

Letter to Pembrokeshire CC regarding concerning job advertisement for new member of staff to work with home educators.

(No response received to 5 emails regarding this, other than an isolated acknowledgement of receipt).

We, at Home Ed Cymru, a national support group for Welsh home educators, are writing to you address some very concerning features and statements in a recent job advertisement produced by Pembrokeshire County Council. These are features that would be very misleading for any person considering applying as they misrepresent the lawful duties of such an employee and attempts to enforce such a perceived duty would therefore not only be unlawful, but also counterproductive and damaging to positive relationships with the community that present staff have sought to develop. Thus, we write to ask for your swift intervention to immediately remove this advertisement to allow time for reflection and consideration of the appropriateness of this role and in the use of funding towards it, with redrafting of the job description and advertisement being essential if so.

https://www.glassdoor.co.uk/job-listing/elective-home-education-advisor-pembrokeshire-county-council-JV_KO0,31_KE32,60.htm?jl=1009223791896&fbclid=IwAR1aPmwDkUKcWWQ0di9LWk0V-6Y3o0X_GwB9RU6VKCnDjsxwFz7lEvP_dI_aem_AcU3ewkLBG_04WfW6S1D8wFz8Bjfh8CQ2zr-vhVjReXvGKTeOHM7gUyVceq-gS2ylx02zqXnFQwaqOAY3xj_iJl

To address each concerning feature in turn:

1. The description in the advertisement mistakenly gives the role of the prospective employee as to “**ensure the education being provided is suitable and effective**”. Unfortunately, this is not a correct representation of the lawful role of a member of council staff in relation to elective home education. This is not a duty that can be lawfully enforced on each family. We appreciate that some communications from Welsh Government can be confusing on this point, thus we trust it is helpful to address and explore the legal roles here.
 - a. The only facet of law that gives local authorities a duty that can intersect with the educational provision of home educating families is s436A and s437 of the Education Act of 1996. S436A clarifies a duty of the local authority to establish, “*as far as possible*”, the identity of those not in receipt of a suitable education”. “As far as possible does not mean “do absolutely anything and everything” but rather is a legal caveat to remind local authorities that no other laws or legal and ethical principles should be broken or over-ridden in any attempts to fulfil a duty. An appreciation of those legal and ethical factors that must be constantly observed in any

attempts to fulfil the duty of identifying such children is absolutely vital for any employee charged with such a task.

- b. The authority should only progress to further enquiries “*if it appears*”, under s437, if there is reason to believe that an individual child is not in receipt of a suitable education. The role is a reactive, not proactive one.
- c. To presume “a duty to ensure that every child has a suitable education” would be to instigate a monitoring and inspection role that has no lawful basis and cannot be lawfully enforced.
- d. Indeed, we are sure that PCC are grateful that they do not have such a legal duty. If authorities actually did have a lawful duty to ensure that every child had a suitable education, they would be legally liable for all the children on state-school rolls who do not currently receive one. For example, if a child on a school roll is not in receipt of a suitable and efficient education because of low attendance, or unmet ALN needs, or transport issues to school, or social and poverty relating factors impacting their ability to access education, then, IF the local authority did have such a duty to ensure every child has a suitable education, then those local authorities would be legally liable for each of these shortcomings, not the parent. If there were such a legal duty, it would put local authorities in a very difficult, or rather impossible situation, legally and financially. Thankfully, whilst a desire of optimal or gold-standard education may be noble, there is no such lawful duty on local authorities to ensure that every child has a suitable education. Rather authorities have a reactive duty to act if there is reason to believe that a child is not in receipt.
- e. Note too that that reactive duty, and the terms of the Education Act in s437 apply in individual cases where there is cause for concern in that specific situation, not across whole demographic groups.
- f. The confusion in terms of mistaken claims of a “duty to ensure every child has a suitable education” comes from a claim originally made in the Senedd in 2018 where the then Education Minister voiced a personal belief, saying, “*I believe we have a moral duty to ensure every child has a suitable education*”. Unfortunately, the key terms “*I believe*” and “*moral*” were subsequently dropped in Welsh government correspondence, and the phrase “duty to ensure every child has a suitable education” started to be promoted, as if there were such a legal duty, which, as established, there is not. As addressed, even if there were such a moral duty, it is not a practically enforceable one, given all the obstacles to schools being able to provide a suitable education for each child.
- g. Unfortunately, the 2023 Welsh guidance was influenced by this mistaken concept, which is then problematic and confusing for local authorities

and home educators alike. Whilst that guidance is given the misleading title of “statutory”, it contains no new statutory duties on local authorities.

i The Welsh Government have clarified that it is only the “musts” in this guidance that are statutory, that any concepts preceded by “may”, “should” or “can” are non-statutory. All of the many “should”, “may” and “can” related suggestions or concepts in that guidance are not legally enforceable and whilst LAs should have an awareness of these proposed actions or concepts, they do not have to follow them where there is reason not to. This is where the “*as far as possible*” principle of s436A of the Education Act 1996 is fundamental, as there are many good reasons to not appropriate a number of such non-statutory suggestions or opinions in that guidance, both as a collective approach and in terms of addressing each individual family.

ii. Fully informed consent is just one of these fundamental caveats. To try to enforce a monitoring role, without fully informed consent of each person involved, which would include the clarification that this is not a legally enforceable role, would be to act unlawfully and unethically.

iii. Furthermore, there are many ways in which monitoring of home education is detrimental to children’s education and wellbeing. These are outside the scope of the purpose of this letter, but can provide assurance that it is appropriate to not try to enforce an unlawful and counterproductive role.

h. Attempts to enforce practices and perceived duties on a community that are not lawfully correct or appropriate are not the most effective way to engage with the community. Such attempts create barriers, naturally so. Since the confusing 2023 guidance has been published, families’ engagement with local authorities has decreased rather than increased, with the quality of any such engagement likely to be significantly lower too. <https://www.educationotherwise.org/wp-content/uploads/2024/03/Wales-home-education-changing-relationships.pdf>

2. We note the job advertisement tells prospective applicants that they would be “**expected to arrange and conduct educational assessment visits to families**”.

a. The description here risks giving applicants the impression of such “visits”, or of “educational assessments” being mandatory or the expected norm. Whilst of course councils may offer such visits for “educational assessments” if resources permit, Welsh government have

subsequently clarified that they are not mandatory, that parents and children are free to decline these, and an increasing number of families do decline, to protect their families. The description here can give the impression of “educational assessment visits” being normal and expected practice.

- b. Moreover, education is a parental responsibility, and it is the role of parents to decide and determine suitability of provision for each child. The council is not the determiner of suitability, the role is reactive if it appears that suitable educational provision is not in place. If there were a disagreement in the opinion of what is suitable for a child between parents and the views of a council employee it is ultimately the courts that decide, not the council.
- c. Indeed, despite the challenges for such families of having to fight their defence of innocence in court without the level of finance that is available to local authorities to do so, courts often find in favour of families when there is such a difference of opinion, and any resulting school attendance orders are challenged in court by the families affected. However, given the trauma and damaging impact for families and the financial implications on authorities, such legal challenges and encounters are obviously ones that both sides would seek to avoid, which is a further reason for ensuring that any employees who would be given the power to issue such legal proceedings are not misled about their duties and are fully aware of the impact of their actions and decisions.

2.

The further described role for potential applicants of being to "**provide reports on assessments, educational progress and concerns for EACH child**" is likewise very misleading and likely to create significant problems if any appointee were to try to enact.

- a. Whilst authorities may make informal enquiries, there is no duty to act unless there is good reason to believe that suitable provision is not in place. Furthermore, there is no lawful duty to monitor home education once authorities are aware that a child is electively home educated and not a child missing education. Once it is known that a child is EHE and not CME, the duty of the council towards their education ends. It is not lawful to monitor progress, and it is most certainly not lawful to do so as a blanket policy for each child.
- b. Likewise, to expect a list of concerns for **each** child is pre-emptive, encouraging to find concerns for each child, creating a climate of suspicion and anticipation. If concerns exist, these should be addressed, but there should not be a proactive or presumptive searching for concerns. That is not lawful, neither is it conducive to good relationships and healthy productive communication.

4. There is a remarkable statement that cites the role of any prospective employees to be ***“ensuring each child is enjoying their EHE”***.
 - a. This is not a lawful duty, and neither is it achievable.
 - a. It is also discriminatory. To appreciate how this is discriminatory, consider for a moment if any council would also proactively take steps ensure every individual school child is actually enjoying all their school education too? (That is a very different concept to any occasional and selective surveys of opinions of populations). And would any council take steps to tailor and change their educational approach if the child indicates they’re not “enjoying” a facet of school life or education? It is not a criterion of any form of education that it can only be permitted if a child is demonstrated to always be enjoying it.
 - b. Paradoxically, home education focuses far more on the feelings and experiences of each child, with a very heightened awareness that children learn best when they are enjoying their experience. Indeed, many parents withdraw their children from schools for this very reason. However, “ensuring” that a child is “enjoying” is not a criterion for permission to continue home education.
 - c. Moreover, ensuring “each” child is a further overstep. The duty is to identify children not in receipt of a suitable education and not to examine the personal lives of every child who is without cause or justification to believe otherwise. “Just in case” is not lawful justification, it does not reach anywhere near the threshold for intervention, especially if considered a safeguarding one. To give a comparative illustration, police cannot enter and search homes “just in case” a crime “may” have been committed, but only if there is evidence and reason to believe one has, evidence of a level that would convince a court judge that this is the case.

5. A very concerning allusion is made in the claim: ***“The role also involves liaising with professionals to ensure electively home educated children are adequately safeguarded, learning and enjoying their EHE”***.
 - a. This gives the impression that liaising with professionals is a general duty. Liaison with other professionals should only be in individual cases if there are grounds for concern of significant harm in that specific case, or if the parents have voluntarily requested this. Informed consent is fundamental in such encounters.
 - b. This is particularly concerning given the present consultation on the concept of “children missing education” databases. Such proposals for non-consensual confidentiality breaching data-sharing have already been strongly objected to in 2020, including with the GMC (General Medical Council) clearly confirming that attempting to enforce such measures would have been unethical, unacceptable and counterproductive to the wellbeing of children.

- c. If this description hints at any aims of contacting other individuals involved in a child’s education beyond a named parental contact (as would seem to be suggested by the extensive degree of contact details listed in the Schedule of the present database consultation proposals), it would be very wise for the council and any prospective employees to be aware that such enquiries would be extremely unlikely to be productive and only be likely to limit the number of sources that then make themselves available for use by home educators, thus greatly diminishing the educational experience and wellbeing of home educating children. We are sure that this is the last thing that PCC would want to risk.
6. There are several other facets that we trust are also helpful to address to allow the narrative to move towards a more positive and constructive one for all.
- a.

We note the concept that such an employee is expected to work on term time basis only, which demonstrates a school-centric approach to home education, as home educated families are not required to follow school-like terms or timetables and often greatly benefit from not doing so. This can add to the impression of any such employee being considered in an inspection rather than a supportive role, although of course, they do not have either duty. It is not of course a major consideration, but simply a minor illustration of part of the picture that such descriptions paint.
 - b. Likewise, we trust it is helpful to reflect together on how the title of “*specialist advisory teacher*” is not an appropriate description for such a role.
 - 1. The term “*Specialist*” connotes particular experience and expertise. It would be interesting to know what personal and lived experience applicants would be required to have of elective home education and of utilising and practicing the diverse range of alternative pedagogy that home educators may utilise. We appreciate that applicants for such positions do not usually have such experience and therefore the title of “specialist” would not be appropriate.
 - 2. Likewise, the term “*Advisory*” connotes both a higher level of knowledge and experience to bring to an encounter, and also a role to be providing this. It connotes a degree of authority. However, such employees would have no lawful duty to be advisors on how to home educate, nor would they have the authority to do so. The use of such terminology goes beyond semantics, it inextricably affects relationship dynamics and the expectation of employees of how their conduct towards home educators should be. It sets any potential employee up for failure and disengagement, which we are sure would not be the desire of PCC or of the community as a whole.

3. “*Teacher*” is unfortunately also an inappropriate term in this context.
 1. Whilst applicants may indeed previously have worked as teachers in schools or other environments, they are no longer teaching children.
 2. Neither is their role to be teaching parents how to home educate. Any employees to such a post no longer have the function of a teacher.
 3. Applicants may have the past experience of a teacher, but this is not relevant to home education. Children grow according to very different developmental trajectories when not confined to school-based environments or curricula. Approaches that may be useful in a class of 30 are not relevant to personal relationship-based home education. Even experience of tutoring is not relevant to the entire experience of home education, which may often take a very different approach to learning and development than adult-led subject-based styles. Home education is not usually school-at-home. Many teachers who become home educators find that they have to unlearn much of their practice and conceptualisation that they had previously relied on in school-based classroom environment, often finding that bringing that experience into the realm of home education was actually counterproductive.
 4. Thus, the term “*teacher*” is not an appropriate job title either.
- c. It would sadly appear that there is almost anticipation that such a role could not be conducive to good working relationships, given the stated requirements of “*Confidence to make and stand by your decisions is key*” and “*You will need emotional resilience for this role*”.
 1. This is a product of the mistaken understanding of the correct roles and duties of such an employee and to expect them to try to enforce roles as if they are lawful duties and requirements when they are not conducive to healthy staff wellbeing, neither is it conducive to promoting wellbeing of the community the council is meant to serve.
 2. Likewise, the expectation to make and stand by decisions is not a helpful one, especially when it is very unlikely that the prospective employee has experience of home education, and, even if they have, every family’s home education journey will be unique. Surely PCC should be encouraging a flexible, open-minded approach to engaging with a community, especially if it is a minority community that it has only limited understanding of? This statement runs counter to the mention elsewhere that an open

mind is necessary. Surely PCC should be encouraging its employees to be aware that their understanding and reasoning will need to grow and develop, and that therefore their decision-making will benefit from constant reflection and from gaining different insights from others. This description of requiring any such employees to be fixed and inflexible is one that sends a profound message to the home educating community, one that does not promote positive engagement.

3. Furthermore, if the employee were to try to impose any inappropriate practices or approaches on the community as if were legal requirements and without clear informed consent processes, then that would be a frustrating and emotionally draining situation for all. Home educators have no desire for adversarial relationships, quite the opposite, we just desire to focus on raising and educating our children. It cannot be too surprising if a community were to not respond as the employee may have come to expect they “should” to any attempts to impose unwelcome or unlawful oversight.
4. We note that the starting salary is some £29,000 per annum. Is this post in addition to present staff in this area, or is this a replacement post?

If it is additional, we would be very interested to understand how this additional funding could be justified, especially given the significant need for spending in other areas, most especially in improving access to affordable exam centres for home educated young people. That would be a far more beneficial use of scarce resources than an additional person to fulfil a role that is not necessary or lawful. Such a sum could transform the lives and educational experience of many home educating families if it were put to a more appropriate purpose, such as access to appropriate exam centres within Pembrokeshire. We would be delighted to provide more information on how this could be facilitated.

Home Ed Cymru have previously engaged with the relevant departments of each LA in Wales, sharing home educators’ perspectives of the 2023 guidance on EHE in October 2023, and addressing the many problems with the supplementary material templates provided by the Welsh government for LAs on 4th February, with a follow-up summary of those core problems on 25th February 2024. We attach these again, for your convenience, as they pre-emptively sought to address some of the issues raised in this present job advert.

In conclusion, we request that this recruitment advertisement is immediately withdrawn to allow review and reflection on the description and terminology. Involvement of those with lived experience is always a constructive component of any engagement with the community and would be an appropriate stage before progressing

further with development of the descriptions of any employment relating to that community. However, if this role is an additional role to the present staff in this area, we would urge you to reconsider and utilise this funding much more beneficially instead, towards improved exam centre access for home educators in Pembrokeshire.

We look forward to hearing from you shortly and to positive constructive engagement to the benefit of staff of PCC, present and future, and to the people of Pembrokeshire.

Kind regards,

Home Ed Cymru