, the concept of CME is about the opinion of a council employee and not about the actual educational provision. The education is exactly the same whatever database/list/register the child was placed onto so the child cannot be actually missing education simply because they are not on a list, the concept is nonsensical.
  - ii. **The proposals therefore are not about whether children have a suitable education but about a council's opinion of each family.** The proposals are an attempt at a power shift to claim it is local authorities that are responsible for oversight and ensuring the "quality" of home education.
  - iii. In so doing, **a system is created whereby permission to be home educating is effectively required, based on the subjective opinion of a council employee.**  
This is not lawful and not acceptable.

It is a profound overreach of powers by the government and by authorities.

- Thus, these are not databases of children missing education, they are databases about families that have exercised their lawful rights to not involve the local authority in their educational provision even in the absence of evidence to suggest they are families to be concerned about.
  - **Moreover, these databases would result in the construction of parallel databases of home educated children, a home education register by another name, where the only way to avoid such mandatory registration would be to move house away from family, friends and employment and then not register for or utilise NHS healthcare or access universal statutory services. Of course this would dramatically affect the wellbeing, safety and education of any such families.**
  - The intent to and effect of create such effectively mandatory lists/registers/databases of EHE children and families, ones that are a condition of being able to access treatment on the NHS, should be clearly stated in any such proposals. It is disingenuous and unethical to portray these proposals as simply creating databases of CME.
  - The proposals also a way of **introducing and legitimising monitoring** of educational provision, by using the threat of the level of scrutiny and intrusion into private family life of the CME database combined with the concept of at least annual evaluations of which list/database/register a child belongs to.
7. **The proposals make access to NHS healthcare conditional upon being “registered” with the council for whatever form of education. The outworking of these proposals therefore results, in effect, in these databases become passports to NHS care.**
  8. **The proposals are an inappropriate use of resources and funding, wasting time and money** on a detrimental measure when could use for far better good for welfare of children. The proposals **take the focus away from those known to be in need.**
  9. The proposals have a hyperfocus on potential identification with no budget or provision to address any issues then identified.
    - a. The proposals shift the focus from providing for needs to identification, and by diverting funding and attention they risk depriving those with known needs of limited funding and resources, whilst also being likely to harm those who were not otherwise at risk.
    - b. The impact assessment admits that "*costs of the proposals have not been identified. There will be costs in terms of staff time for health boards to provide data to local authorities and for local authorities to cross reference this data against children already known to them*", but does not address how these costs would be met, how this may limit funding away from addressing needs rather than identification and how

meeting any needs they believe are identified will be funded, including any ALN related needs.

**10. These proposals are trying to change the definition of CME and conflate EHE and CME.** The WG guidance on CME is clear that when children are deregistered from school, they are to be classified as either **EHE or CME based on what the deregistering parent has stated**. The proposals are therefore contrary to the WG own statutory guidance on CME, as they shift the emphasis onto what the council decide is the case, on whether the council believe the parents that their educational provision is “suitable”.  
<https://www.gov.wales/sites/default/files/publications/2020-09/statutory-guidance-help-prevent-children-young-people-missing-education.pdf>, pages 116 onwards demonstrate the existing classification of CME or EHE based on information from deregistering parent.

**11. Thus, the proposals cannot and should not be enacted. They are not reasonable or proportionate, they propose the use of sledgehammers to crack a nut, causing damage to the wellbeing, safeguarding and education of children in the process.**

**Question 2** – Does this proposal allow for local authorities to meet their section 175 duty under the Education Act 2002, which is to undertake their education functions with a view to safeguarding and promoting the welfare of children?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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If you have responded no, please explain why you believe the regulations will not help local authorities to undertake this duty.

Again, this is a highly leading and a misleading question.

1. The answer is a clear “**No**” – because creating obstacles to accessing health care and/or giving parents more reason to be guarded in their communications with health care professionals is blocking and damaging healthy and natural safeguarding; damaging the welfare of children. Therefore, the proposals would be counterproductive.
2. The answer is also a clear “No” because the question is misleading. It is phrased as though the local authority is responsible for the safety and welfare of every single child, including children it does not know about. This is not and could not be the case and presenting it in this way is overstating the parameters of section 175(1) which place a duty on LAs to “*make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting the welfare of children.*”

- a. As mentioned in question 1, the role of the state is reactive not proactive.
  - b. The state does not have the role of a co-parent.
  - c. Safeguarding duties do not apply unless there is specific reason in individual cases to believe there is need. Parents raising their own children is not a safeguarding risk. Home education is not a safeguarding risk, as even the DfE and the Welsh government acknowledge elsewhere.  
<https://www.educationotherwise.org/home-education-and-the-safeguarding-myth-analysing-the-facts-behind-the-rhetoric/>
  - d. As stated in our response to question (1): **even before such proposals are introduced, we are seeing authorities overstepping their role and remit – making the enactment of such proposals even more unacceptable.**
    - **The hypothetical concept of local councils being legally responsible for the welfare of every child does not correlate with the real-life failings of Welsh and local governments’ own provisions in education and other areas.** We know that Wales currently has the lowest PISA scores in Europe. Many families with children with additional needs complain of difficulties accessing the required support for their children within the school-system. There is also considerable lack of provision by authorities for children who are still their “responsibility” but unable to attend school, (EOTAS provision by local authorities) with Estyn finding in their report that “very few local authorities provide more than 10 hours education per week. In only a very few local authorities, pupils access a full curriculum as part of the local authority tuition service offer”.  
<https://www.estyn.gov.wales/thematic-report/equity-curriculum-experiences-pupils-who-are-educated-other-school-eotas>
    - If local authorities did actually have a lawful duty to ensure the wellbeing of every child, then how that that match their **failings to look after other areas of child-welfare?** For example, there are some 3,500 children homeless in Wales (nothing to do with home education and with families in desperate situations), with almost 140,000 people and families on waiting lists for social housing. Beyond the obvious impact on child welfare of being homeless, school attendance rates are known to be significantly lower for homeless children. If the authorities actually had to fulfil a legal duty to proactively ensure the welfare of every child in Wales, then how does that fit with present provision in all areas of life, including education?
3. The lawful assumption should be that parents and children are innocent until proven guilty, however the proposals reverse this legal principle and

assume guilt of educational neglect to always be the case unless proven otherwise. This is not reasonable or proportionate – or lawful.

4. Placing lawful families under automatic suspicion and in automatic need of oversight significantly damages the welfare of children and parents.
5. Authorities, especially under the current financial climate, cannot meet the identifiable needs of children who are already known to them, an issue of great concern to parents who often are desperately trying to access help and support for their children whether on or off the school roll. So to spend considerable time, resources and money trying to find other potential children when there are insufficient resources to meet any identified needs, instead of using the funding to address at least some of the known needs, is counterproductive and disingenuous.
6. The proposals are not to identify children who are not in receipt of a suitable education but rather those who “MIGHT” or “MAY” not be - markedly expanding the remit of databases to include many children who are in receipt of a suitable education, or children where there may be a differing opinion between parents and councils over what education is optimal for the child. These areas are not the remit of health care professionals.

**Question 3** – Under the regulations, local health boards will disclose the information in the Schedule (name, address, gender and date of birth of child) to the local authority so that they can develop a children missing education database.

- i) Do you agree that the information requested in the Schedule is reasonable and proportionate to enable the local authority to identify children not currently known to them and who may be missing education?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Don't know	<input type="checkbox"/>
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Please provide additional information to support your answer.

- This question only mentions LHBS not general medical service contractors. There is **distinct lack of information** regarding what information may be expected of GPs or others, even initially under the presently stated proposals. The additional role of GP services as mandatory data providers to councils is extremely unclear, in their role in the construction of initial “lists” and in their considered role in the collation of information for “databases”.
- However, what could subsequently be mandated from GPs could very swiftly be markedly increased once S29 was enacted to include an unprecedented and almost unlimited range and depth of data to be requested and for the government to mandate who should provide this.

- **The regulations are presented as necessary in order to fulfil a statutory duty that does not exist.**
- It therefore follows that information required for a "CME record" is **not reasonable or proportionate.**
- The consultation documents refer to the "duty on LAs under section 436A of the Education Act 1996 to *ensure that children in their area are in receipt of a suitable and efficient education.*" **S436A does not say this.** The given role of local authorities is to make arrangements to enable them to establish the identities of children who are not in a receipt of a suitable education, but to only do so "as far as possible". <https://he-byte.uk/england/so-far-as-it-is-possible-to-do-so/>
- We are aware that the then Cabinet Secretary for Education, Kirsty Williams, when announcing these proposals to the Senedd, said that *"this approach will allow us to test the limitation of existing legislation"*. [https://record.assembly.wales/Plenary/4901?fbclid=IwZXh0bgNhZW0CMTAAAR17edOPBqBwU9w59LuPRx-62Yh7LHEt7qOJhrmr93CkC3\\_gXbl038X1Ew4\\_aem\\_Af\\_m43kTOoePQz0NaH5dRX5q2gmzfpicJiJLCC0U2Qh1sbr\\_9UC9Sfyl0SoqOwBp97YU7\\_fhyGRYdDCRTXdQrdmm#A10000068](https://record.assembly.wales/Plenary/4901?fbclid=IwZXh0bgNhZW0CMTAAAR17edOPBqBwU9w59LuPRx-62Yh7LHEt7qOJhrmr93CkC3_gXbl038X1Ew4_aem_Af_m43kTOoePQz0NaH5dRX5q2gmzfpicJiJLCC0U2Qh1sbr_9UC9Sfyl0SoqOwBp97YU7_fhyGRYdDCRTXdQrdmm#A10000068)  
This approach of being used as a way to *"test the limit of existing legislation"* is a concept that sits very uncomfortably with the community that these proposals would be imposed upon.
- Note again, the concept of children being "categorised" under CME rather than EHE being those who only **"may be"** or **"might"** be missing education - not "are" or are "highly likely to be". The presumption is that a child is CME not EHE. This is not reasonable or proportionate.
- Instead of these proposals, what is required is for the LA to **exercise its existing education functions** with a view to safeguarding and promoting the welfare of children, such as standards in schools, access to schools, exclusion from schools, availability of suitable EOTAS provision for children unable to attend school, and appropriate provision for ALN.
- The information requested in the Schedule is a profound overreach:
  - Collating and holding data of all with parental responsibility places vulnerable parents and children at risk from abusive ex-partners/estranged parents.
  - Collating and holding data on all with a care role in a child's life is likely to deter such people from providing valuable input into the lives of children in Wales.

- Collecting and holding the data would be a significant deterrent in and of itself, but further compounded by the unknown use of such data with the potential of it being used for “formal enquiries”. This deterrent would be likely to impact the input into children’s lives of beloved family members and friends, damaging the wellbeing of the children and of all concerned. It would also impact the input from any professional sources, again compromising the wellbeing of children and impacting businesses.
- Holding and using data on those who provide educational input into a child’s life deters people from providing such input.
  - This would impact individuals and businesses who provide a very wide range of educationally enriching experiences as well as private tutors and online education providers. The concept of having one’s data stored and used without consent would be sufficient deterrent, but again the unknown and potentially significant ways in which the contact details would or could be used for is an even greater deterrent.
  - There is no information in the proposals for those adults whose details would potentially be placed on such databases, or how their details and the information then held about them may be further used or cross referenced. Additionally, there is no information about how any such uses may impact their personal practice and their businesses as a result.
  - The lack of information in the proposals on the use of this range of contact details would alone be sufficient grounds for objection to storing such data.
  - However, the reference to “*formal enquiries*” for each child placed on such databases raises a concerning spectre of the likely use of contact details for those who provide educational input. Contacting other individuals involved in any aspect of a child’s education is inappropriate as it is ultimately the parents who are responsible for education. If the purpose of using such contact details is to ask such individuals and businesses for information about the child (be it their education or subjective opinions about the child’s views or wellbeing) then to do so is not only to ignore the legal principle that education is a parental responsibility but it is also to assume that information the parents provide is unreliable or untrue, without evidence to suggest this.
  - Furthermore, it raises the very concerning concept of those who provide input into a child’s life from a faith-based perspective would be on such databases because any such input is by its very nature educational. For faith-based leaders, workers and volunteers to find themselves documented onto “databases of

suspicion” because of their role in relation to their place or choice of belief, worship or spirituality, with unknown levels of cross referencing and subsequent usage, is a profoundly disturbing consideration.

- ii) Do you agree that the information requested in the Schedule is sufficient to enable the local authority to identify children not currently known to them and who may be missing education?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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If you do not believe the information requested is sufficient, please outline what information should be included in the Schedule.

Again, this question is misleading. Both because it asserts a duty the local authorities do not have and because the question itself is leading in that it implies that at least the information listed in the Schedule is required to fulfil this non-existent duty. There is no option to reply that the information requested is inappropriate or excessive – which is our firm view.

We have responded “No” as this felt the least inappropriate answer to such a prejudicial question.

1. The answer is “No” because it is impossible to identify every child, and to attempt to do so in such a manner would be counterproductive and do considerable harm to the wellbeing of children.
2. The answer is “No” – because no such information should be requested from health care providers.  
Health care services should not be used for such databases, because patient information is confidential, whether it is clinical or non-clinical.

The wording of the question is misleading. Nobody is “**requesting**” information. The proposals state that Health Boards and GMS Contractors “**must disclose**”.

3. **The answer is “No” as, even if the proposals were morally, ethically and legally acceptable in concept, it would be impossible for clinicians to support proposals where requirements and mandates are not properly defined and are open ended.**
4. The **extent** of information that would be required is extremely unclear. The consultation paperwork states that basic identifying data (name, date of birth, address, gender) would be sourced from LHBs, without **mention of the actual role of GP services in data collection and provision.**

However, the documentation indicates that LAs will be mandated to complete the record, without any definition of what is meant by the “*reasonable steps*” they would be mandated to utilise to do so - other than noting that bringing in

these proposals would include the enactment of s29 of the Children’s Act, which would open the door to unprecedented and almost unlimited scope and depth of non-consensual data-sharing from whoever the Senedd chose to request this from. This shows a profoundly worrying lack of transparency.

5. **By overstating the LA's duty**, the question is **misleading** and is **likely to prompt calls for more data** from the specified sources. Q3(ii) could also be interpreted as encouraging LAs to consider whether fuller records are necessary in order to be "sufficient" to fulfil the **over-stated duty**.
  
6. Present “lists” of home educated children have been shown to be of little benefit. A recent poll of home educators in Wales demonstrated that 100% of respondents had only heard about this consultation through other home educators – with less than two weeks until close of a three-month consultation, no respondents had been informed about this consultation and/or been provided with the necessary information to respond by either their local authorities or from the Welsh Government. This would seem further evidence that existing local authority “lists/registers/databases” do not serve a useful purpose and sadly gives the impression that authorities do not want to gather and listen to the opinions of home educators, even though they will be the group most impacted by these proposals.

It is also of note that when the lack of opportunity for home educating families and children being able to engage in and respond to the “child-friendly” version of the consultation was highlighted to the Welsh government, then, with only around a week until the consultation closed, a decision was made to hold several number-limited meetings on set dates, but with these limited dates all after the consultation closing date. Some but not all LAs in Wales then forwarded basic information of the dates and times of these meetings to home educators whose contact details they already have on “lists”, and none of these LAs conveyed information on how parents or others could respond to the actual consultation alongside this. This again demonstrates the lack of benefit of such existing “lists” in “supporting” home educators in Wales.

**Question 4** – Are there alternative systems and processes that would enable the local authority to identify a child they have no prior knowledge of?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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If you have answered yes, please state what those systems and processes are.

1. In one sense, this question should not be relevant – the lawful role of the LA is reactive not proactive. LAs **do not have a lawful mandate to have to identify every child, nor ensure all have a suitable education**, rather their role is a **reactive** one, to act if, as and when there are reasons for concern. Thus, **these proposals are asking for powers to fulfil a duty that authorities do not lawfully have.**

2. The Welsh government may wish that this were a legal mandate, but it cannot be claimed to be so unless stated in primary legislation. When introducing these proposals, the then Education Minister, Kirsty Williams, told the Senedd, “*I believe we have a moral duty to ensure every child has a suitable education*”, however the wording to demonstrate that this was a statement of personal belief, and that such a belief was regarding a perceived moral duty not on one set in primary legislation was rapidly dropped from subsequent communications from the Welsh Government, thus misrepresenting the position in law.

[https://record.assembly.wales/Plenary/4901?fbclid=IwZXh0bgNhZW0CMTAAAR0NLoYplj61B0Yaty8fEFLfiWIDNFsHq6N5xGx3w9MuRVEQeng1Hi-BM6Y\\_aem\\_Af9CjYLmkk3t2D64bX7IMDx7aGp2xyQy1m8PZxKS6OvfVK8\\_J13rFF-JMf1Wh-qScau7vsXavG95uVIRceXuupi#A10000068](https://record.assembly.wales/Plenary/4901?fbclid=IwZXh0bgNhZW0CMTAAAR0NLoYplj61B0Yaty8fEFLfiWIDNFsHq6N5xGx3w9MuRVEQeng1Hi-BM6Y_aem_Af9CjYLmkk3t2D64bX7IMDx7aGp2xyQy1m8PZxKS6OvfVK8_J13rFF-JMf1Wh-qScau7vsXavG95uVIRceXuupi#A10000068)

3. It is simply not possible to identify every child, especially without causing damage to children’s wellbeing in attempting to do so. The Education Act 1996 s436a states that councils should “*make arrangements*” to enable them to establish the identities of children not in receipt of a suitable education, not to “*have to do this at all costs*”, with the caveat of “*in as far as possible*” - meaning that no other laws or legal and ethical principles should be broken or overridden in any attempts to do so. The caveat “*in as far as possible*” sets warning and cautionary boundaries to any attempts to enact beliefs that it is acceptable to try approaches that “*will allow us to test the limitation of existing legislation*”, as previously quoted.
4. Whilst there is no need to have a question, such as this one, to ask for how such a perceived duty should be enacted when there is no lawful basis to mandate such actions, the most optimal way to increase the engagement of any community with authorities is to treat it **respectfully**, without discrimination and suspicion and in a way that optimises **voluntary** engagement.

The GMC, in its response to the 2020 consultation on such proposals, recommended that instead of the proposals for non-consensual databases of children derived from health care sources, the government instead pursue their goal “*within existing child safeguarding arrangements, which preserve room for voluntary cooperation and professional judgment*”.

5. However, the proposals of this present consultation would only be likely to **decrease levels of voluntary engagement** not only with local authorities, but also with health care services, with families likely to find the need to be cautious about levels of disclosure, or even make choices about risk-benefit of engagement with health care services in view of likely or perceived sharing of personal information on databases and subsequent scrutiny or suspicion of family life. This is not something the government should be causing, especially when the outcome has already been highlighted to them, when the negative effect from the 2023 guidance alone is becoming apparent.

6. Open, free, confidential access to health care is clearly a more appropriate way to ensure the wellbeing of children than creation of lists and databases that place obstacles in the paths of families. This is even more clearly the case when LAs do not have the capacity or resources to deal with issues that are already known, let alone any that hypothetically may seem to appear because of those lists.
7. Children Missing Education guidance correctly states that "*Identifying them is only part of the task; securing placement in appropriate provision is an equally important element*" [para1.16] yet there are no costs allowed for appropriate **provision** that would be required if additional needs are identified.

**Question 5** – What, if any, advantages and disadvantages do you think there would be in the disclosing of the required data to populate the database? Complete the section relevant to you.

i) Parents and carers

The Welsh Government have not clarified to home educators what “general medical contractor” means, increasing the difficulties of responding fully to this consultation.

1. The proposals would damage people’s trust in and access to confidential and free healthcare, which impacts all members of the family.
2. The proposals would damage relations between families and LA staff.
3. The proposals risk limiting opportunities to outsource aspects of education by the potential of the inclusion of the data of such other organisations and individuals onto databases.
4. Repeated government consultation processes over unwanted and concerning measures place a further stresses, distractions and workloads upon parents and carers who simply want to protect and educate their families.
5. Regarding point 5 of the schedule of information required on each child on the database, this includes the name and contact details of not just one parental contact, but **ALL with parental responsibility and ALL who have care of the child at any time.**

This is a potentially extensive list, drawn up without consent or even knowledge of those adults whose contact details are stored, with the role of healthcare services in establishing those details also extremely unclear.

This places adults and children who have been victims of domestic violence and abuse at significant, unacceptable and avoidable risk.

- There is considerable risk of significant individuals in children’s lives stepping back from such engagement and involvement rather than be on such a database, which is hardly a beneficial effect on the wellbeing of children.
- The schedule also mandates for council employees to elicit and document the names and contact details not just of one person responsible for ensuring the child has a suitable education but all adults who contribute even a part of a child’s education. In the case of home educators, the number and range of adult who provide educationally enriching experiences would cover a remarkably wide range of people in the community, which may include:
  - Sunday school teachers/religious leaders; club leaders of youth/drama clubs; Scout/Guides/Brownies/Cubs leaders, swimming/sports teachers and coaches; music teachers, fellow home educating parents when families take part in shared learning times or home ed clubs and groups; community volunteers in gardening schemes – the number and range of people whom home educated children come into contact with as part of their non-school based education can be very extensive.
  - This data would be collated, stored and shared with unknown other individuals and departments without the consent or knowledge of each adult, which is again unacceptable and unlawful.
  - The anticipated and actual sources of such data is not addressed in the consultation document, including the potential role of healthcare services, given the mandate for GP service providers to be data-sharers and data holders for the council.
  - There would be no point holding contact information on such adults if there were no intention to contact them. The only indication for the reason to do so would be part of the inappropriately “*forma*” enquiries that the documentation says would apply to families on databases, although again the documentation does not address this.

Neither does the documentation address if consent would be required, if these individuals would be informed every time their data is placed onto such databases, when it is shared, what purpose it is being used for, and when it is deleted – if it is deleted.

- It is unclear if the data about these other adults will be carried over with those child’s records into the EHE “lists/databases/registers”, if and when children are removed from CME databases to be placed onto EHE ones instead. The government has already indicated an expectation that LAs will

hold records on EHE children who are known, whilst omitting at present to use the term “databases” for those extensive records.

- The disclosure of such data may also impact on the businesses of those who provide either care or educationally enriching experiences, including tutoring, to home educated children in Wales, as individuals and companies would need to weigh up the stresses, costs, business and personal implications of facing unknown levels and frequencies of enquiries, including if and when cases end up in court when parents contest SAOs due to differences in opinions of what is considered “suitable” education. It is highly likely that a number of such individuals and businesses will be deterred from providing input into the lives of home educated children in Wales, impacting their businesses and income. This would also clearly reduce the educational, social and well-being related experiences and opportunities for home educated children, and thus being counter to the aims of the proposals. Placing deterrents to external input of care and educational enrichment would also place a considerably greater burden upon parents.

Even for those that continue to offer such opportunities, families will likely be more circumspect and guarded in their usage, conversations and communications with providers, knowing that, if a council employee were to question or disagree with their mode and style of educational provision, then those tutors and others who would have been friends and allies in supporting the education of their children would then be placed onto such database and, it would seem, be somehow questioned or asked to provide evidence regarding their family.

6. Vitally the child impact statement identifies proposed discrimination against those parents who have been the most active in protecting their children. In relation to parents who have cited “*negative reasons for withdrawing their child(ren) from school, for example, child’s anxiety, threat of prosecution, bullying, medical reasons, breakdown in relationship with the school*”, they propose that “*parents were not prepared to home educate their children the education that they provide may not be efficient or suitable, which then results in the child becoming classed as ‘missing education’ (CME)*.”
- So, parents who bravely cite a reason for deregistration that would be seen to criticise school-provision because it did not provide a suitable education would then be the ones under suspicion of not providing a suitable education. This would place such families under increased scrutiny and suspicion, and, according to these proposals, mean they would be placed straight into the process of undergoing “*formal enquiries*” as well as having the data of not only their child but their family and many others who are involved in their child’s life onto databases for unknown levels of contact/communications/enquiries, with

this also having the potential of other red flags therefore being raised because of unwarranted suspicion.

- The irony is that parents who remove their children from such damaging situations are the ones who are demonstrating the most care for their children. In fact, parents who remove their children from unsuitable provision are fulfilling their duty. It could be argued that parents who do NOT remove their children from such situations would be the ones who would be failing in their lawful duty to provide a suitable education by leaving their children in a situation where such provision was not in place. Parents removing their children from a damaging situation where the school/LA are not able to meet the child's needs should be commended not placed under suspicion.
- This aspect of the proposals would effectively create a climate of censorship, with parents silenced on being able to give what a healthy system would welcome as constructive feedback on why the provision had not been suitable; feedback that if encouraged could be used to significantly improve the experience of and provision for other children. **This feature of the proposals reads as a threatening and coercive way of silencing whistle-blowers, and is not acceptable.**
- The proposals do not only treat parents who have deregistered their children due to failings of the school system with increased suspicion and threat of the consequences of being on such databases, they also treat parents who have lawfully chosen to not involve the council in their educational provision with the same suspicion and threat.

7. The child impact document states:

*“This will initially result in more children who are home educated being recorded as CME, and will prompt the LA to **formally assess** the education being provided”.*

- This is wrong and misapplies the Education Act of 1996. It bypasses the concept of informal enquiries to see if there is good reason to believe that it may “appear” that a child is not in receipt of a suitable education (s436a) and goes straight to s437 mandating “formal assessment”.
- This is an attempt to introduce monitoring by the back door, without transparency on this.
- This is treating law abiding parents with unacceptable and grossly disproportionate levels of suspicion and mistrust.
- This also makes a mockery of claims within documentation that the proposals do not really impact home educators, as families’ choices to educate their children, and how to go about this, are now dependent on the opinions of council employees, without

the lawful option of having the ability to be free from such oversight AND access free NHS healthcare.

- **Thus, the proposals effectively ration access to NHS healthcare.**
8. The proposals attempt to place the council as the ones who decide what constitutes a suitable education, not the parents.
    - This is a significant overstep.
    - This profoundly undermines the parent's ability to fulfil their lawful duty of providing a bespoke education that is suitable to each child's age, aptitude and ability, including any ALNs they may have - by being placed under the oversight of someone who does not know the child and often does not understand the unique and diverse range of educational approaches utilised in home education, or who may often demonstrate conscious or unconscious bias towards home education.
  9. The proposals attempt to create a situation where parents **effectively need the permission of the council** in order to be able to home educate. That is not lawful, and also profoundly ironic when so many parents may have deregistered because the LA had not provided a suitable education for that child.

Education is a parental responsibility, and the council's role is a reactive one "if it appears" there is a need to make further enquiries. This is akin to the police not having powers to search everyone's homes or bank accounts, they may do so only if there is good reason to believe a crime has been committed.

10. Parents who are taxpayers could understandably object to what is not just a waste of money and resources that could be used far better elsewhere, but also to an agenda that would cause more problems than ever could attempt to solve.
11. The proposals if enacted would cause a perpetuation of stigmatisation and discriminatory attitudes towards home educating parents, by the inherent slurs that parents cannot be trusted unless the council decides they can be. The proposals are based on a failure to take parents at their word. They promote the unlawful discrimination against a minority group.
12. The proposals are an attempt to shift the balance of power, to undermine the role of the family, which is profoundly damaging.
13. Parents can **ask** for help **if** they require it. One respondent to the 2020 consultation, presumably from a professional clinical body, said that they thought a database would be a good idea to help with any difficulties in accessing diagnostic services - but databases are not needed to enable

parents to ask for help, databases deter parents from asking for help and divert funding from providing help into creating and maintaining databases. The key issue is not that parents don't know how to ask but that help isn't usually available even if do ask for it, usually due to lack of funding.

## ii) Children and young people

1. The proposals create and perpetuate stigmatization and labelling, discrimination, "othering" of young people.
2. The proposals create barriers to their access of confidential health care, and external input of care or educational enrichment.
3. The Child Impact Assessment of the database consultation documents lists how Welsh Government believes their proposals generally enhance children's rights under various articles of the UNCRC. However, closer analysis of the proposals would demonstrate the opposite.

To address each of the claims in the proposals regarding articles of the UNCRC:

Article 1: Everyone under the age of 18 has all the rights in the Convention.

The Welsh Government suggest their proposals enhance the principles of the UNCRC here, explaining that "*the proposals relate to all children*". However, this is counter to claims elsewhere in documentation that the proposals do NOT affect all children.

Article 2: The Convention applies to everyone: whatever their race, religion or abilities, whatever they think or say, whatever type of family they come from.

The Welsh Government suggest their proposals enhance the principles of the UNCRC here, again explaining that "*the proposals relate to all children*". However, the proposals challenge this article, not enhance it.

- The proposals contain a whole paragraph where the concept of children working rather than receiving an education is addressed specifically to GRT families, thus perpetuating stereotypes and prejudices.
- Children who are electively home educated are treated as CME unless parents prove otherwise, perpetuating suspicion, stigmatisation and "othering".

Article 3: The best interests of the child must be a top priority in all things that affect children.

The Welsh Government suggest their proposals enhance the principles of the UNCRC Article 3, as education provided by the-parents must be

suitable and efficient. If local authorities believe that the education being provided is not suitable or efficient then the child is regarded as a child missing education and there is a duty on the local authority to engage the family, providing additional advice and support or issue a school attendance order.

However, the proposals challenge not enhance this article when the LA concept and understanding of what constitutes a suitable education for a given child in their own individual circumstances differs to that of the families involved. The LA are much less likely than parents to know what is in the best interests of the child and thus any judgement and recommendations of what might be considered suitable are likely to have a negative effect when they run contrary to the opinions of the parent.

Article 12: Every child has the right to have a say in all matters affecting them, and to have their views taken seriously.

The Welsh Government suggest their proposals both enhance and challenges Article 12, explaining “*the proposals enhance article 12 as the child can have their say at consultation phase. Proposals may challenge article 12, if the child stated they didn’t want their personal data shared with the local authority by the health board*”.

This is incorrect – the proposals only serve to challenge Article 12.

- Even if a child does not want their personal data shared with the local authority by the health board, it would appear that their views are ignored and the data shared regardless of their opinions and concerns, as there is no provision in the proposals for an opt out for parents or children.
- There is no child friendly version of the consultation in general circulation or accessible on the consultation website with only days until close of consultation.
- The PDF information sheet that is intended to be a “child-friendly” way of conveying information about the consultation contains stigmatising, discriminatory imagery and concepts and misrepresents the law and legal duties. It also omits vital information such as use of GPs or impact on those who provide care or educational enrichment for children, or on how the capacity to subsequently greatly increase the data shared or the purposes it is used for. The implications for home educated children are not clarified.

Article 13: Every child must be free to say what they think and to seek and receive all kinds of information, as long as it is within the law.

The Welsh Government suggest their proposals enhance the principles of the UNCRC Article 13, explaining “*the consultation would allow the child the opportunity to express views in relating to sharing data.*”

This is not the case. The proposals challenge this Article.

This article actually states: “*The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds ....*”

The proposals if enacted would share children's data without their consent or even their knowledge, which is contrary to the letter and the spirit of this article.

With only one week until the close of the consultation, there is still no child-friendly version of the consultation in general circulation or on the consultation page, only a "survey" that has been sent to a selected population on an invitation only basis, which would seem to be selectively harvesting data. This is hardly democratic or representative of "every child".

Article 16: Every child has the right to privacy. The law should protect the child's private, family and home life.

The Welsh Government rightly say that the proposals challenge this article, explaining "*the proposals may challenge article 16, if child didn't want their personal data shared with the local authority by the health board.*" However, their explanation fails to identify where children do not want their data shared by their GP services or when they are not of an age to give informed consent for data sharing. Note there is no mention of an opt out process but rather a mandate is proposed.

Article 23: A child with a disability has the right to live a full and decent life with dignity and independence, and to play an active part in the community.

Governments must do all they can to provide support to disabled children.

The Welsh Government argue the proposals enhance this Article as "*education provided by the parents must be suitable and efficient. If local authorities believe that the education being provided is not suitable or efficient then child is regarded as a child missing education and there is a duty on the local authority to engage the family, providing additional advice and support, determine whether the child has additional needs and then how these needs can be met. The local authority would be responsible for securing any additional learning provision.*"

This is not the case. The proposals challenge Article 23 as it should be for the child – or the parents as their lawful advocate – to determine what their provision should be to meet their needs, not the state. The state does not become the co-parent simply because a child has disabilities or additional needs - to deprive a child of the normal autonomy of family life because they have a disability is discriminatory.

Home educating parents of children with disabilities may well have had to deregister children from schools because the LA has failed to provide a suitable education via school, but the consultation documents (the child impact assessment) propose that parents who have deregistered for what WG call "*negative reasons*" should be treated with increased suspicion of not providing a suitable education.

This aspect of the proposals is wrong for so many reasons, including because parents would be failing in their duty to ensure a child receives a suitable education if they LEFT their child in educational provision that

was not suitable and/or safe. So Welsh Government propose to stigmatise and penalise parents who are fulfilling their duty when they point out that the local authorities and schools have failed to fulfil their roles.

Article 24: Every child has the right to the best possible health. The Welsh Government say the proposals challenge Article 24, explaining “*the proposals may result in a child not receiving their article 24 right, if families fail to register their children with health practitioners if didn’t want their personal data shared.*”

This is, of course, correct. However, the challenge to this article goes beyond this, as even if parents do choose to register their children for healthcare, knowing that healthcare sources are considered data-holders for local councils would be likely to cause parents to be inhibited from being free to discuss every concern openly, knowing the risk that confidentiality could be breached and anything they say somehow used “against” them or misinterpreted

Article 28: Every child has the right to an education. The Welsh Government say “*the proposals enhance Article 28 as the establishment of this process would ensure that the local authority is aware of all learners and can ensure that they have access to a suitable and efficient education.*”

However, the proposals challenge this article, not enhance it, because the imposition – or the pressure to impose what the LA thinks is a suitable education instead of parents and children being free to determine this without interference by strangers can have a profoundly detrimental effect on education. To consider that these proposals enhance education is to consider that state provision is superior to that of parents, or that the LA is a better determiner of what is appropriate for a given children than the parents. To treat home education as lesser or inferior mode of education than school-based education is not lawful.

Article 29: Education must develop every child’s personality, talents and abilities to the full. The Welsh Government say that “*the proposals enhance article 29 as the establishment of this process allows for local authorities to be aware of families that they may not have been previously aware of and the local authority can remind these families that the Education must develop every child’s personality, talents and abilities to the full.*”

As per the comments on Article 28, this challenges not enhances this right. It challenges because the imposition, or the pressure to impose what the LA thinks is a suitable education instead of parents and children being free to determine this without interference by strangers can have a profoundly detrimental effect on education. To consider that these proposals enhance education is to consider that state provision is superior to that of parents, or

that the LA is a better determiner of what is appropriate for a given children than the parents.

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.

The Welsh Government suggests the *“proposals would enhance article 30 by ensuring minority or indigenous groups are in receipt of education and that those children are not disadvantaged.*

The proposals challenge this article not enhance it - the proposals single out GRT families, so are guilty of not only of not supporting individuals' customs and beliefs, but perpetuating discrimination and stereotyping of minority groups. The proposals also assume that council employees do not operate with conscious or unconscious bias in their opinions. It is notable that there is no provision in these proposals for a complaints system.

Article 31: Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

The Welsh Government argue that the proposals enhance Article 31 *“as a suitable education includes socialisation and ensuring the child can operate in modern life. The proposals will help LAs identify previously unknown EHE children and enable them to assess provision to ensure that these elements are provided by the parent.”*

This is an inflammatory and stereotyping statement about socialisation and capacity to function in modern society. It also implies that parents cannot be trusted to do this without state oversight.

The proposals challenge this article. The kind of school-at home types of education that, in home educators' experience can often be what council employees seem to be expecting or preferring, (which can reflect a lack of understanding of home education pedagogy or unconscious bias, a bias encouraged by the 2023 guidance itself), inhibit true play-based learning, amongst other aspects.

Article 32: Governments must protect children from work that is dangerous or might harm their health or education.

The Welsh Government argue that the proposals would enhance Article 32 *“as local authorities would be made aware of children who are missing education. These children may have been exploited and possibly in employment. The local authority can ensure that any children who are working are doing so in line with child employment regulations.”*

However, those measure are already in place without the new proposals.

These proposals would challenge this article as if there are families where this is happening, the proposals would place active deterrents to them engaging with services such as healthcare, meaning that such children

would actually be less “visible”.

No evidence has been presented of any significant issue of child labour to justify such wide-reaching data-sharing on some half a million children in Wales.

Articles (33, 34, 35 and 36): (drug abuse, sexual exploitation, abduction, sale and trafficking, other forms of exploitation).

Again, the Welsh Government argues “*the proposals would enhance articles 33,34,35, and 36 as local authorities will be made aware of previously unknown children as a result of this process. The proposals ensure that local safeguarding systems and processes can be utilised if professionals have concerns.*”

This is not correct - these proposals challenge these articles ~~and do~~ not enhance them - the proposals would damage the education, home life and privacy of many other families in the process.

The proposals risk pushing any such children at risk further underground by limiting their access to health care too, thus reducing safeguarding for them that *open and uninhibited encounters with healthcare might otherwise have afforded.*

Article 39: Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.

The Welsh Government state the proposals enhance Article 39 “*as local authority would be made aware of children missing education and would be required to provide appropriate support.*”

No, these proposals challenge rather than enhance this article. The proposals would damage the education, home life and privacy of many law-abiding and caring families.

The proposals would be likely to put any truly vulnerable children at risk by precipitating less engagement with statutory services such as healthcare and placing deterrents to external input into care and educational opportunities, thus reducing opportunities for healthcare and education. Furthermore, the obstacles placed by the proposals would reduce the natural safeguarding opportunities that open and uninhibited encounters with healthcare and other providers might otherwise have afforded.

Article 40: A child accused or guilty of breaking the law must be treated with dignity and respect.

The Welsh Government argues “*the proposals would enhance article 40 as local authority would be made aware of children who could be placed in/moved into an LA and would be required to provide appropriate support from specialist YOS officers.*”

The Welsh government's argument addresses those who need YOS input, but these databases are not required to address communications between YOS services in different LAs, that is a completely separate matter.

The Welsh government's proposals openly challenge this article by being based on the premise of considering families are guilty of neglecting their children until/unless they can prove they are not. Whilst it would be the parent who is mainly treated as innocent until proven guilty, the suspicion is placed on the family, indeed the "child-friendly information document speaks of databases of families.

### iii) **Local health boards and general medical contractors**

#### **1. Clinicians are less able to do their jobs effectively if patients do not trust them.**

- a. That includes the **natural safeguarding measures** of clinicians being able to spot and report cases of genuine safeguarding concern. Clinicians already have the power and duty to do this without changes to legislation such as these proposals, however putting up barriers to trusting and confidential conversations, engagement and attendance decreases clinicians' capacity to do so. Moreover, placing barriers to access of confidential health care reduces the preventative role of clinicians in not only health care but in helping address any actual safeguarding challenges in individual cases before they become an issue or deteriorate.
- b. Mandating such widespread non-consensual data-sharing not only damages clinician-patient relationships, it damages professional integrity and could go against the consciences and better judgement of clinicians, as referenced in the GMC's response to the 2020 consultation.

The consultation documentation does not address the damage to trust-based practitioner patient relationships and the obstacles to accessing health care that these proposals would cause (the attached research report "Confidentiality and Respect" can provide more information on this).

#### **2. If any clinicians already hold prejudicial, discriminatory or misinformed views about home education or towards home educators, or subgroups of the community, these proposals risk increasing or perpetuating these views, which would be detrimental to the wellbeing of children.**

- a. The proposals (even in draft form) may give GPs and clinicians the impression that home education is something to be suspicious of, something that needs "reporting to authorities"; further exacerbating present misconceptions and prejudices that can compromise practitioner-patient relationships and impinging on clinical care (please

see the recently released research report “Confidentiality and Respect”) [https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw\\_aem\\_AbUQJlInURcDPVoMIEwZaZATbG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi\\_Sn1llngsFJVgzWVx](https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw_aem_AbUQJlInURcDPVoMIEwZaZATbG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi_Sn1llngsFJVgzWVx)

- b. This would prejudice families’ relations with the GP and other health care service providers.

### **3. Unclear role of GP services**

- a. Given that, if these proposals were enacted, LHBs would already have provided basic identifying data about families (although that alone would be prohibitively unethical), then the role of GP services/general medical services contractors in providing data is unclear. It is unclear what data will be required from GMS contractors that is not available from LHBs, and what additional roles these services would be either expected to play, or subsequently called upon to play. This is considerable grounds for suspicion and concern for clinicians.
- b. Will the LA have provision to monitor how often children access GP services?
- c. Will GPs and other health care providers have to tell parents and children in advance that they are going to pass their details on to LAs? If not, why not, as surely this would be a requirement of GDPR as well as in accordance with professional bodies’ guidances on confidentiality? If so, then who would fund the costs and administrative time in managing this?
- d. Will there be an opt out system for parents and/or children to decline such data-sharing? (From the consultation documents, it would seem not). If there were, there is no information on such a process, including how this would be advertised and promoted?
- e. In addition, as LHBs cover other areas of health care (e.g. dentists, opticians), will these services also have to tell parents and children when their data is to be shared, and what considerations have been made on the impact of accessibility to these of the deterrent effect of non-consensual, confidentiality- breaching mandatory data-sharing via LHBs on access to these services that hold such data about their patients?

4. The only brief reference to the likely impact on access to health care in the consultation documents **does not seem to believe the statements of those with lived experience, or address this damage**, stating “*although no further information was provided to assess whether this is a risk, and the impact of this*”.
  - a. This is a **remarkably ironic statement**, given that there is:
    - i. “*No further information*” to back up the **inherent belief behind these proposals that parents should be routinely treated with suspicion by authorities and need to evidence themselves pre-emptively** to demonstrate they are not neglecting their children, **even in the absence of evidence** to suggest that they are likely to be doing so.
    - ii. “*No further information*” from the government on so many aspects of the extent of requirements of data-sharing, as explored in previous responses.
    - iii. “*No further information*” from the government on how the data of home educated children will be handled if and when it is deleted from the CME database, or on the negative impacts of these proposals on home educated children.
    - iv. “*No further information*” on how there is considered sufficient safeguarding risk to justify putting all home educated children under scrutiny, when it is acknowledged that home education itself is not a safeguarding risk.
  - b. It is not acceptable to raise a significant risk of damaging impact and then dismiss it without addressing it. This risk alone is sufficient to mean that these proposals cannot be progressed or enacted.

#### iv) **Local authorities**

Local council employees will be less able to do fulfil their roles and also to be able to engage with the community when such proposals cultivate an increased climate of mutual suspicion rather than respect and trust.

The proposals would create working relationships that would likely to be more antagonistic.

The proposals would precipitate betrayals of trust and confidence. They would remove any capacity for council employees to truly support families by increasing the role of data-hunters, “checker-uppers”, “formal enquiries”. LA employees would therefore be seen with increased suspicion if these proposals were enacted and decrease families’ willingness to share information or engage with LAs above what is lawfully required.

#### v) **Other**

The proposals would create and perpetuate increased levels of stigmatisation and suspicion among the general public and media. The proposals seek to

depict children who they do not know about as if they ARE missing education unless proven otherwise.

**The proposals would place obstacles and deterrents to individuals and organisations offering care or educationally enriching input into the lives of home educating children in Wales**, because of the deterrent threat of their contact details potentially being placed on such databases, bearing in mind that even just not having been previously known to the council employees that deal with education is considered sufficient grounds to place a child on such databases. The consultation documents do not address why these contact details are deemed necessary or what purpose they will be used for. However, it would be extremely odd to mandate that these contact details be elicited and stored on a database without any intention to use them. Given the stated intention of the proposals as given in the consultation documents to bypass section 436A of the Education Act 1996 and start “formal enquiries” on the educational provision of each child placed on these databases, it would appear that contact with these individuals and businesses are seen to be a necessity in such “formal enquiries” rather than taking the word of the parent, with the depth and frequency of such enquires and the extent and range of information that would be requested of these sources being undefined and without stated set boundaries.

A recent job advertisement for a council employee with a remit relating to home educators, stated a function of the role as “liaising with professionals to ensure electively home educated children are adequately safeguarded, learning and enjoying their EHE”. If this is the type of information that would be potentially gathered from such individuals who have had their details placed onto databases under S6 of the schedule, professionals or otherwise, then this would clearly be a deterrent to offering such provisions to home educated children. Likewise, there is no information about how else these contact details would be used, if they would be cross referenced with other details on the databases, of what action would be taken if providers’ contact details were noted in the files of several different children on these databases, for example if children who were not previously known to the LA – and we must add lawfully so for both the families and the providers – attended or used their provisions. All these lawful people would be placed onto databases of suspicion just because the local council had (lawfully) not been aware of the child they were providing educational input for.

Religious leaders would be also impacted by point 6 of the schedule of requirements of information that must be held on such databases, as a wide variety of places of worship and faith-based organisations are a naturally enriching part of the lives of many children, and inevitably children will be learning and educationally enriched by such environments and experience. The concept of a society collating databases containing details of religious leaders, youth leaders and similar, of whatever religious background, because they contribute input that is educationally enriching, is profoundly disturbing.

**Question 6** – The draft regulations propose that local health boards disclose information to local authorities annually. Do you agree with an annual return?

<b>Agree</b>	<input type="checkbox"/>	<b>Disagree</b>	<input checked="" type="checkbox"/>	<b>Neither agree nor disagree</b>	<input type="checkbox"/>
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If not, how often do you think this information should be provided to local authorities and when would the most appropriate time be?

We fundamentally disagree. **This information should not be disclosed at all.**

There should be no mandate for any form or aspect of health care services to share such confidential data about patients, whether it is clinical or non-clinical. The GMC response to the 2020 Database Consultation supports this view. Non-clinical information is as confidential as clinical information. It would be unethical and counterproductive to share this data.

It is of significant note, however, that there is no limitation set to how often GP services may be contacted by LAs to request data on children.

This is clearly unacceptable. It is quite astonishing to see government proposals suggesting such a huge shift and treatment of confidential data without making it explicit exactly how, when and why such data would be used.

**Question 7** – What would be the implications of a more frequent data return in terms of technical, administrative and resource implications on:

i) local health boards

- The role and duty of local health boards is to deliver healthcare to the community. Increased frequency of data returns increases the distraction from this duty, diverting even more time and funding away from the duty of healthcare services to provide healthcare to the community.
- Increased frequency of data returns would cause increased damage to access of free, open and confidential health care by families, resulting in failure of duty and role of LHBs to deliver accessible, safe and confidential health care to the community.
- Increased frequency of data returns increases the risk of data breaches, which the healthcare provider would be liable for, having to deal with the consequences, including the legal implications.
- Increased frequency of data returns confers a heightened level of suspicion of EHE families, especially of those who have exercised their lawful right to

privacy and chosen to lawfully decline to inform the council that they home educate. It increases the perpetuation of a climate of suspicion and mistrust, to the detriment of society and especially to the children and families involved.

ii) local authorities

- More frequent data returns would result in an increased workload, diverting time and attention away from meeting known needs of children regardless of their educational background.
- More frequent data returns would be an increased misuse of public funds that could be better diverted directly to address the known needs of children.
- More frequent data returns would perpetuate and amplify a culture of mistrust and suspicion, hindering the effectiveness of any contact with families.

iii) other

- Again, this question has not been addressed to GP services contractors, their opinion just comes under the category of “other” even though they are cited as one of the two mandated data sources of children’s data.
- GPs will be held responsible by parents and children for any information subsequently collected about the family for the database because GPs are the most visible and identifiable source.
- The question does not address the impact on home educating families of more frequent data returns. More frequent returns would increase the risk of data breaches with the consequences of these. More frequent returns would increase the level of mistrust and place greater deterrents to accessing NHS healthcare.

**Question 8** – Who within the local authority would need access to the database in order to carry out their functions?

No-one, as there should not be such databases. They are unnecessary, unethical and unlawful.

However, to explore the issues further, to demonstrate the **unworkable** nature of these proposals, having already addressed some of the unethical, unlawful and counterproductive aspects:

1. The question only asks about access to the database but gives no indication as to access to the data on lists created such data-sharing

by children who are removed from that database, for example lists created of electively home educated children.

2. **GPs will have no say over who accesses the data or for what purpose, once they have handed over their patients' information.** It would appear from the question that GPs will not have access to this database to see how the data is documented or used.
3. If a CME database were to be set up at all, then as a minimum:
  - Access should be limited to people working in Children Missing Education who require access in order to check the entries and make any changes required.
  - Access should be restricted on the basis of necessity, defined by task not just job category.
  - In addition, there should be a log of
    - who has accessed the database,
    - for what justifiable reason,
    - and whether they made any changes.
  - There should not be equal read/write access.
  - Writing permission – i.e. being allowed to edit or change the database - should be subject to greater restriction than reading permission.
4. This would be completely different from the permissive relaxed open-ended arrangements put forward in the draft Regulations.

As currently drafted Regulation 12 would mean that a person in **any** of the given categories would have access to the **entire** database and could make use of the information for **other** purposes than children missing education which is the purported justification for the database.

Such open access has the potential for misuse of data, for example to identify from the database families who are not registered with GPs and dentists, under the guise of “safeguarding”. This would raise significant ethical questions.

### Local health boards (9 to 12)

**Question 9** – Can you identify any key privacy risks and associated compliance and corporate risks?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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## Supporting comments

- This question should not only be for LHBS, given that GPS contractors are also intended to be mandated to be data-providers.
- There are significant privacy risks.
- Each child’s right to privacy is being overridden every time their data is shared without consent.
- Each child’s right to confidential healthcare is being overridden every time their data is shared from healthcare sources without consent.
- Compliance risks include the way families will no longer feel safe in accessing NHS healthcare.
- Compliance risks include families refusing to have their data shared, placing LHBS and GPS contractors into an unmanageable situation, given the mandate to share data but the duty to honour their patients and to uphold principles of confidentiality and informed consent.
- Corporate risks include how, given the knowledge of the negative impact on families feeling safe enough to access to free and confidential healthcare, enactment of these proposals would cause LHBS to fail in their primary duty of providing healthcare to the community.
- Corporate risks include liability for consequences of data breaches.

**Question 10** – Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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## Supporting comments

- The GMC, in their response to the 2020 consultation on proposals for databases of children based on non-consensual sharing of data by health care sources, stated:  
*“In our guidance on Confidentiality we are clear that the duty of confidentiality continues after the death of a patient (see paragraph 134). The circumstances in which personal information may be disclosed after death are set out in paragraphs 135-8.”*
- Home Ed Cymru have been informed that Welsh Government were asked to clarify the purpose of such questions about the death of children, but that Welsh Government refused to answer, saying it was only relevant for LHBS and LAs to know that information. This is unacceptable in a consultation process, to not provide such information for the families who would be impacted if the proposals were enacted.

**Question 11** – Do you have any previous experience of this type of data disclosure and processing?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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**Question 12** – Are there additional resource and technical implications of processing and disclosing the required data to local authorities?

<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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### Supporting comments

- The proposals would divert even more time and funding away from the duty of healthcare services to provide healthcare to the community, at a time of budgetary cuts and crisis of funding for the NHS in Wales.
- The proposals would cause increased damage to access of free, open and confidential health care by families, resulting in failure of duty and role of LHBs to deliver accessible, safe and confidential health care to the community.
- The role and duty of local health boards is to deliver healthcare to the community. The proposals would cause LHBs to be in breach of their duty to patients and to provide accessible healthcare to the community.
- Principles of confidentiality in healthcare include that, even if there are individual circumstances where it is justifiable to share data without consent, that the person whose data is shared must be informed of this intention on each occasion and the purpose of such data sharing discussed with them (except in extreme circumstances). There is no provision for LHBs to inform every child in Wales aged 5-16 (some half a million children) of the intention to share their data and the reasons for this.
- There is no provision or mechanism to address the situation when children and parents refuse consent for their data to be shared.
- There is no funding to address legal challenges to personal data being shared from healthcare sources.
- If the requirement to fulfil this new and very different role are not written into NHS contracts, then staff would be enabled to refuse to comply with such proposals. It is a role that is divergent and runs counter to key principles of provision of healthcare.
- The risk of data breaches is unavoidable, which LHBs would then be liable for and would have to deal with.

## General medical services contractors (13 to 14)

**Question 13** – Are there any privacy risks or associated compliance and corporate risks?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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### Supporting comments

Only two questions are specifically asked of General medical service contracts in our specific response section, only one of which allows free text response, even though GP service contractors are one of the two sources that the proposals would seek to mandate data-sharing by. Thus, the fundamental concerns regarding these proposals must be reiterated here to ensure that the concerns and objections of GPs and related professionals are noted and given due weighting.

It is clearly unethical and unacceptable to mandate non-consensual data sharing from health care sources, be they general medical services contractors, LHBs, or any other health care source. This would also unacceptably risk compromising the vital trust-based practitioner-patient relationship and thus place unacceptable obstacles to accessing health care. It compromises the role of health care practitioners to deliver open and confidential access to health care.

1. There are clear legal and ethical precedents for this, including:
  - a. the guidance of professional bodies including the GMC's specific response to the 2020 consultation on such proposals.
  - b. RCOG guidance to not breach confidentiality in cases of illegal self-induced abortion.
  - c. Abandonment of the Contactpoint database, due to unsurmountable risks to safety.
  - d. Abandonment of data-sharing from NHS sources about asylum seekers due to adverse impact on access to health care.
  - e. Abandonment of the Named Person Scheme, due to Supreme Court ruling on the invasion of privacy and family life.
2. The proposals are therefore not only unethical but counterproductive, damaging well-being and access to confidential healthcare where there were no previous grounds for concern.
3. Confidentiality must not be breached in such widespread and non-consensual ways.

4. Such a legal mandate would cause a significant and unsurmountable conflict of interests for health care providers for the reasons already listed, thus impacting compliance. Clinicians' duties must be primarily to their patients and such a legal mandate would impair their ability to fulfil their duty of delivering confidential healthcare that patients can safely access.
5. As such proposals are not acceptable to clinicians, for the reasons already given, alternative approaches, which, as the GMC have already indicated should be based on voluntary interaction, must be explored to address any genuine legal duty or need.

**Question 14** – Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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- The GMC, in their response to the 2020 consultation on proposals for databases of children based on non-consensual sharing of data by health care sources, stated:  
*“In our guidance on Confidentiality we are clear that the duty of confidentiality continues after the death of a patient (see paragraph 134). The circumstances in which personal information may be disclosed after death are set out in paragraphs 135-8.”.*
- Home Ed Cymru have been informed that Welsh Government were asked to clarify the purpose of such questions about the death of children, but that Welsh Government refused to answer, saying it was only relevant for LHBS and LAs to know that information. This is unacceptable in a consultation process, to not provide such information for the families who would be impacted if the proposals were enacted.

**Local authorities (15 to 19)**

**Question 15** – Do you (the local authority) believe that your existing children missing education systems and processes enable you to be confident you are aware of all children of compulsory school age within the local authority area?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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### Supporting comments

- This is a highly misleading question including in relation to the lawful duty of local authorities. It is impossible to answer accurately and appropriately with the three response boxes offered.
- Not even the Education Act expects all children to be identified.
- There is no system that could reliably allow ALL children to be identified.
- The present proposals would only make any truly vulnerable individuals LESS visible as well as less able to access healthcare and external educational and social enrichment. So whatever processes are presently in place would be significantly better and lower risk than the present proposals.

**Question 16** – Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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### Supporting comments

- The GMC, in their response to the 2020 consultation on proposals for databases of children based on non-consensual sharing of data by health care sources, stated:  
*“In our guidance on Confidentiality we are clear that the duty of confidentiality continues after the death of a patient (see paragraph 134). The circumstances in which personal information may be disclosed after death are set out in paragraphs 135-8.”*
- Home Ed Cymru have been informed that Welsh Government were asked to clarify the purpose of such questions about the death of children, but that Welsh Government refused to answer, saying it was only relevant for LHBS and LAs to know that information. This is unacceptable in a consultation process, to not provide such information for the families who would be impacted if the proposals were enacted.

**Question 17** – Can you identify any key privacy risks and associated compliance and corporate risks?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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## Supporting comments

- Privacy risks include the breach of privacy for
  - All children in Wales, whose data will be shared to create “lists”.
  - All children placed onto what are termed as “CME databases”.
  - All children who are placed without truly informed consent onto the parallel EHE databases/lists/registers that would be created as a result of these proposals. These children would be placed onto these parallel EHE lists/databases/registers without truly informed consent, as consent can only be given if there is no coercion, and the threat of formal enquiries and other consequences of being placed onto CME databases the following year, including of “formal enquiries” results in an inappropriately coercive influence over children and families. There is no legal duty to retain this information once it is known that a child is not CME as the lawful duty of the LA towards that child has been discharged. However, under these proposals if a child or family exercise their lawful rights to have that data now deleted, then they would be forced to undergo formal enquiries the following year – unless they deregister from NHS healthcare.
  - All adults whose details are perceived to be required to be recorded onto such databases and then used for unstated and unaddressed purposes. Namely:
    - All who have parental responsibility, putting victims of domestic violence and abuse at significant risk. In addition, the parents who provide a loving and nurturing education are treated as people under suspicion of causing their child to miss education, of being neglectful, in the absence of any evidence to suggest this is the case, and often for the only reason that they have lawfully chosen to not inform the council that they are home educating. Their privacy is being removed and reputation damaged without reason. They are assumed to be guilty unless they prove their innocence.
    - All who have any care input into the child’s life, including family, friends and professionals, who may then feel they need to remove that enhancing input into the child’s life to avoid the intrusion of the data being stored and whatever enquiries would then follow. This would be a very damaging consequence of the proposals.
    - All who provide educational input into the child’s life. This could be an extremely extensive list of individuals and organisations. Such organisations could be voluntary, professional, or faith-based. These individuals may then feel they need to remove that enhancing input into the child’s life to avoid the intrusion of

their data being stored and whatever enquiries would then follow. This would be a very damaging consequence of the proposals.

- Compliance risks include:
  - Disengagement of families with statutory services in order to protect privacy.
  - Inhibition of communication with local authority staff who would be seen increasingly in the role of intrusive inspectors.
  - Families are already decreasing their level of engagement with local authorities as a consequence of the 2023 Welsh government guidance on EHE.  
<https://www.educationotherwise.org/wp-content/uploads/2024/03/Wales-home-education-changing-relationships.pdf>
  - It would be likely that relationships would become increasingly adversarial. As a fruit of the government's present approach to home educating families and their lack of engagement with them in developing increasingly draconian and authoritarian policies, families are increasingly choosing to keep contact with their LA to a minimum to protect their privacy. The continual persistence in attempts to implement such agendas and policies results in parents becoming more, not less, aware of their lawful rights and increasingly determined to protect these against further attempts at degradation.
  - There would be an increased level of court cases to contest SAOs rather than comply with them, given the increased awareness of rights and of the lawful remit of local councils. this would increase the cost in time and funding for local authorities, and further damaging relationships with the local community.
  
- Corporate risks include:
  - the liability for the consequences of inevitable data breaches.
  - Liability for employees adopting roles that try to mandate requirements on families without a lawful basis.
  - Liability for employees who provide misleading information on lawful requirements.
  - Responsibility for the health of local authority staff where increasingly authoritarian government policies are creating a more adversarial than supportive environment, and where the

staff are increasingly being required to attempt to enact inappropriate and unlawful roles and responsibilities. The kinds of policies demonstrated in these proposals are creating climates of mutual mistrust and suspicion, impacting the working environment of council staff, rather than creating bridges of mutual trust and respect, which would cultivate a more positive and rewarding working environment. As there is no lawful mandate to insist on compliance with various facets that staff are expected to demand from families, (for example insistence that parents provide samples of “work”, “meetings”, timetables/documentation of use of time, corroborative evidence- the request or insistence for which infers the parent’s word cannot be trusted- to name just a few), the situation for staff becomes increasingly unworkable and unproductive. A climate that produces an expectation on staff to pressurise parents to comply with demands that may be either unlawful to insist upon, or unnecessary to fulfil their lawful role, is not a positive working environment. The misleading information that can be given to local authority staff, both in information from the government, for example in the misleading supplementary materials or confusing wording of the 2023 guidance, or in job advertisements and job descriptions that misrepresent the lawful duties and role of the authorities, create an unworkable environment for staff, which is not acceptable conduct for employers.

**Question 18** – Do you have any previous experience of this type of processing?

<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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**Question 19** – Are there additional resource and technical implications of processing the data received from local health boards?

<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
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**Supporting comments**

- The proposals would result in a significantly increased workload, diverting time and attention away from meeting known needs of children regardless of their educational background.
- The proposals would be an increased misuse of public funds that could be better diverted directly to address the known needs of children.
- The proposals would perpetuate and amplify a culture of mistrust and suspicion, hindering the effectiveness of any contact with families.

- The risk of data breaches is unavoidable.
  - ContactPoint had to be abandoned for this very reason, as it is impossible to keep this volume of data safe in such contexts and the most vulnerable of children are the ones most at risk when data breaches occur.
  - The range of information mandated by the schedule places children at significant risk when such data breaches occur, given the wide range of contact points provided.
  - The risk of data breaches would be particularly serious for victims of domestic violence from estranged parents or partners, given the mandate for ALL with parental or care responsibility to have their contact details stored and therefore used.
  - The risk of data breaches is particularly high given how flagging up a database of children who are not in school could particularly attract hacking by criminals such as paedophiles or drug dealers. It would not be difficult, for example, for a hacker seeking to abuse children to search for all boys or girls of a given age in that area and find where they live, what activities they attend, or for a drug dealer to use the information on the database to find those who would be most “suitable” to be manipulated and coerced for their purposes.
  
- Conscious and unconscious bias by council staff when constructing, maintaining and using these databases would be unavoidable in relation to their views and opinions of families, cultures and approaches to education.

**Question 20** – Do you think anything in the draft regulations could have a disproportionate impact on those with protected characteristics?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Don't know	<input type="checkbox"/>
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Yes. Profoundly so.

1. **Disabled children and/or families where the parents are disabled** would clearly be disproportionately affected. They would clearly be in greater contact with healthcare services. And if they chose to avoid healthcare services if they felt this legislation to be too immoral and intrusive, or of the damage to the trust-based clinician-patient relationship were too great, then they have the most to lose in terms of being able to thus safely access the health care they require.
  
2. **Victims of domestic violence** would clearly be disproportionately affected by a requirement to disclose such names and addresses – because of the stated

intention for the data of **all** parents to be collated and recorded on such databases, included, including contact details such as addresses. The risk of data breaches is considerable, especially as LAs would be likely to have lower levels of security on their databases compared to, for example, how NHS records are kept. The proposals would cause a particularly high risk of such victims and families needing to be extremely careful about their contact with medical services. Surely this is a cohort of society that needs protection and open access to health care services more than any.

- a. When the children's database was to be introduced in England (ContactPoint) it was discovered that tens of thousands of vulnerable children's records would need to be shielded so that even authorised users could not identify the whereabouts of the child. This was because in some cases knowledge of a child's location could place a child at increased risk of significant harm, put a child's placement at risk in case of adoption, or place an adult at risk of significant harm for example in cases of domestic abuse or forced marriage.

3. **Older people such grandparents** would be disproportionately affected.

- a. They would have to choose whether to be on a widely accessible government database, (one that is stigmatising as it deemed for families that are under suspicion that they MAY not be providing suitable education) or avoid being involved in their children's lives and education.
- b. At present compulsory nonconsensual government databases are restricted for groups such as sex offenders. Surely the government cannot put grandparents and other carers who want to be involved in their children's education into similar categories of people who need to be on a government database.

4. The proposals are likely to also disproportionately affect **ethnic minorities**, where some communities, particularly women from those communities, find accessing medical care less easy and where attempts are made by community leaders to build up trust between the community and the authorities. These attempts would be damaged greatly by such legislation, increase levels of suspicion of any form of authority figure and break what may be carefully built-up levels of trust and cooperation, and inhibit their seeking interventions and help from medical professionals, to the detriment of health of individuals and the community.

5. **Gypsy, Roma and Traveller families** who home educate are already treated with increased levels of suspicion according to WG documentation, as reflected in the use of the Ivatts' report on GRT communities in LA training sessions (more information in info sheet if required) and in consultation documents, and thus would be more greatly impacted.

6. **Women** would be disproportionately impacted. The main providers and facilitators of home education are usually women, the ones most aware of the impact on their children of all the implications of such non-consensual data

sharing and who would be the ones to have to face difficult decisions about registering/accessing health care and/or about how open and disclosing to be about any challenges they face or need for support when accessing health care for themselves and their families.

7. And most of all – these proposals infer that **home-educators, as a minority group**, are untrustworthy inferior sub-group of the community, by “registering” children as potentially/likely CME unless parents can proactively evidence otherwise- treating a whole demographic minority group as guilty unless can prove themselves innocent.

The data of home educated families counts as special category data, requiring an increased level of protection.

**Question 21** – What, in your opinion, would be the likely effects of the draft regulations on the Welsh language? We are particularly interested in any likely language less favourably than English.

Do you think that there are opportunities to promote any positive effects?  
Do you think that there are opportunities to mitigate any adverse effects?

### Supporting comments

- The 2023 Welsh guidance on home education has already made home educators more wary and suspicious of local authorities, expressing decreased desire or intent to engage with LAs beyond what is necessary. <https://www.educationotherwise.org/wp-content/uploads/2024/03/Wales-home-education-changing-relationships.pdf>

Further unwanted legislation would exacerbate this. Thus, home educators would be less likely to take part in any LA offers of classes or resources that promote learning Welsh as a second language.

**Question 22** – In your opinion, could the draft regulations be formulated or changed so as to:

- have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or
- mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

## Supporting comments

- The draft regulations are not fit for purpose whatever language they are in or whatever language they may or may not favour, so this question is irrelevant.
- However, the proposals would cause families to be less engaged with and less trusting of local authority provisions, and thus less likely to make use of any council funded services to promote learning Welsh as a second language.

**Question 23** – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

There are many points that you have not specifically addressed as this form is not designed to allow objections to be clearly explored but rather questions posed are worded as such to seek to collate responses that would agree with the proposed narrative.

### 1. Additional points include:

- a. Child impact statement does not mention the intention stated elsewhere that GMS contractors (including GP surgeries) will be required to share data, let alone have any reference to potential implications of this, to the associated risks and impacts that would need to be evaluated.
- b. The proposals do not address why GP services as well as LHBs should be mandated to be data-holders and data-sharers. This implies that LAs would then have permission to routinely communicate directly with GPs about families because of their choice of educational provision. This concept is unacceptable, as is the ambiguity of the purpose of inclusion of GP services contractors.
- c. No child-friendly version has been made widely available, whilst selected groups have been sent “surveys” to complete by invitation only.
  - i. Home educators were not involved in any promised targeted consultation with less than 2 weeks to go until close of a 3-month consultation. As home educators are the main cohort of children and families that would be affected by these proposals this is unethical and not acceptable.
  - ii. If databases and lists are so invaluable and useful, why did LAs in Wales not use their existing lists to inform known families about this consultation despite it’s significant relevance for their lives and approach to education? (Other than one LA who sent a very demeaning and derogatory email with limited information less than 2 weeks before the close of consultation and only after

Home Ed Cymru had placed a formal complaint about this issue).

- d. The documentation is deliberately misleading, misquoting the law and lawful duties. For this reason alone, the proposals should be abandoned.
- e. The policy behind these proposals is a very anti-family, adopting a very mistrustful approach,
- f. The fundamental issue is that it is not ethical to breach confidentiality and use information from health care providers without informed consent to create such databases. It would be unethical, unacceptable and counterproductive.
  - i. Access to health care must be confidential.
  - ii. Likewise, a second pillar of the ethics of access to health care is informed consent. However, these proposals would override the concept of informed consent, and would even act against expressed consent, in the widespread mandated data sharing to create databases with considerable amounts of private and personal information about children's lives.
  - iii. If the precedent is set to be able to get SOME info from GP surgeries about families because of the family's decision to home educate, then this opens the door to mission creep over time for
    - 1. either changes in the overt government permission or mandate being given on what information may be required or who should provide it,
    - 2. or unofficial gleaning of data – the "while you're on the phone" - "anything else would be good to know about this family..." manner of unofficial overstepping intrusion. It must be noted that home educating families already often reporting misleading communications from local authorities in relation to their provision of education.
    - 3. As previously mentioned, in a recent poll of home educators' experiences in Wales, out of 133 responses, only 4% of respondents indicated that "*all communications received from my LA have never had the potential to be misleading, all have been fully clear with no scope for confusion*", reporting miscommunications that could readily result in information being elicited inappropriately (or even potentially coercively)
- g. GP services are not listed in Children's Act 2004 and would have to be specifically added for these proposals to be enacted – however the implications of this are not addressed in this consultation.
- h. There is no section in this response form to address those who provide educational and care input into the lives of home educated children, even though their data would be held on such databases. There has

been no evaluation in the consultation documentation of the impact of placing deterrents to individuals and businesses providing care and educational input and enrichment into the lives of home educated children.

2. Due to the inappropriately and loaded wording of these consultation consultation questions negating the ability for free objection to the proposals, we have summarised our key concerns below so that they might be properly noted and explored in the evaluation of this consultation.

The following are just some of the many reasons why the proposals would be counterproductive to the aim of benefitting the wellbeing of children and should not be enacted. Like ContactPoint, these proposals must be abandoned.

To summarise why these proposals cannot and must not be enacted:

1. To do so would be unethical, counterproductive and, overall, more likely to damage rather than improve the wellbeing of children. If barriers are placed to accessing healthcare then clinicians have less opportunities for natural safeguarding as part of their clinical roles, as well as service users having poorer quality experiences of healthcare if they are unable to communicate freely and confidentially with healthcare professionals.
2. There are clear precedents to indicate that such widespread, routine and non-consensual data-sharing from healthcare sources should not be permitted- because this is unethical and also unsafe – unsafe in terms of the impact on healthcare and the risks involved with data breaches.
3. The amount of information required for the databases as opposed to the initial lists is very extensive and unrealistic to achieve, let alone manage safely, plus the involvement of GP services in providing this is very unclear. But these proposals open the door to a far greater and unprecedented capacity to gather almost unlimited amounts of data from any source, as dictated by whatever minister is responsible for healthcare at the time. This is because of the section of legalisation that would need to be enacted to allow these database proposals. Some might argue that this legislative attempt is not purely about the data sought in this schedule but what can then later be mandated without consultation should these proposals be introduced.
4. The questions are also highly misleading, as are the consultation documents, in asking for powers by inferring a responsibility that councils do not lawfully have, or by repeatedly mis-stating the lawful duties of local councils. Attempts to overstep the lawful remit of authorities even **before** such proposals are introduced makes such proposals even more worrying and unacceptable.
5. Furthermore, we fundamentally object to the use of data derived from healthcare records not only because the use of healthcare records is

unethical but because even this very consultation fails to be transparent on the reality of what these databases will be. Of course, these databases are not truly databases of children missing education, because they do not contain the details of any children who are currently on school rolls but who are missing education for a myriad of different reasons, however they **will** contain data of home educating families who are providing a suitable education but who have exercised their lawful right not to involve the local authority in that provision. Presenting the database as something if and when the purpose is to create alternative records and databases would be at the very least unethical, poor practice and a move that would certainly not win the already damaged trust of the community.

6. The proposals are presumptuous. They presume school-education is always suitable even in cases where children are on the school roll but don't actually attend but treat home education as automatically not suitable until proven otherwise.
7. The requirement for the contact details of all adults who have a care or educational role in a child's life to be stored on such databases, alongside the unknown depth and frequency of enquiries that council employees would make of each person whose contact information is stored, in addition to the apparent lack of consent in this process, would greatly impact on the input from such sources into children's lives. Those who provide such educational enrichment or care may well be deterred from such involvement and families may also be less free to communicate openly with any providers for fear of miscommunication during any potential enquiries by a council employee.
8. Time, resources and attention could be much better used elsewhere, on supporting those with known but unmet needs.
9. These proposals essentially create a system where parents effectively require approval of local authorities to be able to home educate, rather than LAs being there in their lawful, protective and reactive role to step in only "if it appears" that a suitable education is not in place. As such the proposals are seeking to rewrite the law in a way that is discriminatory against law-abiding home educating families. The proposals create a situation where LAs are deemed to be the ones to decide if education is suitable, which is not the lawful situation. Education is a parental responsibility, not the responsibility of the state or local authorities. This is a marked overreach.
10. These points violate many articles of the UNCRC, including not only the rights to privacy in family life, but also the right to education, by intrusion into family life and interfering with the role of parents in fulfilling their duty to provide an education suited to each individual child's age, aptitude and ability, by placing a council employee as a higher judge than the parent of suitability, even though that person does not know nor understand the child in question.

**To expand on the reasons why these database proposals cannot be enacted to fulfil this “duty”, even if such a duty existed:**

**1. To mandate data sharing by health care sources without consent of patients or parents would be:**

**a. Unethical**

- i. GMC confirmed this in their response to the 2020 consultation, “Local Authority Education Databases”, stating that
  1. sharing even non-clinical data in such a way would be an unethical breach of confidentiality.
  2. voluntary routes should be used instead.
  3. proposed approach to the disclosure of personal information in the draft regulations is inconsistent with GMC guidance.
  4. that proposals do not allow room for professional judgment.
  5. that proposals would be inconsistent with the common law duty of confidentiality.
  6. *“Requiring doctors to share information about children and young people and their parents could cause some to disengage with health services, affecting not only their health but also potentially the health of their local communities”.*
  7. *“We expect doctors to make sure that patients know what information is being shared about them, and to obtain consent to sharing, unless doing so would undermine the purpose of the disclosure”.*
    - a. It should be noted that there is no provision in the consultation documentation for the mechanism or funding for this, or for any application of processes of informed consent or opt out measures.
    - b. Likewise, there is no form of redress when information is shared or documented inappropriately or inaccurately.
- ii. Further examples of legal and ethical precedents include:
  1. The 2018 decision at Westminster to stop an attempt of non-consensual data-sharing from NHS sources on asylum seekers with authorities due to detrimental effect on access to health care.
  2. The 2024 Royal College of Obstetricians and Gynaecologists (RCOG) guidance to clinicians on safeguarding women by not breaching their confidentiality, even where the act in question in that case (self-induced abortion) is presently illegal.
  3. The abandonment of the “Contactpoint”, a database of children, that had been heavily criticised by a wide range of groups including the BMA for privacy, security and child protection reasons and because of risks of breaches of patient confidentiality. That had been based on the

English equivalent within the Children's Act 2004 of the s29 being used to justify the present Welsh government proposals.

4. The ruling of the Supreme Court against the Named Person Scheme due to unwarranted intrusion into privacy and family life.

**b. against and override the principles of informed consent**

- i. There is no mechanism proposed for redress for patients when their shared or stored data contains inaccuracies or misconceptions.
- ii. This undermines the clinician's role and duty to be promoting and delivering health care.

**c. cause more harm than good as would be likely to cause patients to not feel they cannot safely access confidential NHS health care**

- i. The attached recently released research report, "Confidentiality and Respect" provides more information and exploration of these issues. [https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw\\_aem\\_AbUQJjInURcDPVoMIEwZaZATbGG8TM23ratwkHOnqtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi\\_Sn1lIngsFJVgzWVx](https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4IxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkvw_aem_AbUQJjInURcDPVoMIEwZaZATbGG8TM23ratwkHOnqtZhXS1LSyBhbSqxFvK9KyzOC4hwIzi_Sn1lIngsFJVgzWVx)

**d. damage the trust-based confidential relationship between doctor and patient.**

The proposals would be likely to create the sense that people cannot be freely open with clinicians, creating a climate of mistrust on both sides which would place barriers to accessing health care.

- i. Clinicians can already report individual cases where there is specific concern of a risk of significant harm. That capacity would be hindered by the obstacles placed to accessing and engaging with healthcare, by the climate of mistrust created.
- ii. Widespread sharing of data of large groups of patients and whole sections of society where there are **no concerns identified** on a "just in case/you never know" basis is **not reasonable or proportionate**.

**e. likely to cause clinicians to wrongly view home education as an issue of concern**

Even though the suggested aim of the proposals is given as identifying children who are not in receipt of what the council may consider a suitable education, it inevitably involves data-sharing and scrutiny of home educated children.

- i. Instead of ensuring the wellbeing of children, the proposals reinforce and perpetuate negative stereotypes and any prejudicial misassumptions. The proposals promote discrimination of a minority group in a way that is unlawful.
    - ii. The impact of any negative stereotyping, discriminatory attitudes and false information about home education on how safe home educators feel accessing healthcare is investigated and explored in the research report “Confidentiality and Respect” (link to report above).
  - f. **a breach of confidentiality**  
Regardless of whether a member of healthcare staff is clinical or administrative, or whether the data is clinical or non-clinical, sharing data from healthcare sources is always a breach of confidentiality, but one where clinicians would bear the brunt of the consequences or could be assumed to be the ones at fault.
  - g. **would result in dangerous pilot studies if proposals followed.** The Welsh government have stated that they intend to run pilot “evaluations” – but the only outcome measure they intend to look at from such pilots is how many children are identified, not the impact on access to healthcare of doing so or any other potential outcomes. This is unacceptable. Indeed, the impact on healthcare is immeasurable. Pilot evaluations alone would be damaging to health, education and the wellbeing of children, as well as also damaging relationships between families and local councils and increasing mistrust of the Welsh government.
2. The significant and unavoidable risk of **data breaches compromise the safety and wellbeing of children.**
- a. LA data is not held as securely as NHS data, data-breaches from LA sources are common, and data on home educated children comes under Special Category data so warrants higher levels of data protection.
  - b. Moreover, there is no form of redress for patients if and when such data-breaches happen.
  - c. There is also significant risk of **inadvertent** “off the record” and thus inappropriate data-sharing beyond what was directly mandated, if GP services are seen as data-holders for the council, when council staff make contact with GP surgeries. In a recent poll of home educators’ experiences in Wales, out of 133 responses, only 4% of respondents indicated that “*all communications received from my LA have never had the potential to be misleading, all have been fully clear with no scope for confusion*”.
3. **The proposals would have a profoundly damaging impact on external educational input for home educated children. The extremely wide range and extent of data proposed on such databases, holding data on wide ranges of adults who have any degree or type of input into children’s**

**lives** could result in service providers and other adults **disengaging and choosing to not provide that valuable input**, to the detriment of children's well-being.

- a. Awareness of the enormous range of data that could subsequently be mandated as a result of enactment of s29 if the Children's Act 2004, the deterrent to providing enriching and care input for children in Wales only increases the deterrent effect of these proposals.
4. The databases would require **subjective opinions** regarding ALNs and the provisions perceived to be required as a result of any ALNs, without any clarity of how much of this data could be gleaned from GP surgeries rather than LHBs, or how much of this data would be considered to be required from the extensive list of contact details that the databases are mandated to hold. It is unclear as to whether the predominant opinion would be that of the parent, or the council employee, but if it were the latter then this is counter to the principle that education is a parental responsibility as denoted in law.
5. **This question (1) is also very misleading in its reference to a perceived "duty" of local authorities.**
- a. The consultation response questions do not state the true and actual legal "*duty*" towards children. Elsewhere in the documentation, the duty of local authorities is openly and misleadingly misquoted, claiming a proactive "*duty to ensure every child...*" – a duty that does not have a lawful basis.
  - b. The actual duty of local authorities is a **reactive NOT a proactive one**,
    - i. to act "*if it appears*" (Education Act 1996) or to "*attempt to trace*" (CME guidance 1.24),
    - ii. neither provide a mandate to identify every child at any cost. Guidance does not say, and could not say, that authorities have a duty to track down every child. This may be likened to the role of the police who are not legally allowed to search just any home for evidence of a crime "just in case", or simply because the person fits a certain demographic (that would, of course, be discriminatory and unlawful).
  - c. Indeed, the proposals reverse the process set out in the Education Act by considering CME to be the default setting unless evidenced otherwise. This is not lawful.
  - d. Likewise, the "child-friendly" pdf information sheet (provided by Welsh Government to selected groups but not published on their website) states, "*The Education Act 2002 says local authorities must: make sure all children in their area have an education and are safe and well in all areas of their life*".

**This is an unacceptable misrepresentation of the law.**

- i. It refers to s175 of that Act, which states, "*A [F2local authority] shall make arrangements for ensuring that [F3their education functions] are exercised with a view to safeguarding and*

*promoting the welfare of children*". This states "with a view to", i.e., be mindful of in what you do. It does not say or mean "must ensure", nor does it say, "all children" or "all areas of their life".

- ii. In addition, the section this quote is taken from refers to those in school or further education, where parents have chosen to give schools a role in their children's education.
  - iii. **It does not universally apply to ALL children, neither does it confer a coparenting role onto local authorities.**
- e. **Thus, even before such proposals are introduced, we are seeing authorities overstepping their role and remit – making the proposals in this consultation even more unacceptable and concerning.**
- f. **If local councils were actually legally responsible for the welfare of every child, they would very rapidly be bankrupt, and in the midst of a host of court cases for failings to do so.**
- i. We know that Wales currently has the lowest PISA scores in Europe. Many families with children with additional needs complain of difficulties accessing the required support for their children within the school-system. There is also considerable lack of provision by authorities for children who are still their "responsibility" but unable to attend school, (EOTAS provision by local authorities) with Estyn finding in their report that "very few local authorities provide more than 10 hours education per week. In only a very few local authorities, pupils access a full curriculum as part of the local authority tuition service offer" (<https://www.estyn.gov.wales/thematic-report/equity-curriculum-experiences-pupils-who-are-educated-other-school-eotas>)
  - ii. If local authorities did actually have a lawful duty to ensure the wellbeing of every child, then how does that correlate with their failings to look after other areas of child-welfare? For example, there are some 3,500 children homeless in Wales (nothing to do with home education and with families in desperate situations), with almost 140,000 people and families on waiting lists for social housing. Beyond the obvious impact on child welfare of being homeless, school attendance rates are known to be significantly lower for homeless children. **The proposed concept of authorities actually having to fulfil a legal duty to proactively ensure the welfare of every child in Wales, does not fit with present provision in all areas of life, including state-funded education and if this was indeed their true legal duty they would be found lacking on multiple levels.**

**6. These databases of “children missing education” are fundamentally not what they claim nor set out to be.**

- a. EHE children are not the same as CME but are intrinsically conflated in these proposals. EHE children will inevitably find themselves on this database until the point that they can “prove” otherwise. Thus, the database will include significant numbers of children who are not truly CME.**

**Conversely schoolchildren are often not in receipt of a suitable education, but the proposals imply that this cannot be the case.**

- b.** No school children who are missing education will be on these databases. Any child on a school roll is automatically assumed to have a suitable education and would not be included in such databases, even if their attendance were 0%. Any children where the LA is responsible for providing education outside of the school environment (EOTAS) but who only have no more than a few hours a week of basic tuition (which according to Estyn’s 2023 report on EOTAS in Wales is a frequent occurrence) would not be on these databases of children missing education. Any children who are unable to function or concentrate in school environments due to unmet ALN needs, or due to the stress of in-school bullying or abuse/harassment would not be on these databases of children missing education. Any children who repeatedly have difficulty getting to school because of lack of transport, or who have difficulty functioning and accessing education due to social, domestic or poverty-related issues would not be on these databases of “children missing education”.
- c.** However, families who are lawfully home educating but who have exercised their lawful rights to not involve the local authority in that education will be automatically put onto these databases.
- d.** Thus, these proposals are discriminatory towards EHE and not compatible with the legal stance the EHE is equivalent to school education in law and that education is the responsibility of the parent not the state.
- e.** The proposals create a bizarre situation where whether education is suitable or not does not depend on the education itself but on the opinion of a council employee- as the categorisation changes even though the educational provision hasn’t.
  - i.** The Welsh government, in their response to a complaint letter from Home Ed Cymru, stated that that *"If the local authority is unable to determine that the education provided is suitable, that child is CME, not EHE"*. We note the "is", not even the "potentially" that see elsewhere in the proposals. But the very same educational provision for that child suddenly becomes suitable by the mere decision of a council employee even

though the actual educational provision has not changed to when they were classified as CME. So, the concept of CME is about the opinion of a council employee and not about the actual educational provision. The education is exactly the same whatever database/list/register the child was placed onto so the child cannot be actually missing education simply because they are not on a list, the concept is nonsensical.

- ii. The proposals therefore are not about whether children have a suitable education but what a council's opinion is of each family. The proposals are an attempt at a power shift to claim it is local authorities that are responsible for oversight and ensuring the "quality" of home education.
  - iii. In so doing, a system is created whereby permission to be home educating is required, based on the subjective opinion of a council employee.
    1. The proposals effectively create the situation where annual permission from the council is required to home educate. This is not lawful and not acceptable. It is a profound overreach of powers by the government and by authorities.
- Thus, these are not databases of children missing education, they are databases about families that have exercised their lawful rights to not involve the local authority in their educational provision even in the absence of evidence to suggest they are families to be concerned about.
  - **Moreover, these databases would result in the construction of parallel databases of home educated children, a home education register by another name, where the only way to avoid such mandatory registration would be to move house away from family, friends and employment and then not register for or utilise NHS healthcare or access universal statutory services. Of course this would dramatically affect the wellbeing, safety and education of any such families.**
  - The intent to and effect of create such effectively mandatory lists/registers/databases of EHE children and families, ones that are a condition of being able to access treatment on the NHS, should be clearly stated in any such proposals. It is disingenuous and unethical to portray these proposals as simply creating databases of CME.
  - The proposals also a way of **introducing and legitimising monitoring** of educational provision, by using the threat of the level of scrutiny and intrusion into private family life of the CME database combined with the concept of at least annual evaluations of which list/database/register a child belongs to.
7. The proposals make access to NHS healthcare conditional upon being "registered" with the council for whatever form of education. The outworking of these proposals therefore results, in effect, in these databases become passports to NHS care.

8. **The proposals are an inappropriate use of resources and funding, wasting time and money** on a detrimental measure when could use for far better good for welfare of children. The proposals **take the focus away from those known to be in need.**
9. The proposals have a hyperfocus on potential identification with no budget or provision to address any issues then identified.
  - a. The proposals shift the focus from providing for needs to identification, and by diverting funding and attention they risk depriving those with known needs of limited funding and resources, whilst also being likely to harm those who were not otherwise at risk.
  - b. The impact assessment admits that "*costs of the proposals have not been identified. There will be costs in terms of staff time for health boards to provide data to local authorities and for local authorities to cross reference this data against children already known to them*", but does not address how these costs would be met, how this may limit funding away from addressing needs rather than identification and how meeting any needs they believe are identified will be funded, including any ALN related needs.
10. **These proposals are trying to change the definition of CME and conflate EHE and CME.** The WG guidance on CME is clear that when children are deregistered from school, they are to be classified as either **EHE or CME based on what the deregistering parent has stated**. The proposals are therefore contrary to the WG own statutory guidance on CME, as they shift the emphasis onto what the council decide is the case, on whether the council believe the parents that their educational provision is "suitable".  
<https://www.gov.wales/sites/default/files/publications/2020-09/statutory-guidance-help-prevent-children-young-people-missing-education.pdf>, pages 116 onwards demonstrate the existing classification of CME or EHE based on information from deregistering parent.
11. **Thus, the proposals cannot and should not be enacted. They are not reasonable or proportionate, they propose the use of sledgehammers to crack a nut, causing damage to the wellbeing, safeguarding and education of children in the process.**

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: