

Feedback on Rhondda Cynon Taf County Borough Council Elective Home Education Policy from Home Ed Cymru.

17th October 2024

Please find below, and attached, a copy of feedback from home educators on the recently published local policy of RCT in relation to elective home education. The policy as presently stated is in black, with feedback and points requiring attention added in blue.

We are encouraged to see some positive and helpful inclusions in this policy, and have provided feedback on these.

However, there are a number of errors and misconceptions that require addressing and correction.

There are also several points that require clarification.

We naturally note a remarkable similarity to the EHE policy that published by Caerphilly CBC two months before RCT's policy. However, the feedback here is particularly tailored in the light of experiences of home educators of practice by RCT LA as relate to written policy.

As part of home educators being included in reviewing policy and practice (point 2.27 of the 2023 guidance on elective home education), we look forward to reading the revised policy shortly.

Kind regards,

Home Ed Cymru.

1. Introduction

1.1 Defining Elective Home Education

Elective Home Education (EHE) is the term used to describe when parents choose to educate their children at home instead of sending them to school.

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

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

EHE will reflect a diversity of approaches to learning experiences.

Children who are EHE are not required to follow the national curriculum or any other specified curriculum or meet criteria for the number of learning hours. The EHE approach can be anywhere on a continuum from a formal, structured, schedule-based approach and mostly within the home environment, through to autonomous or child-led education.

Moreover, it can vary over time and subject. For example, a child might move from a more autonomous approach when younger to one that is more structured for GCSEs (if the child chooses to sit them).

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

Whilst it is of course encouraging to see such wording within the guidance, these concepts would be of no benefit unless evident in daily practice and approach of local authority employees to home educators and not merely repeated phrases. It is clearly inappropriate if home educators were to have to repeatedly have to remind public servants of their own remit and policy or to have to keep correcting them on the boundaries of their lawful role.

'Our National Mission: high standards and aspirations for all' sets out the Welsh Government and the education system's priorities to ensure the success, high standards and wellbeing of all learners. The principles set out in 'Our National Mission' apply to all children, including those who are electively home educated. The Well-being of Future Generations (Wales) Act 2015 promotes a more equal Wales by supporting an inclusive, equitable education system where all children are supported to overcome barriers to learning and participation.

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

It is highly inappropriate to attempt to apply the principles and objectives set out in "Our National Mission" to home education. Home education is a parental responsibility, not the responsibility of the state, and not the responsibility of the local council. "Our

National Mission” is a list of political ideologies and is aimed at state education. It is not a legal requirement or duty. There is no lawful basis to insist on applying or imposing its principles and objectives on home educating families. To attempt to do so would be counter to human rights legislation and could be conceived as an attempt to blur the lines of who is responsible for a child’s education.

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

1.2 Purpose of the Policy

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

The local authority takes a supportive approach to ensure that all parties involved in elective home education should be aware of their roles, rights and responsibilities.

The local authority continues to promote mutual understanding, trust and respect as we build positive and effective relationships with home educators to safeguard the educational interests of children and young people.

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

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

It is of course vital to continually appreciate that the role of safeguarding educational

interests lies fundamentally with the parents and family, and ensure that, as already referenced, there is no inadvertent development of any potential clouding of understanding of this or development of unconscious bias of suspicion towards home educating families.

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

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

2. Key Guidance and Legislation

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

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

It is encouraging to see that the UNCRC is recognised. We trust that all Articles of this document are fully respected. The UNCRC’s aim is that children grow up amongst an approach and attitude of peace, dignity, tolerance, freedom and equality, and we trust

these attitudes are always extended to home educators. The UNCRC was compiled to help prevent totalitarian states on the global stage from interfering with and hindering the wellbeing rights and education of children, and of course was not intended to be a tool to be used in any context against families. It was, of course, not written to be used in a context that would imply a conflict of interests between parents and children but rather to help ensure that states respect the integrity and benefits of the family unit. Thus, we trust that any references to individual articles are always appreciated in this light, without individual articles or sections being quoted or applied out of context.

3. Definitions

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

4. Reasons for Elective Home Education

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

- Ideological or philosophical
- Health (including emotional health, well-being and bullying)
- Cultural
- Religious
- Additional education provision
- Language choice
- Length of school journey
- Awaiting a place in the school of their choice
- Flexibility and tailoring of teaching approach.

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

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

It is also very helpful to note that whilst parents may indeed initially deregister for what Welsh Government may term “negative” reasons, research and experience demonstrates that parents often choose to continue to home educate for “positive

reasons”. The reasons why a given family choose to home educate can and often do change over time and with experience, as demonstrated in the following research:

https://learnwhatyoulive.substack.com/p/why-do-families-choose-home-education-267?fbclid=IwY2xjawF6bNdleHRuA2FlbQlXMQABHZWYyYVRFiNGcOJJDAWhXl6RcWmWtX6UFwqZdLbUG5e6V647ka8Yhg4g2A_aem_8UL2zM0JXJ2PmzC2jyLWNA

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

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

5. The Law Relating to Elective Home Education

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

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

Article 2 of Protocol 1 of the European Convention on Human Rights states that:

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.’

It is essential that not only is the statement that authorities must ensure they “*respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions*” written into local policy, but that this principle is reflected in all approaches to and interactions with home educators.

Again, it is to be remembered that the ECHR was also complied to ensure that totalitarian states did not inappropriately interfere with or obstruct children's access to education, including to remind them that it is parents (and not the state) who make the decisions on suitability, including that the education is in conformity with each family's own religious and philosophical convictions.

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

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

It would be extremely helpful to all to have the fact that provision of "samples of work" is not a requirement clarified and stated in policy to avoid any further confusion and miscommunications.

Home educators seek to spend their time engaging with their children and would obviously not appropriate for law abiding citizens to have to keep reminding public servants of their role.

To routinely request "samples of work" would be at odds with a respect for a variety and diversity of approaches. Requesting "*samples*" of a child's "*work*" as if there are a requirement would be contrary to the policy as stated, as well as a misapplication of legal duty and a misinterpretation of primary legislation and government guidance. Indeed, the only references to "samples of work" in the 2023 Wales guidance is in the context of families consenting to visits/meetings, and such visits/meetings are not a legal requirement, legal action cannot be taken for exercising lawful rights to not consent to such meetings.

It is also vital to note that, at the Goodred vs Portsmouth hearing, the judge's ruling included the principle that they would have found the council at fault if felt there were indications or evidence of a blanket practice of routinely insisting on samples of work in addition to written evidence from the parents.

Furthermore, copyright law, namely the Copyright, Designs and Patents act of 1988 (<https://www.legislation.gov.uk/ukpga/1988/48/contents>) means that permission is required for any samples of learning to be shared, either from the child/young person or

by the parent as the child's lawful advocate and representative.

It may well be helpful in reflecting on this issue to consider the following article.
https://www.tes.com/magazine/archive/who-owns-childs-work-not-teacher-or-school?fbclid=IwZXh0bgNhZW0CMTAAR0sj6xJd7GGiRhyBfZ60XAdoldQV4hv3epLxmRQkzyQxdxOqIBRRU9aunl_aem_3q5Vqnrnh_4PDHJKMPjqQw

Whilst the article is written to consider "school-work", it is even more applicable to evidences of learning from outside the school environment and a helpful reminder that evidences of learning are private and confidential.

It would be extremely helpful to all to have the fact that provision of "samples of work" is not a requirement clarified and clearly stated in the LA policy to avoid any further confusion and miscommunications, as have occurred in recent months following misleading communications from LA personnel to home educating families.

6. Children's Rights and The Voice of the Child

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

Wherever possible, when parents have chosen to electively home educate, the views of the child should be obtained. All children have a right to participate in decision making that affects their lives and their views relating to the suitability of their education should be given due weight in accordance with their capacity as per Article 12 of the UNCRC. This will help the local authority to meaningfully take into account the views of the child when making a judgment as to the suitability of education.

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

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

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

It is interesting to note that the department is keen to appreciate the voice of the child, as this also requires that children's wishes must be treated with full respect in all areas, without negative repercussions. This includes treating with full respect their preference for home education, and their choices to not share samples of "work" or of their learning experiences, along with their wishes to not disclose personal information about their lives to strangers, be that in person, in written format or in photographs or screenshots.

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

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

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

The views of the child, or examples of their "work", should not be obtained unless the child specifically requests this course of action.

Children are very unlikely to understand the wider implications of a conversation with a public servant which has the potential to land their families in court. This is why the parents and not children respond to any informal enquiries. Parents are the legal advocates for children, as with medical matters.

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

This includes ensuring that any communications are correct, appropriate and fully relevant to that individual case before it is sent. It would be extremely helpful to ensure that this is included into local written policy and prioritised in daily practice and approach. Unfortunately we have seen in practice in RCT that generic letters are sent out to parents which do not have any relevance to the parent/child they were sent to and are often confusing and misleading.

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

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

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

Regarding references to the UNCRC:

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

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

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

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

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

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

UNICEF themselves state that, *“It's important to remember that the Convention must be seen as a whole and so articles 28 and 29 should not be looked at or considered in isolation. Particular regard should be paid to the General Principles and other closely related articles for example: article 16 : protection of privacy, article 24 health (including health education), article 31 rest, leisure, play, recreation and culture”*.

<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-right-to-education/>
<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-right-to-education/>.
The Article says that “State Parties” must “recognise the right of children to education,” and as part of that make provision available, not take over responsibility for it, or presume that parents are not providing it.

The letter of the law and the content of the 2023 guidance, particularly the amendments to that guidance, demonstrate that each child must be considered as an individual and

each case treated with the greatest respect.

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

7. Roles and Responsibilities of Parents

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

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

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

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

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

boards. It is unhelpful and perhaps misleading, especially for new home educating families, to mention only WJEC in policies.

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

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

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

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

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

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

It is helpful that policy states here that “*parents do not need any qualifications to home educate*”, including using the phrasing “*home educate*” rather than “teach their

children”. This helps mirror and propagate an appreciation that home education often does not involve didactic adult-led teaching.

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

7 a Efficient and suitable education

(This point is referred to in the index as 7.1 rather than 7a).

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

Progress, over the long term, may take a variety of forms.

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

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

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

Especially when child-led approaches are used, there can appear to be little change in some areas for a considerable period of time, sometimes children can even give the appearance of the opposite. This does not mean that education is not suitable but can often be an indication of deeper learning process and/or of a child being allowed to develop along their own, individual and natural trajectory rather than any attempts to force conformity according to statistically derived expectations.

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

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

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

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

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

7 b. Suggested characteristics of a suitable and efficient education

(This point is referred to in the index as 7.2 rather than 7b).

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

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

Home educating parents should provide education that offers opportunities for the child to develop their physical, intellectual, emotional, spiritual, moral, social and cultural development. It would include provision in numeracy, literacy and language skills, suitable to the child’s age, ability and aptitude and to any SEN/ALN the child may have. Suitable education is not simply a matter of academic learning but should also involve opportunities to develop social skills in their interactions with others.

These are essential in preparing the child to participate and function in society. Some

possible characteristics that a suitable education may provide, develop or include:

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

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

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

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

There is no expectation that home educators will:

- Teach according to the Curriculum for Wales
- Have a timetable
- Have premises equipped to a particular standard

- Mark work done by their child
- Set hours during which education will take place
- Have any specific qualifications
- Cover the same syllabus as any school
- Make detailed plans in advance
- Observe school hours, days or terms
- Have formal lessons
- Reproduce school type peer group socialisation
- Match school age specific standards.

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

For example:

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

The Welsh Government’s Home Education: Handbook for home educators for parents (Home education: handbook for home educators | GOV.WALES) provides information and advice on all aspects of EHE. Parents will receive a copy of this from the Local Authority at the outset of EHE.

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

8. Roles and Responsibilities of Schools

8.1 Removing a child from the school admission register

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

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

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

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

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

When a parent gives notification in writing to the school of their intention to electively home educate their child, the name of the child must be removed from the admissions register (Regulation 8(1) (d) Education (Pupil Registration) (Wales) Regulations 2010). The school (including those in the independent sector) must make a return (giving the child's name and address) to the local authority within 10 school days following the date of removal (regulation 12(3)).

It is helpful to provide this advice to schools that the name of the child **MUST** be removed.

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

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

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

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

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

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

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

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

8.2 Where a child attends a special school, please see Section 9.

9. Roles and Responsibilities of the Local Authority

9.1 EHE Process

The local authority EHE process is attached as Appendix 1.

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

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

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

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

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

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

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

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

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

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

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

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

We appreciate that, unfortunately, the rather confusing format and wording of the 2023 guidance (in part due to revisions made to the wording of the guidance here in response to a legal challenge by Education Otherwise) can add to a false conflation of these two areas and sections, which is why clarification is needed here. Furthermore, it is vitally important that LA EHE staff understand this distinction. The generic letters that have been sent to a wide range of EHE families in the last year have raised concerns amongst home educators that this may not be the case.

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

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

Likewise, it would be nonsensical to consider that it would only be in “*some instances*” that it would be possible for LAs to discharge their lawful duty without a meeting, when that duty and the law have not changed since the Welsh guidance and LAs have been fully able to discharge that duty without such requirements previously. Again, this

wording is taken from the non-statutory section of the guidance and reflects personal opinions rather than legislative requirements.

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

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

Regrettably, there still seems to be an issue of communications from RCT to EHE parents being copy-and -paste standardised letters that overlook information that has already been provided by parents, often seemingly sent out to the community in batches. We are aware that the department informed Home Ed Cymru in April 2024 that there have been some “*communication and administrative challenges*”, however sadly these seem to be persisting, despite reassurances that this would be addressed. If the department is not in a position to correctly judge in each case if a communication needs to be sent to a given family, then the appropriate path is to wait until there is sufficient time and staffing level to ensure that the communication is correct and relevant, rather than send out batches of identical or very similar letters where they are not relevant. We are sure that you can appreciate the distress and anxiety such letters can cause, especially when terms such as “school attendance order” are unnecessarily and alarmingly dropped into the text and trust that us highlighting the ineffectiveness and counterproductive nature of impersonal and inappropriate communications will be helpful in restoring respectful engagement.

If in an individual case there is a genuine need for more information from families, then it is standard practice for LAs to specify what they consider to be lacking, so that parents may address this, either by providing more information or modifying their provision, rather than leave parents guessing regarding any concerns that may or may not be present. Indeed, the council would not be able to lawfully proceed to notices to satisfy or school attendance orders if it has not itself responded to parental information or requests of clarification in an appropriate and timely manner.

This is especially relevant given the unnaturally high rate of Notices to Satisfy under s437(1) of the Education Act 1996 being issued in RCT over the last year. Fol requests from the charity Educational Freedom demonstrate a rather bizarre rate of Notices to Satisfy being issued to 100 children out of a population of 501 known EHE children. (This is a rate of 20% compared to the UK average of 2.8%).

We will of course refer to the figures revealed by this Fol in the relevant sections, but this rate of Notices to Satisfy is even more concerning in the light of concerns already expressed to RCT LA regarding the use of blanket-issued letters and lack of information or clarification relating to any actual or specific concerns.

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

There are a few points to clarify in this statement.

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

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

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

Seeing the child to discuss their education provision and access to resources accords with a number of articles in the UNCRC, such as a child's right to an education and to fulfil their potential, including their rights to express their views and to receive appropriate information in order to make informed choices, to support and provision, to play and leisure activities and to be kept safe.

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

Should a child decide that they do not wish to meet with a local authority EHE Officer, the local authority will need to decide whether it is satisfied of the suitability of the education provided by the parents / guardian on the information available. Where the local authority's request to meet with a child to make a decision regarding suitability has been refused the local authority may not be in a position to be satisfied that the education being provided is suitable.

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

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

Furthermore, the concept of being "*satisfied*" does not apply to S436A enquiries, which are simply a measure to see if "it appears" a child may be under the LA's remit of being a child who is missing education. So "*position to be satisfied that the education being provided is `suitable`*" is not the appropriate terminology here. Rather, phrasing along

the lines of “**do not see reason to believe a child is not being home educated**” or words to that effect would be more appropriate.

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

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

It is interesting to note that whilst the RCT policy is almost identical in many ways to the previously published policy by Caerphilly LA, the phrasing on one sentence here has been changed in a way that makes the meaning more obscure.

The Caerphilly policy states, “*It may well be that having decided to request a meeting with a child on the basis it was necessary to make a decision about suitability, if that request is refused the local authority may not be in a position to be satisfied that the education being provided is suitable.*”. this appears to infer that there would only be a potential issue of concern or difficulty if such a meeting had been requested in a particular situation where specific circumstances may have influenced the belief of a meeting being relevant. **The rephrasing of this one sentence in the RCT policy obscures that meaning and can be read to refer to more of a blanket policy and approach, which would not be appropriate.** Thus, this would benefit from clarification and rephrasing.

The local authority will provide at least one EHE review and support meeting from a local authority officer per year. This meeting is designed to offer support to the family, as well as obtain details about the planned education and the pupil’s progress.

A summary report containing this information will be sent to the parent after the meeting.

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

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

approaches, which could be very damaging to the optimal educational experience and provision of many children for whom such approaches are not suitable or favoured.

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

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

If a child has a Statement of SEN / Individual Development Plan (IDP), additional visits may be required to ensure the Additional Learning Provision (ALP) identified remains appropriate.

The review will be arranged in line with guidance in the appropriate SEN / ALN Code.

9.2 Children with Special Educational Needs/Additional Learning Needs

The following section relates to ALNs and IDP.

There are a number of issues of concern with this policy as presently drafted regarding aspects of this policy in relation to children with additional learning needs and the role of IDPS

Feedback on these aspects of this policy will be provided separately for the sake of succinctness and to allow further feedback from local stakeholders.

Parents can electively home educate a child who has a Statement of SEN or an Individual Development Plan (IDP).

Where it is brought to its attention or otherwise appears to a local authority that an electively home educated child (other than a looked after child) for whom it is responsible, may have ALN, the local authority must decide whether or not the child has ALN that requires Additional Learning Provision (ALP) and, if appropriate, prepare and maintain an IDP and secure the ALP described in that plan (Section 18.21 of the Additional Learning Needs Code (ALN Code)), within a 12 week timescale. Refer to Appendix 2 – Request to Determine ALN.

A local authority preparing or reviewing an IDP for an electively home educated child, should work with the child and child’s parent to identify the appropriate ALP and then secure it. This involves identifying the type of ALP called for by the child’s needs and whether the parent will be able to deliver it (either directly or by arranging for someone

else to deliver it). Subsequently, if the parent is to deliver it as part of the child's home education, in order to secure the ALP set out in the IDP, the local authority will need to satisfy itself that it is being delivered. Refer to Appendix 3 – IDP Process

Where parents are not able to provide all of the ALP called for by the child's needs, the local authority will need to consider how the ALP can be secured. This may involve specific training to parents, advice and guidance or the local authority exercising its functions to secure education for the child at a particular school (Section 18.23 of the Additional Learning Needs Code (ALN Code)).

EHE Officers and Access & Inclusion Services will work collaboratively to ensure electively home educated pupils with ALN receive the support they need.

If a child is registered at a Special School under arrangements made by a local authority and parents wish to electively home educate, they should write to the school stating that they wish to educate their child otherwise than at school. The school will inform the local authority of the parents' wishes but will not remove the child's name from the register until agreement is received from the local authority.

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

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

If it is satisfied that the parents' arrangements are suitable, the local authority may be relieved of its duty to arrange the provision specified in the Statement / IDP. If, however, the local authority is of the view that the parents are not making suitable arrangements the local authority is not absolved of its responsibility to arrange the provision in the Statement / IDP. At any point in this process, once the young person transitions to post 16 provision, they can withdraw their consent to the IDP.

[As stated above, there are a number of issues regarding aspects of this policy in relation to children with additional learning needs and the role of IDPS. Feedback on these aspects of this policy will be provided separately for the sake of succinctness and to allow further feedback from key stakeholders.](#)

9.3 Truancy Sweeps

No further action should be taken where a child's record indicates they are home educated unless there is a reason to doubt that this is the case. Home educating parents need to be made aware that professionals involved in truancy sweeps may need to verify any information given to them in these circumstances. The local authority maintains a list of all school age children who are in receipt of EHE where details can be checked by local authority staff as part of a truancy sweep.

Home educated children, young people, families and parents are under no duty or expectation to provide their names and addresses if stopped as part of a truancy sweep if they have stated that they are electively home educated, as there then no evidence of any crime or unauthorised school absence.

This must be clearly stated here in the policy, for the benefit of EHE families, local authorities and those conducting such sweeps.

It is vital to clearly state this and ensure all conducting such sweeps are fully aware of this to protect these employees from misconduct, as if those conducting such truancy sweeps were to derive personal data without clarifying to those providing it that they were under no duty to do so as lawful home educators, and then to share such data with local authority EHE departments would be a breach of data protection laws and GDPR. Thus, the council has a duty to ensure that its employees act lawfully, as well as a responsibility towards lawful home educators that their rights are not overridden and breached.

Furthermore, to use truancy sweeps as a way to “find” electively home educated children is not ethical and is **counterproductive** in safeguarding children.

Using truancy sweeps in such a way would only make home educators **more cautious about using public services and public spaces, especially during “school hours”**. These are times of the day when it is often most beneficial for home educated families to be out and about as part of their ongoing education. Social engagement is of course an essential part of home education, and the use of truancy sweeps would have a negative effect if they were found to not respect the privacy and rights of home educators.

To use truancy sweeps as a way of trying to find contact details of EHE children would interfere with their freedom to a suitable education, be unethical and be detrimental to the wellbeing of EHE children and young people. It would also add to any sense of stigmatisation from authorities and be profoundly anxiety inducing, especially in the many home-educated children who have experienced school trauma and who may be readily triggered by such encounters.

9.4 Support for Electively Home Educated Children

Parents who choose to home-educate their children must be prepared to assume full financial responsibility, including bearing the cost of any public examinations. In line with Welsh Government guidance RCT recognises that home educating parents can adopt a rich and diverse range of approaches to home education and use a variety of philosophies and methods. RCT provides a package of support to electively home educated children to access a range of activities. Information regarding home education is available on the Access & Inclusion Service and Ty Gwyn Education Centre websites.

Please refer to Appendix 4 for the links.

EHE Officers promote access to a wide range of support services available to electively home educated children such as careers advice and Youth Support Services.

Please refer to Appendix 4 for useful information/websites.

For support from a local authority to any community to be effective it must of course be based on feedback and requests from those with lived experience within that community and not an imposition of ideas of what others may consider is necessary.

10. Privacy Notices

Information received by the local authority (including Attendance & Wellbeing Service), together with any additional information received from schools, pupils, parents/cares or other organisations, will be recorded and processed by the local authority in accordance with the legal obligations placed on RCT Council and our duties under the Education Act

1996, Education and Inspections Act 2006 and The Children Act 1989.

To learn more about how the Access & Inclusion Service processes personal information, please visit our service privacy notices here

<http://www.rctcbc.gov.uk/serviceprivacynotice>.

RCT will consider sharing information where a child's wellbeing is at risk.

We would be grateful for clarification on this last sentence, as present drafting is rather subjective. There are clear thresholds for what constitutes risk of significant harm that have to be met to justify sharing of information without consent. There must be clear parameters and a transparent process for data sharing that includes an appropriate independent complaints process.

11. Monitoring Arrangements

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

There sadly seems to be some considerable confusion here.

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

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

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

The Welsh Government's own guidance on CME confirms that there is no legal basis for monitoring elective home education. Point 7.35 states, "*There is no legal framework for the LEA to regularly monitor provision of home education nor an automatic right of entry*

to the parental home to check the standard of education the child or young person is receiving”.

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

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

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

“5.11 regarding safeguarding duties

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

And that, following completed informal enquiries, local authorities may be *“likely to want to update periodically the information it has on your child”.* Note this is to simply periodically update information, not to reevaluate “suitability of education” or assume that the child is missing education unless evidenced otherwise.

https://assets.publishing.service.gov.uk/media/5ca21e22e5274a77d9d26feb/EHE_guidance_for_parentsafterconsultationv2.2.pdf

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

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

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

If the local authority considers that a suitable education is not being provided, then a written report of the findings will be made and copied to the parents within 10 days of the contact with the designated local authority officer. The report will specify the

grounds for concern and any reasons for concluding that provision is unsuitable. Parents will be given a reasonable opportunity to address the identified concerns and report back to the authority.

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

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

If there is legitimate reason to believe education is not being provided for a given child, then any requests for further information must be specific to identify grounds for concern in that particular case and “any reasons for concluding that provision is unsuitable” MUST be clearly delineated. If information has been provided that is felt to be lacking or concerning, then the exact rationale for believing this on each point of concern must be listed to allow parents opportunity to address such concerns. Naturally, a blanket policy of requesting information en masse is not appropriate or consistent with the guidance or with stated local policy.

As addressed elsewhere in this feedback, the unnaturally high rate of Notices to Satisfy under s437(1) of the Education Act 1996 issued in RCT over the last year give considerable grounds for concern. FoI requests from the charity Educational Freedom demonstrate a rather bizarre rate of Notices to Satisfy being issued to 100 children out of a population of 501 known EHE children. This is a rate of progressing to formal legal action against the families of 20% of EHE children in RCT, compared to the UK average of 2.8%).

The rates of issuing of School Attendance Orders are also higher in RCT than the national average. For the year 2023-2024, 16 SAOs were issued by RCT LA, meaning the families of 3.16% of EHE children in RCT were issued with school attendance orders, compared with the national average 1%.

<https://educationalfreedom.org.uk/home-education-research-survey-data-analysis-and-review/>

These figures naturally raise significant questions regarding appropriateness of practice within RCT LA. As addressed elsewhere, the threat of proceedings under S437(1) of the Education Act 1996 Notices to Satisfy and SAOs should never be used as tools of coercion. They should be measures of last resort that are only issued on a case-by-case basis, that are only issued with good grounds that are demonstrable and articulated to parents.

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

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

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

If parents fail to address concerns the local authority is required to consider sending a formal notice to the parents under section 437 Education Act 1996 before moving on, if needed, to the issuing of a School Attendance Order (SAO).

A SAO will only be served after all reasonable steps have been taken to try to resolve the situation. At any stage following the issue of the order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the order revoked.

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

This is of course especially relevant in the present feedback for RCT given the abnormally high rates of issuing of Notices to Satisfy (issued to families of 100 out of 501 EHE children in RCT, giving a rate of issuing of 20% compared to the national average of 2.8%) and of SAOs (3.16% in RCT compared to national average of 1%).

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

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

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

12. Safeguarding Children and Young People

According to the Welsh Government, there is no evidence to suggest that electively home educated children are at greater risk of neglect or abuse than children who are educated at school. Schools and education settings play an important role in safeguarding children.

It is important, therefore, that all children enjoy the right to be safe, regardless of how and where they receive their education.

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

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

Not only is home education not a safeguarding risk, but research has shown that home educated children are LESS likely to experience abuse or neglect within the home

despite an increased level of scrutiny. <https://www.educationotherwise.org/home-education-and-the-safeguarding-myth-analysing-the-facts-behind-the-rhetoric/>

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

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

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

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

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

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

<https://www.nber.org/papers/w30795?fbclid=IwZXh0bgNhZW0CMTAAAR35W9PETv0bntSzpyreBaUwuMmhs8T8vE->

[btgi0EmA4pBhleZ3Uhzekt4_aem_3mZYaqLS1Me7XACrGZ7row](https://www.nber.org/papers/w30795?fbclid=IwZXh0bgNhZW0CMTAAAR35W9PETv0bntSzpyreBaUwuMmhs8T8vE-btgi0EmA4pBhleZ3Uhzekt4_aem_3mZYaqLS1Me7XACrGZ7row)

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

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

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

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

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

https://selfmanagedlearning.org/wp-content/uploads/2024/04/Confidentiality-and-Respect-Report-March-2024.pdf?fbclid=IwAR0ioqcC5F9YEb4azD8gqyFC4lxV5S3W4wJP0-xdMSFvnHDtpUurKKzLkw_aem_AbUQJjInURcDPVoMIEwZaZATbGG8TM23ratwkHOngtZhXS1LSyBhbSqxFvK9KyzOC4hwlzi_Sn1llngsFJVgzWVx

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

‘Harm’ can include the impairment of health or development, and development means physical, intellectual, emotional, social or behavioural development, so the provision of unsuitable education clearly can amount to this. The causing of significant harm need not be intentional or deliberate, but case law indicates that it must be ‘considerable, noteworthy or important’. This is a key point for local authorities in considering whether the use of safeguarding powers is appropriate in a case relating to a child who is not receiving a suitable education.

This is a helpful point as harm can be caused by attempts at intervention into family life, thus it is imperative that any such considerations or intimations of enquiries or proceedings from local authorities must be done with the greatest sensitivity and consideration of the individuals involved.

However, this cannot be a subjective judgement, including any judgements based on personal beliefs, ideologies, conscious or unconscious biases or discriminatory attitudes in relation to home education or the lives of those who home educate.

If safeguarding measures are to be deployed, then the appropriate thresholds of risk of significant harm must be met for escalation to be appropriate.

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

Whilst any employee must naturally act if there is reason to believe abuse or neglect are taking place, there should not be an automatic screening of each family on the presumption or anticipation of this being the case. As with education, the role of the authorities is reactive, and should be enacted without bias, discrimination or personal prejudice.

13. Elective Home Education and Gypsy, Roma and Traveler Communities

The local authority is sensitive to the distinct culture, ethos and needs of Gypsy, Roma and Traveler (GRT) communities. GRT parents have the same right to educate their children at home as other families and will be treated in exactly the same way as any other families.

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

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

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

As an incidental note, the department may choose to amend the Americanised spelling of "traveler" to the spelling used by the travelling community.

14. Child Employment

Regulations regarding child employment apply to all children of compulsory school age, whether they attend a school or are electively home educated. Children may not work until they reach the age of 13 years and even then, they cannot work during school hours.

Before a child commences any form of employment, they must be in possession of a work permit, which the child's employer should apply for.

15. Children in Entertainment

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

16. Flexi Schooling

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

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

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

The decision and provision of flexi-schooling is an arrangement between the parents and the school. It is the Head Teacher's decision whether this arrangement is made and the local authority may work with Headteachers for them to consider whether this could be in the best interests of the child.

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

17. Review of the EHE Policy

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

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

It is unfortunate that home educators, as the key stakeholders in these issues, have not been involved in the development of this policy.

However, we welcome the opportunity to provide this feedback to the department.

As home educating families, we trust that the opportunity to reflect on these amendments is a positive and constructive one, that appropriate modifications will be made and we look forward to positive and respectful modifications of this policy.

With kind regards,
Home Education Cymru.