

## **Evaluation of Torfaen EHE policy 2023-2025 from Home Ed Cymru May 2025.**

Home Ed Cymru is a national support network for home educators. We aim to share our lived experience of home education, to be a fair and reasoned voice.

We have taken some time to look at Torfaen CBC's current policy in relation to elective home education (EHE), partly in relation to discussion of EHE at a recent meeting of Torfaen's Education Overview and Scrutiny Committee in April 2025, to offer insight from that lived experience, to ensure this is reflected in TCBC's perception of EHE, including in written policy.

It was noted in that meeting that TCBC recognise the value that different parties can bring when developing and reviewing local authority policies. This sentiment is also stated in point 2.27 of the 2023 Wales guidance on EHE. The guidance confirms that home educators should be involved in reviewing local procedures and practices as this can help address any discrepancies or issues of tone or content.

It was noted during the scrutiny meeting that due to rising numbers of families who are home educating within the borough, there is currently a strain on the EHE department. We trust that by discussing revision to EHE policy and exploring the appropriate lawful duties of the council that TCBC will feel there is an opportunity to resolve the demand on the EHE department.

This feedback relates to the EHE policy that has recently become available on the council website (although dated September 2023).

<https://www.torfaen.gov.uk/en/Related-Documents/Schools-Info/Elective-Home-Education-Policy.pdf>

We have formatted our feedback as comments alongside each section of the policy as currently drafted. For ease of reading, quotes, including from the present policy on EHE, are in blue.

### **1 Introduction**

*“This policy outlines the responsibilities and procedures of Torfaen County Borough Council concerning elected home education (EHE) in accordance with section 436A of the Education Act for Wales [1996]. The purpose of this policy is to ensure that children who are educated at home receive a suitable education while safeguarding their welfare and well-being.”*

*(A summary of LA responsibilities is in Appendix 1)*

Although this paragraph references only s436A of the Education Act 1996, the policy also references and describes responsibilities, procedures and powers relating to s437 of that Act. It is important to keep the distinction between these two sections and processes in mind when appreciating the lawful duty and remit of councils in relation to EHE families.

It is helpful that the council's present policy has now been made accessible via the TCBC website, to facilitate communication and afford opportunity for home educators to ensure that lawful situations and remits are clarified and appreciated. For example, the initial statement expresses a belief of the council having a role or duty *"to ensure that children who are educated at home receive a suitable education while safeguarding their welfare and well-being"*. It is helpful to have the opportunity to clarify this misunderstanding. Local councils do not have a legal duty to ensure that every child has a suitable education, whether they be educated at home or in school.

The concept of councils having a legal "duty to ensure" particularly arose from a statement to the Senedd in 2018, when the then Education Secretary, Kirsty Williams, stated that she *"believe(d)" that the government had a "moral duty to ensure every child had a suitable education"*.

The wording in this statement that demonstrated how this was a personal belief (*"I believe"*) in a *"moral"* not a legal duty was not conveyed in subsequent communications. Thus, this misleading concept that the council has a "duty to ensure" has unfortunately been woven into guidance documents and policies.

The concept is misleading because, whether children are educated at home or in school, the responsibility or "duty to ensure" provision of education, including consideration of the suitability of that education for each individual child, legally lies with the parent, as clearly stated s7 of the Education Act 1996, and not with the council.

This is why parents cannot sue a council when a council fails to provide a suitable education for a child, as the duty to ensure suitability does not lie with the council. Indeed, councils would rapidly be bankrupted if the duty did lie with them, from not only the requirements to provide education that is truly suitable for each individual child in their area but also from the legal cases that would ensue each time that is not the case.

The duty of local councils, as stated under S436A of the Education Act 1996 is to establish, *"as far as is possible"*, the identities of those who are *"not"* in receipt of a suitable education, not a duty to ensure that all are. This is not simply an issue of semantics but a fundamental difference.

Section 437 goes on to permit councils to investigate *"if it appears"* that a suitable education is not being provided, clarifying that the duty of councils is a reactive duty, not a proactive one. When the Education Act 1996 was being drafted and then progressed through Parliament, home educators were assured that s436A and 437

would not be used to apply to them in the way that it often now is, but were assured it was only to apply in cases where there was reason to believe a child was missing education.

Even if one does seek to apply these sections to home educators, the caveat “*as far as possible*” is fundamental, as it means that no other laws or vital ethical concepts should be overridden or ignored in any attempts to establish such identities. Such fundamental precepts include those of informed consent and the Golden Rule of British law, that people are innocent until proven guilty and the burden of proof is to demonstrate guilt rather than prove innocence. A helpful article on this matter can be found here: <https://he-byte.uk/england/so-far-as-it-is-possible-to-do-so/>

In terms of “*safeguarding their welfare and wellbeing*”, it is well acknowledged, including in the 2023 Welsh Government guidance on EHE, that home education “*is not a safeguarding issue*”.

It is again vital to appreciate the lawful duties of the council.

The duty to safeguard the welfare and wellbeing of children lies not with the council but with parents. The council duties are again reactive.

S175 of the Education Act 2002 is sometimes used to try to convey a routine and automatic duty towards home educated children. This states “*A [F2local authority] shall make arrangements for ensuring that [F3their education functions] are exercised with a view to safeguarding and promoting the welfare of children*”.

It is therefore important to appreciate that this states “*with a view to*”, i.e. be mindful of this in what you do. It does not say or mean “must ensure”, nor does it say, “all children” or “all areas of their life”.

Furthermore, in that Act, the concept of having “*a view to safeguarding and wellbeing*” is inextricably linked to the council’s educational duty. The only legal educational duty that intersects with elective home education is any confirmation that a child is EHE rather than CME. Thus, any concepts of “*having a view to safeguarding and wellbeing*” relate only to that step of ensuring EHE children are acknowledged as such and not considered CME.

In addition, most of this section refers to institutions with governing bodies, such as schools or further education colleges, where parents have chosen to give schools a role in their children’s education. This statute certainly does not confer a coparenting role to local authorities.

## **Use of appendices:**

We note that this policy makes considerable use in the various appendices drawn from non-statutory supplementary materials previously provided by Welsh government. We appreciate this may have initially appeared to be a convenient way to construct a local policy, however it unfortunately results in a range of issues. This is partly because

these non-statutory supplementary materials appear to have been drafted a number of years ago, before publication of the Welsh government's guidance in its present form and are therefore not fully consistent with that guidance or the limits of what is lawful. There is significant concern that these materials contain a number of key misleading statements that, if followed as written, risk causing council staff to behave unlawfully and overstep healthy and respectful boundaries.

The Welsh Government has still not published these materials for public access and scrutiny, although Home Ed Cymru were eventually able to obtain copies from the Welsh Government some time after their release to councils.

In February 2024, Home Ed Cymru provided extensive feedback for local authorities in Wales on the misleading content of these supplementary materials.

The summary of concerns provided for Welsh local authorities of the issues with the use of these outdated supplementary materials from Welsh Government was:

1. There are no appropriate references in the supplementary materials to clarify how or why families' personal data will be collected, stored, processed, and shared to ensure **compliance with GDPR**. Moreover, much of the information requested on these forms is **potentially Special Category data** and subject to greater data restrictions. It is important to also note that, because a prosecution for failure to comply with a School Attendance Order is a criminal matter, a decision to take parents to court would potentially mean that all information supplied by a family would subsequently be treated as Criminal offence data, which requires a higher standard of protection (and must have been collected in accordance with all relevant laws).
2. There is no reference - in tone, content or inference – within those supplementary materials to the essential issue of any engagement from home educating families needing to be part of a process that involves **fully informed consent** on part of both parents and children. A process of fully informed consent requires transparent and accurate communications including a clear explanation of legal duties and responsibilities (including that of data use). Furthermore, families cannot be deemed to be giving informed consent if they have been misled as to their legal duties, or if they have complied with unclear requests or demands from LAs through fear of negative repercussions for them or their families if they do not comply, as this is, of course, not true consent. Thus, for example, it is vital to ensure that families are not misled into believing that the only way to effectively communicate with the council is through the use of “meetings”, “visits” council-provided forms. It must be clear to all families in any communications referencing these that these are simply one way of communicating and there would be no negative repercussions for choosing to communicate in other ways, for example to respond to informal enquiries in writing.
3. The content in the additional materials repeatedly implies that **meetings/visits** between home educating families and local authorities are a requirement as

part of informal enquiries, when this is not the lawful situation. There is nothing in these templates to clarify to any council staff using them, or to the families receiving them, that **any such meetings are optional and voluntary**. To the contrary, the **appendices even advocate the threat of SAOs if parents refuse to meet with the LA – this would not be lawful, let alone ethical, reasonable or proportionate**.

The Welsh Government have subsequently, when challenged on the issue of meetings, confirmed that there is no legal or statutory requirement for home educating families to meet with local authorities. This was also the primary focus of the legal challenge to the Welsh Government by Education Otherwise, resulting in an amendment to the Guidance to clarify this matter. However, these supplementary materials appear to have been produced prior to completion of the guidance in its present form, and certainly prior to that legal challenge. Again, we reiterate that the templates reflect the Welsh Government's previous stance on this matter rather than the true legal situation or even the current Guidance itself.

4. It is also helpful to reflect that not only could parents be misled and/ or feel coerced by the content and tone of these outdated forms and templates but **children's rights** would also be threatened by their potential use, rights we trust Torfaen CBC are keen to uphold. Personal information is being requested of children without confirming their legal rights and duties in relation to this, without explaining how any information shared would be used and without highlighting the need for informed consent before they do so. Whenever the views of the child, or any other interaction directly from the child, are requested by LAs, it should be **explicitly and clearly communicated that this is an offer and opportunity and not a requirement** (when understanding and adhering to the UNCRC in its entirety). Children (and parents) should be fully informed as to the relevance and also the potential consequences of sharing or not sharing this information.
5. The supplementary materials state, "*The local authority has a legal obligation to ensure that all learners are receiving a suitable and full-time education*". As addressed above, this is a misrepresentation of the legal duties of the council, despite such phraseology making its way into documentation. The repetition of such a mistake makes it no more accurate in the retelling. The duty of LAs is to act "*if it appears*" that education is not suitable - there is nothing in law to say that local authorities must pre-emptively check that "every child has a suitable education".
6. There is repeated emphasis in the supplementary materials (for example in the initial flow charts) that parents need to provide **evidence** of suitability of education in response to informal enquiries (S436a enquires) as if this is a duty. This is incorrect. The Education Act places no duty on parents to evidence their educational provision during a S436a enquiry. The Welsh Government have also confirmed this. Any such expectation on parents also demonstrates a degree of inappropriate conflation of 436a of the Education Act with s437.

We trust that councillors and staff alike will also appreciate that any threat of reverting to “safeguarding measures” if parents do not comply with demands to evidence education, even when there are no legitimate concerns that would suggest “*it appears*” that a suitable education is not in place, risks giving the appearance or impression of a potentially coercive or authoritarian approach and therefore would not reflect respectful and appropriate practice. We trust that the council would swiftly reject any such appearance in favour of a transparent, lawful and respectful approach.

7. **The proposed forms ask for information that parents are not legally required to provide**, such as their personal reasons for their choice of mode of education, or about future plans, without making it clear that they do not have to provide this information and that there would be no negative repercussions for not providing such personal information. The templates lack transparency and appropriate information on this point too, thus not following due process required for fully informed consent.
8. A **false impression** is given (for example in the conclusion of Annex 3 of the supplementary material) that there is not only a legal duty to **repeat informal enquiries**, but that evidence is required at each attempt to do so. The purpose of an informal enquiry according to S436A of the Education Act 1996 is to confirm that a child is not missing education. Once the local authority is aware that a child is home educated rather than “missing education”, then any legal educational duty of the local authority towards that child, according to the law, has ended. The use of the term “*required*” at the conclusion of Annex 3 of the supplementary materials is not appropriate in all cases and would need to be considered in individual circumstances.

Should the local authority continue to hold the contact details of that family, they may if they wish contact them at a future date to ask if there have been any changes to that situation (to ensure that any data they hold is not outdated). If there are no grounds to believe “*it appears*” the situation has changed, that is, if there are no grounds to believe “*it appears*” that a child is now not in receipt of a suitable education, then there are no clear legal reasons to require and then spend time evaluating evidence to re-prove what the local authority has previously already established.

**Thus, it will hopefully be apparent to councillors and staff alike that there is no need for a significant drain on resources when lawful duties are followed.**

## Appendix 1

- 1) *“It is the view of Torfaen County Borough Council that children’s educational needs are best met in school”.*

It is naturally very sad and concerning to see such a statement in policy, however noting its expression in writing at least allows opportunity for this to be swiftly addressed, as we are sure both staff and councillors would be keen to address any approach of institutionalised bias or discrimination.

Home education is of equal worth in the eyes of the law to school-based education. Furthermore, the choice of approach to education lies with the family not the council. We trust TCBC wish to demonstrate respectful view of the needs and decisions made by all families in council policy and practice

This statement is also a demonstration on why measures proposed within the Children’s Wellbeing and Schools Bill should not be appropriated, as sadly the council has demonstrated here by holding preconceived concepts and views on what is in a child’s “best interests” that it would not be able to objectively act in the “*best interests*” of a child.

We trust that not only this policy will be swiftly amended to reflect a respectful and unbiased approach to home educating families, but the appropriate training is provided on the issues of institutionalised and unconscious bias and discrimination. We are sure such training and engagement will be a positive step forward.

- 2) Appendix one immediately follows this statement of opinion with the comment that *“However, we understand and respect it is the parent’s right to home educate their child”.*

May we suggest that it would be very helpful to re-phrase references to the both the decision to home educate, and to the rights to do so, to refer to “**families**” rather than just “*parents*”.

Whilst responsibility for education lies with parents, EHE is not just a parental choice. It is helpful for phrasing in policies and communications to reflect that it is usually the choice taken together as a family. The situation is often one of parents’ facilitating and enacting their child’s preference, choice or need for home education. Parents are not so much exercising “rights” as fulfilling their duties when they home educate their children, especially when they have had to remove their children from unsuitable provision to do so.

We suggest this not only to be reflective of the experiences of home educators but also because occasionally comments have been noted in communications from the Welsh government that can intimate that the “*rights*” of “*parents*” are

somehow “offset” against the “*rights of children to a suitable education*”, as if the two are somehow at odds with each other, or in a way that risks conveying a presumption that home education could be considered less likely to meet these rights than school-based education. Such a concept would naturally be a divisive and demeaning one. Choices of words carry power to influence thinking and mindsets in negative or positive ways. It is beneficial to ensure that phrasing does not create or perpetuate any such connotations, even if doing so inadvertently.

We would encourage council staff to reflect on the impressions conveyed by the use of the term “however” here, as unfortunately it risks connoting something of a reluctance in “having to” deal with home educators.

When the council and councillors of the scrutiny committee appreciate that parents raising and educating their own children does not place an additional burden on the council but rather relieves it of various financial requirements, we trust that there will be no reluctance or caution in consideration of home educating families in Torfaen.

- 3) Point 1 of Appendix one also states, “*The Local Authority has a duty to be sure that the best interests of the child are at the heart of their education plan*”. The lawful duty of the LA in relation to EHE is to confirm that a child is not CME. It is the parents’ responsibility to determine what is in the best interests of a child.
- 4) Point 2 of Appendix one begins “*Registration and Monitoring*”.

There is no requirement for home educators to “register” as EHE, as home education is the default setting legally. It is a parent’s duty to provide suitable education as stated in section 7 of the 1996 education act. This duty can be discharged to a school. Whilst councils may choose to keep a list of children it knows are home educated, “*registration*” is a misleading term in this context.

The term “*monitoring*” is also misleading.

Councils have **no legal duty or empowerment to monitor elective home education**. They may simply make informal enquiries to establish if a child is missing education.

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 both England and Wales. 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”*.

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 re-evaluate “suitability of education” or assume that the child is missing education unless evidenced otherwise.

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

There is no reference to monitoring of elective home education in the 2023 Welsh guidance or in the Welsh government’s handbook for home educating parents.

Alongside having no lawful basis, it clearly would not be consistent with the department’s stated aim of collaborative working and engagement with the community for any misleading references and concepts to remain.

**Thus, any references in local policy to the concept of monitoring should be removed.**

- 5) Point 2 of Appendix 1 continues to state, *“Local authorities have a duty to identify all children of compulsory school age who are being educated at home”*. The lawful duty is to establish, as far as possible, the identities of those who are NOT in receipt of a suitable education. There is not a lawful duty to “find” every child who is home educated and as previously stated, no other laws or legal principles should be broken or overstepped in attempts to act according to s436A and establish identities of any not receiving education.
- 6) Point 3 of Appendix 1 states, *“Local authorities are expected to assess the education being provided to children who are home educated and continue to do so on at least an annual basis. This assessment is intended to ensure that parents are fulfilling their legal duty by providing an education that is full time, suitable and efficient in meeting the child’s needs”*.

Even if there were an “expectation” or hope based on personal or political opinions, this is not a legal duty. The legal duty is to identify children who are NOT in receipt of a suitable education, i.e. those that are CME, not to monitor, oversee or intervene in the educational provision of home educating families.

7) Point 4 of Appendix 1 references “*Support and Advice*”.

Naturally, the most important source of any support and advice would be those with lived experience, whether employed by the council or elsewhere. We trust that TCBC would wish to ensure that any approach to home educators does not risk being paternalistic or school-centric in manner.

It is interesting to note that the area of “*support*” where councils have the capacity to provide the most benefit, that of ensuring provision of accessible and affordable examination centres is not mentioned here, and that the question in the proforma for the voices of “*older children*” in the Welsh Government supplementary materials asking if the young people wish for help accessing examination centres is the only question that has been omitted from the Torfaen version of that form (Appendix 7b of Torfaen policy).

There is no duty for councils to provide examination centres for home educated young people, but access to local examination centres was one of the key features of the “*package of support*” that was promised by the Welsh Government as part of the introduction of the 2023 EHE guidance that this policy references.

Whilst the policy later mentions “*signposting*” to “*identifying*” examination centres, it is notable that the policy chooses to not identify support such as provision of access to examination centres as a “*duty*” or requirement, whereas it does confer a range of practices or ideas that relate to “*duties*” such as attempts to oversee EHE as if these are.

It is also interesting that there is no reference in this policy to consultation or engagement with home educators and the home educating community on how the council can best serve them and any needs, such as access to affordable examination centres that offer a suitable range of examination boards.

As part of revised EHE policy the option to engage with home educators on how the council can best serve them should be included.

8) Point 6 of Appendix 1 comments that “*the primary responsibility for the welfare and well-being of the child rests with the parents, local authorities have a duty to safeguard the welfare of children educated at home. They may intervene if there are concerns about a child's well-being or if cannot be satisfied that a child is receiving a suitable education*”. The first sentence is not quite correct, and the focus and emphasis the first sentence are somewhat at odds with the second sentence. The responsibility lies wholly with the parents, councils are not co-parents, only having a duty to intervene if there is reason to believe there is abuse or neglect (as per the second sentence) but where there is no reason to

believe abuse or neglect then there is no duty for councils to intervene in family life, making the first sentence misleading.

Furthermore, it should be noted that there is no requirement to be “*satisfied*” under s436A enquiries. The concept of being “*satisfied*” related to enquiries under s437, which should only be undertaken “*if it appears*” suitable education is not being provided and relates to a council becoming aware that there are sufficient grounds to consider the child is CME.

- 9) Point 7 of Appendix 1 comments on the recommendation to refer to the latest government guidelines. However, it is important to note that guidelines, or local policy, are not law and do not “trump” primary legislation. Included in this is the understanding that most of the present guidance on EHE in Wales is non-statutory and, as it reflects personal opinions rather than primary legislation, cannot be enforced.
- 10) The phrase “*consult with the relevant local authority in Wales*” is a little puzzling to note in a local policy and suggests that this is taken from a generic template.

## 2 Definitions

*2.1 "Compulsory school age," This is from 31 December, 31 March or 31 August following a child's fifth birthday (whichever comes first) until "School leaving age", which is the last Friday in June if the child will be 16 by the end of the summer holidays.*

*2.2 A Suitable Education is defined as being "suitable":*

*a) To age, ability and aptitude and*

*b) To any additional learning needs they may have”*

*c) An Efficient Education “achieves what it sets out to achieve”*

*d) A Full-Time Education should occupy “a significant portion of a child's life”*

It is helpful to reflect that the concept of education being “full-time” arose in very early education law during the industrial revolution as a way of ensuring that children were not simply to be used as “tools” in society in that era but rather free to be children.

*2.3 The expression ‘parent’ in relation to a child or young person, includes any person who is not a parent of the child but has parental responsibility for him or her, or who care of the child.*

This definition provides a helpful opportunity to reflect on how “parental responsibility” lies with the parent, remembering that the state or council are not “co-parents”.

### 3 Notification, Registration and the Role of the School

*3.1. Parents or guardians of children of compulsory school age who wish to educate their child at home must notify the Head of the child's school in writing. The school must then inform the Local Authority within 10 days of deregistration. The Local Authority will maintain an updated EHE register (Appendix 2)*

This of course only applies if a child has already been registered by a parent in a school. There is no duty for parents to either register a child in a school or to inform local authorities at any point of their decisions on educational choices (unless a child has been registered by the parent in a special school and they now wish to deregister) as education is the responsibility of the parent not the council. It may be helpful for councillors to hear from loving home educating families lived experience on why, on a UK wide level, they often prefer to not be “known” by their local councils.

Appendix 2, as referenced in Point 3.1:

*“Parent informs school in writing of intention to home educate and asks them to deregister”*

The word “ask” here should be replaced with the word “instruct”.

This is because deregistration is not a request, but a legal instruction with immediate effect.

Whilst schools may choose to offer a meeting to discuss this, any such offer must not delay enactment of this legal instruction in order for lawful compliance with Pupil Registration Regulations. It should be made clear that any such offer of a meeting to discuss the instruction to remove the child from the school register is optional and respectful of their decision.

Points of concern in this flow chart, such as

- the concept of letters to health and social care,
- contacting parents “for an initial meeting”,
- “review(ing) educational plan”
- and the concept of being “satisfied”

will be addressed under the sections referencing the relevant appendices.

*3.2. Upon receipt of the notification, the Local Authority will acknowledge the receipt and initiate the process for assessing the suitability of the proposed education. (Appendices 3,4,5a,5b,5c)*

The concept of a “*process for assessing the suitability of the proposed education*” is one that would benefit from addressing here.

“*Proposed education*” connotes future educational provision.

However, there is no duty for families to make “plans” in relation to their educational provision, and certainly no duty to share these with council staff should they decide to make any. Indeed, making adult-designed future “plans” is, for many, counterproductive to a child-led approach to education.

This comment again raises the issue of who is responsible for ensuring education is suitable. The Education Act of 1996 crucially clarifies the existing fundamental principle that it is the parent who is responsible for education, not the state. This includes the style and mode of educational provision. If council staff were to hold a differing opinion on the suitability of educational provision to the family concerned, then, whilst the staff may issue a School Attendance Order, the decision on whether or not provision is suitable ultimately lies with the courts if such an order is contested, not with the council.

In order to avoid any bias towards a school style view of education it is important for staff involved to have thorough training in the diverse approaches to education, especially in the home environment, thus enabling them to make reasoned decisions when they are required.

### **Appendix 3 of Torfaen policy**

This template does not appear to be drawn directly from the supplementary materials. Whilst it includes the term “*offer*”, it **does not clarify that this is not a requirement and is purely voluntary**, that there are other ways to respond to any enquiries or communication and that there would be no negative repercussions for declining a meeting. It may be helpful for staff and councillors to appreciate the impact of the combination of this of information with the “official” appearance of a letter as conveyed by council logos and headers and of terminology such as reference to governments and use of the term “*requirement*”. The combined effect of the appearance of such correspondence can be very impactful, especially for new home educators, and risks them accepting a meeting against their wishes. The format of the letter in this template is not consistent with a process of informed consent that respectfully allows parents to make lawful choices that are appropriate for their family without any fear or hint of coercion.

It would naturally be highly inappropriate for a council to tell parents how to ensure education is suitable. This would make councils the determiners of suitability of education, which is not the lawful position. In addition, this would risk propagating an appearance of a paternalistic approach that could be potentially disempowering to families, a potential appearance that we trust TCBC would be keen to avoid.

The reference to the council being “**required**” to “*review your educational plan initially and then at least on an annual basis*” is misleading. Whilst there is an opinion expressed in the 2023 guidance that would demonstrate a desire for this, this is not statutory. There is no legal basis for repeating informal enquiries on an “*annual*” basis “just in case” parents who were known to be providing suitable education have suddenly ceased to do so in the absence of reason or evidence to believe this is the case. As previously addressed, whilst councils may choose to periodically confirm if their records are up to date, to consider “annual reviews” of provision as if a statutory requirement when it is not creates a workload that is unnecessary and not a wise use of limited council resources.

## **Appendix 4 of Torfaen policy**

This appendix is not part of the non-statutory supplementary materials.

This template letter is concerning for home-educators, and we would appreciate urgent clarification of its use.

The combination of the flowchart in Appendix 2 of Torfaen’s policy and this template in Appendix 4 indicates that it is routine to “*inform*” and share identifying details on every home educated child with social services and “*health*” without the knowledge or consent of the parents, purely because the family has chosen the legal option of elective home education.

**We would appreciate clarification if it is routine practice to pass the identifying details of every home educated child in Torfaen to social services, and if so, for further details of this non-consensual data-sharing.**

**Could you also confirm if ALL children, including those on a state or private school register are referred to health or social services, or only home educated children? Would you also confirm what steps are taken by those services on receipt of this information, and how the information is stored, used, how long it is kept on file for by each service, and when it is deleted?**

Whilst communication between services may be appropriate if there were reasonable grounds to believe there is significant concern for the wellbeing of a child in individual cases, the mass sharing of information without cause for concern and without consent or knowledge of parents is a very different and concerning matter.

It is somewhat puzzling why social services would be routinely informed of the identity of every home educated child. If the aim is to screen for safeguarding concerns, there is already an accepted process for this. Schools have a legal duty under Pupil Registration Regulations to complete an off-roll notification form for each child that is deregistered from school. This should have the opportunity for both the headteacher and the school

safeguarding lead to document and inform the local authority of any concerns they may have on safeguarding risks or education, including if there is any history of involvement of social services.

However, a copy of the form that schools use on receiving instruction to deregister a child in Torfaen is not available on the council website or in this policy. It would be helpful if this were included on the website.

On deregistration, schools are also required to upload a CTF (Common Transfer File) containing the child's education and safeguarding history into the S2S DFE secure site , this has a messaging service local authorities can use to alert social workers if a child's deemed immediately at risk.

Thus, there are already processes in place to enable children to be safeguarded where there are relevant concerns in those cases, processes that do not

It is of note that Welsh safeguarding guidance confirms that "*consent is required to refer a parent or child to Social Services for an assessment of their care and support needs unless there is cause to suspect that they are at risk*". Therefore, the purpose of routinely informing social services of the identity of every home educated child is very unclear.

[https://safeguarding.wales/en/chi-i/chi-i-c6/c6-p8/?fbclid=IwY2xjawKMEBlleHRuA2FlbQIxMABicmlkETBDMWZsSHlaTkkyYldMSm5QAR5Pzq1HJZbGIC86PLr2FpAMzWMBOlMApp0IQwSr-MZd7V8AXI3bkwN-fjtbiQ\\_aem\\_A9ztJhJzxc0uJomi\\_oufog](https://safeguarding.wales/en/chi-i/chi-i-c6/c6-p8/?fbclid=IwY2xjawKMEBlleHRuA2FlbQIxMABicmlkETBDMWZsSHlaTkkyYldMSm5QAR5Pzq1HJZbGIC86PLr2FpAMzWMBOlMApp0IQwSr-MZd7V8AXI3bkwN-fjtbiQ_aem_A9ztJhJzxc0uJomi_oufog)

Home educators require considerable further information on how that data is used, stored, processed and deleted by those departments and services once it has been shared.

Please provide this information urgently.

Likewise, the template and flowchart state that this letter should be sent to "*health*", again giving identifying details on each EHE child seemingly without knowledge or consent of parents and purely because the family has chosen the legal option of elective home education.

There is no clarification of what is meant by "*health*", whether this means GPs or school nurse services for example. There is no reference to how this information would be used, stored, further shared, processed or deleted and this information is required to be GDPR compliant.

**Clarification on all this information in relation to whatever is meant by "health", alongside further information about how this information is used, stored, further shared and processed is also required urgently.**

In terms of school nurse services, whilst there is a question on each of two forms asking children if they would like more information on these, no information is provided in policy on how families, known or unknown to the LA, could access these services.

**It would be very helpful to provide information within the policy and on the council website on how families can access these services, should they choose to.**

**It would also be very helpful to establish here that the school nurse service is – or at least should be – a confidential service,** so that any not known to council staff involved in making informal enquiries will still feel confident in accessing this healthcare provision. We would like to see it clarified within revised EHE policy that if accessing school nurse provision means that the child’s details would be automatically passed to the council purely because they are EHE, then this should be transparently stated. However, staff should bear in mind that confidentiality of access to healthcare should be the priority.

Whilst clinicians are able to break confidentiality in individual cases if there are grounds for concern on the welfare of a child, **if accessing school nurse provision means that the child’s details would be automatically passed to the council purely because they are EHE, then this should be transparently stated and this policy swiftly reviewed,** to not place obstacles to access of healthcare. Confidentiality of and confidence in access to healthcare should be the priority.

**Appendices 5a, 5b and 5c of Torfaen policy** are paraphrases/copies of Annexes 2a, 2b and 2c of the non-statutory supplementary materials.

We appreciate that the provision of these outdated supplementary materials by Equity in Education (EIE) has been misleading for council staff and home educators alike, which is why Home Ed Cymru has taken the time to engage here on how Torfaen’s EHE policy can be revised in a respectful and lawful way that makes the most appropriate use of council and taxpayer resources.

Appendices 5a, 5b and 5c, like Appendix 3, fail to follow the appropriate process of fully informed consent. As for Appendix 3, this includes how no other options are offered or suggested for how to communicate with council staff, there is no clarification that there would be no negative repercussions to declining such a meeting. Parents reading such letters would readily be given the impression that such a meeting is a requirement when it is not, and the mention of “*legal obligation*” connotes implications of requirements, which is misleading and unhelpful.

On that note, the cited “*legal obligation to ensure that all learners are receiving a suitable and full time*” in Appendix 5b is not a correct representation of the actual lawful duty of the council, as addressed and clarified in earlier points of this feedback, and thus requires rewording.

Of particular concern is how Appendix 5c threatens instigation of legal action without “*information*”, without clarifying that such a meeting is not necessary to provide any information sought, without clarifying that there are a range of ways in which parents may choose to respond to informal enquiries such as in writing. The threat of legal action for choosing to exercise fully lawful rights and protect the privacy of the child risks conveying a coercive effect on law-abiding families through such letters.

Regarding the use of “*forms*” for parents and children, whilst the phrasing “it would be useful” is used rather than directly saying that the parent and child(ren) have to complete these, the context and phrasing again are likely to convey some form of need or requirement that these are completed. It is not clarified that these are purely optional, that there are no negative repercussions for so doing.

In terms of the content of these forms, they ask for considerably more information than parents or children are required to provide, or that is necessary for a council to know that a child is being home educated rather than being CME.

It may well be helpful for employees and councillors alike to appreciate that this is one of the reasons why national and regional home educating support groups generally advise families to frame their own response rather than utilise council provided forms when responding to informal enquiries. Moreover, generally speaking, it is very damaging to trust and respect for councils if parents to see those councils are overstepping their remit in attempts to derive unnecessary personal information about their family and children without fully informed consent. This is something that we trust Torfaen council would be extremely keen to avoid, which is why we have taken the time to prepare this feedback, to encourage reflection on practice and policy, and to enable staff to appreciate the impact of such matters on home educating families.

We have already provided information on how these forms overstep remits and duties in our feedback on the Supplementary Materials. We can readily provide a further copy of this if our original and follow up emails are not readily accessible.

In addition, we would be most willing to discuss these or any issues with the department or members of the scrutiny committee should this be desired or welcomed.

*3.3. Parents can home educate a child who has a statement of SEN or an IDP. However, where a parent wishes to home educate a child who is registered at a special school, they cannot be deregistered until the Local Authority has agreed to this.*

It would also be important to note in the wording of this policy that consent should not be reasonably withheld, that the primacy of parents in advocating for their children’s needs and rights should be respected.

## 4 Assessment of Education Provision

*4.1 A designated officer from the Local Authority will conduct an assessment to determine if the home education being provided is suitable, efficient and full time. The assessment will be respectful of the parent's chosen educational approach and will primarily focus on the child's progress and welfare.*

The council have a duty to establish identities of children who are not in receipt of a suitable education (CME), but not a duty to inspect assess, oversee or monitor the provision of home educated children.

EHE children are not the same as CME children, but sadly there are increasing erroneous connotations of the two distinct cohorts. Whilst it has become common practice to make informal enquiries of home educating families, the only lawful purpose of these is to confirm that these children do not fall under the council's duty of care of being CME. When it is established that a child is not CME, the council's lawful educational duties end.

**As the concept of “*progress*” relates to change over time, it must be borne in mind that there is no lawful duty to monitor home education, the only duty in terms of education is to confirm that a child is not CME. Therefore, it is not appropriate to make demonstration of “*progress*” a requirement of parents, just as there is no lawful basis to insist on “annual reviews” as a form of monitoring home education.**

Moreover, the concept of “*progress*” in education is far from simple, especially in child-led autonomous approaches, as true progress is not linear. A child may appear to not “*progress*” in some areas in ways that adults may expect “*progress*” to be demonstrated, especially when deeper learning and development are occurring. Signs of “*progress*” as adults may consider them, especially if the adult's view is influenced by school-centric models of education, may only appear at a much later stage or age, but that does not make the educational approach unsuitable or invalid. Indeed, there are good lines of reasoning why such approaches would be considered to result in more optimal long-range benefits for children, academically and otherwise. Focus on or expectations of demonstrations of “*progress*”, even if it were legally required, compromises a family's ability to follow a range of key educational approaches and styles. This would be to the detriment of long-term educational benefits for children, most especially those where school-like approaches to education and “*progress*” have already failed to be suitable. Thus, focus on expectations of demonstration of “*progress*” risks interfering with a family's choice of approach to education, which is not lawful, and compromising the benefits of home education, which is counterproductive and unethical.

**Whilst councils sometimes choose to express personal preferences in what they would “like” to see provided, they are not able to set a measure as if it is a “requirement”, or take legal action against parents if they do not follow a “like” or even a “should” as if it were a “must” or a mandatory “requirement”.**

In terms of welfare, as previously addressed, the duty of ensuring the welfare of a child belongs to the parent not the council, with any council duties in relation to welfare being reactive not proactive.

*4.2 The assessment will ideally include a report and meeting with the parents/guardians and the child, a review of educational materials, samples of the child's work, and other relevant evidence. Seeing the child and ascertaining the child's views will be a key factor in assessing suitability. (Appendices 6,7a,7b)*

Having established that any “assessment” should only be part of a simple confirmation that a child is home educated and not a “child missing education”, it is therefore important to again appreciate that the council has no lawful duty to “inspect” home education provision.

So, for example, there is no lawful duty for parents to provide, or for council staff to insist on viewing “*samples of work*”.

To routinely request “samples of work” would be at odds with a respect for a variety and diversity of approaches, as learning does not have to include “work”, learning does not have to be “work”, learning does not have to be something that is distinct and separated from the child’s everyday life and experiences into something that is differentiated into “work”. 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 or provide “samples of work”.

We have occasionally heard of the Goodred vs Portsmouth hearing being cited to justify an expectation that samples of work should be provided for viewing by council staff. That is a misapplication of that hearing and judgement for a number of reasons, including that the case in question related to formal enquiries under s437 of the Education Act, not informal enquiries under s436A. Fundamentally, the judge’s ruling included the principle that the council would have been found to be at fault if it had been 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. Council staff may ask, but there is no requirement to provide.

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](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.

Thus, 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 confusion or miscommunications.

Likewise, there is no duty to provide or “*review educational materials*”. There is no lawful duty to “inspect” home education provision.

Likewise, “*meetings*” or “*visits*” are not a mandatory requirement, and this has been clarified by the Welsh Government. We appreciate that the wording of the personal opinions expressed in the non-statutory elements of the 2023 Welsh Government guidance on EHE can create confusion and risk creating a sense of undue pressure on parents and council staff alike. This is partly because of the confusing title of the guidance as “*statutory*”, when most of the content is non-statutory, being related to “*should*”, “*may*” or “*could*”. Indeed, there is no new statutory content within the 2023 guidance. This is where the principle addressed earlier of “*as far as is possible*” in relation to how councils attempt to discharge their duties in how to establish the identities of children who are missing education, in that no other legal principles or statutes should be overridden in any attempts to do so, including those of informed consent.

Indeed, the concept stated within that 2023 guidance of parents and “*Gillick competent children*” being free to decline these meetings demonstrates that the key principle behind any such meetings must be **fully informed consent**, as that is the concept that Gillick competence is based on.

Fully informed consent requires all involved to be fully cognisant of the boundaries of their own and each other’s duties, and of the full range of repercussions and consequences of what may or may not be said or disclosed.

For consent to be true consent, it must not be coerced or obtained under any threat or suspicion of adverse outcomes for not agreeing to go along with a proposed behaviour or action. It is thus imperative that families are reassured of their lawful right to respond to enquiries from the local authority in whatever manner they choose, without fear of negative repercussions, and that any “offers” of meeting are clearly communicated to be just that – “offers” only.

Parental word is sufficient evidence in a court of law and thus certainly sufficient for informal enquiries by a member of council staff. 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.

By responding in writing to the council's informal enquiry there should be no feeling of being monitored or inspected.

It would also be helpful for the department to reflect on the use of the word "*report*". The use of the noun "*report*" in such a context connotes some form of requirement or duty to undertake an action of "reporting" to someone as if are answerable to them. It can connote a hierarchical situation of being held to account.

Home educators increasingly use the term "written response" for how they may choose to respond to informal enquiries as it is more reflective of what is being provided- a response in writing to an enquiry, not being held to account or required to "report". There is no duty on home educators to be accountable to councils for their provision, home educators simply assist the council in their duty to identify children missing education by confirming that their children do not fall into that category.

## Appendix 6

Unfortunately, there are a number of issues with this form.

Again, the template does not state that **completion of the form is optional**, that families can choose how to respond to any enquiries.

As previously discussed, Information gathered without fully informed consent is therefore of questionable validity.

The form also fails to identify how the requested information would be processed, stored and shared, and therefore does not comply with GDPR.

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

The form also asks for the provision of *“other evidence, such as any planning, records of visits/activities, examples of your child’s work”* without clarifying that parents are not legally obliged to supply such information.

The form concludes:

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

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

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

The incorrect impression given throughout is that this is an official form which parents have a legal duty to complete. Furthermore, as explained in point 7 of the summary of the issues with this Appendix, the form, with the use of terms such as *“required”* and *“will”*, gives a false impression that there is a legal duty to not only repeat informal enquiries but also that evidence is required each time authorities attempt to repeat this process, even when it has already been established that said child is not in receipt of a suitable education, and with no reason to believe *“it appears”* this may have changed. This is not a legal “requirement”.

It is therefore helpful for staff and councillors to reflect on appropriate use of scarce resources in repeating enquiries about lawful and loving families where there are no grounds for concern and it is already known that they are home educating, where these can be felt to be intrusive, where they are not necessary, where there is no legal requirement to do so and when doing so can risk overstepping into unlawful attempts to monitor or oversee home educating families.

If money is to be spent in relation to home education in Torfaen, there are far more beneficial and productive ways that financial resources could be utilised, ways that would directly benefit home educating children and young people.

## **Appendix 7a and 7b**

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

Likewise, it must not be presumed that parents do not listen to their children and take their feelings and experiences into account when making decisions about their education and well-being- the council is not a co-parent in this.

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

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

As mentioned earlier, the one question omitted from Torfaen version of the form for older children compared to the non-statutory supplementary materials relates to whether the child would like help with provision of access to local examination centres.

### **“The voice of the child”.**

It is helpful to consider the purpose of these forms and the concept of “eliciting the voice of the child”.

Whilst Torfaen’s policy does not directly reference the UNCRC, the concept of eliciting the “voice of the child” stems from this.

However, when it comes to children’s rights, including how they are conveyed in the UNCRC, the presumption should be that parents are upholding such rights, unless there is good reason to believe otherwise.

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 by council staff.

It is, of course, also important to appreciate the context in which the UNCRC arose, in order to apply them correctly.

The UNCRC was compiled to help prevent totalitarian states on the global stage from interfering with, obstructing and hindering the wellbeing, rights and quality and availability of education for children. It was not intended to be a tool to be used in any context against families, nor was it 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.

All articles must be taken together and not used in isolation.

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.

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 the 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 important that Article 28 in its entirety is kept at the forefront of our minds as the child's right to education encompasses diverse approaches to each individual child's education. 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 emphasis on respect of both the children and the parent are fundamental. It is therefore vital that state parties do not exercise pressure or measures that risk interfering with children's right to a form of education that they and their family find most appropriate, including when such approaches do not parallel school-like pedagogy.

It is helpful to note for background reference that any statement to the effect of stating that the views of the child *“should”* or *“must”* be obtained would contradict 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/must be obtained would be a contradiction, as the choice to not express views to strangers is a legitimate expression of their views.

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 risks incorrectly implying that the child has no right to refuse to give their views. You may find the reports by David Wolfe KC that were prepared in 2019 and 2020, whilst the present Welsh government guidance on EHE was being drafted of interest and use, including on this point. In these he clarifies that the use of the term “*should*” in such guidance is inappropriate, being too strong a term in such contexts and “goes too far” by creating the impression of obligations where these do not exist. We can readily supply copies of his reports if you do not presently have access to these.

*4.3 The assessment process will be completed and the Local Authority will communicate the findings to the parents/guardians within 10 working days (Appendices 8,9)*

## **Appendix 8**

This form is assumed to be intended for completion following section 436A informal enquiries where the only legal remit of the authority is to identify if a child is missing education. The majority of the information on the report is not necessary for the local authority to fulfil its duty, especially where there is no reason to believe “it appears” that a child is missing education.

Again, unfortunately this form is confusing and misleading for local authority employees as it conveys an expectation that they should/must elicit a range of information from families that these families are not legally obliged to provide and that is not necessary for the council to fulfil its remit of noting that the child is EHE not CME.

This range of very personal and private information on the family includes reasons for home educating, “evidence”, “plans” and planning documents and future aspirations of the child.

This can place employees in a difficult and stressful situation with a conflict of interests, if they feel pressure or a requirement to complete such forms.

Whilst councils may have developed the habit of requesting information to confirm that a child is home educated rather than missing education, in essence, only two fundamental questions are needed – (1) has the parent stated that the child is home educated and receiving a suitable education? and (2) is there any reasonable cause to not believe the parent’s assertion that their child is receiving a suitable education?

If local authority employees are led to believe that they are expected to elicit all of the information noted in this report, this risks them feeling a sense of pressure to ensure that this information is provided and further risks them placing undue pressure on parents to (unnecessarily) divulge personal and private information.

The yes/no format of this form also risks increasing a sense of pressure on a local authority employee if they feel unable to give either answer accurately on questions where this information is not necessary to fulfil lawful duty.

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

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

## Appendix 9

It is not necessary to routinely have an *“Action Plan”* for home educating families. The council has no lawful remit to intervene in home education. The only action that would be required would be if a child was missing education.

Families do not require *“feedback”* on their provision (unless they were for their own reasons to wish to request the opinion of another).

One of the risks of a council providing *“feedback”* or *“reports”* on normal family life, which we trust TCBC would be keen to avoid, can be the conveyance of a paternalistic or even authoritarian approach to families.

There is no requirement for families to have a *“report”* on their home education provision as there is no lawful duty to inspect or monitor it.

Thus, the council would create an unnecessary workload for itself to provide unnecessary feedback which risks overstepping lawful and respectful boundaries. The only information that is required is confirmation that the child is not *“documented”* as CME, something that requires significantly less man hours and cost.

*4.4 Where it transpires that a home educated child may have additional learning needs (ALN), the Local Authority must decide whether or not the child has ALN and, if they decide the child does, they should prepare and maintain an IDP and identify and secure any appropriate additional learning provision (ALP) described in that plan (section 18.21 of the Additional Learning Needs Code (ALN Code)).*

The principle of the **role of the family in advocating for their children** and the family’s understanding of the child’s needs must be paramount in any such measures. Any steps in relation to a child’s ALN must be fully respectful of the primacy of the family and seek to be led by their input and experiences.

## **5 Support and Advice**

*5.1 The Local Authority will offer support and advice to parents/guardians on matters relating to home education, including access to curriculum resources, educational opportunities, and local networks.*

This concept of “support” has been addressed above when exploring the issues with Appendix 1.

Any support for EHE families would need to be through a thorough understanding of the breadth of diverse approaches to education that EHE families take.

This would need to be led by the lived experience and wishes of the community, organised in consultation with EHE families, rather than a council-led directive approach.

*5.2 The Local Authority will signpost parents/guardians to a wider package of support including identifying examination centres, careers advice, counselling services, ALN advice, youth and play services and family support services.*

*5.3 Regular information sessions or workshops for parents/guardians and children may be organised to facilitate their engagement with the Local Authority and the wider home education community.*

Whilst clear and accessible information on any true support a council may offer, such as access to affordable examination centres, can be helpful, other than to simply respond to informal enquiries should the council choose to make these, there is no requirement for “engagement” with the local authority. Home educators do not require the council to be a bridge between other home educators and home educator run groups. Any support offered must be respectful and led by the input of those with lived experience within the community.

## **6 Annual Review and Returning to School**

*6.1 A review of the child's home education provision will be conducted by the Local Authority to ensure the education remains suitable on at least an annual basis until the child is either of school leaving age or returns to mainstream education. (Appendix 10)*

Our concerns regarding the concept of “annual reviews” has been addressed above, including establishing that there is no lawful basis for monitoring home education.

## Appendix 10

Is a paraphrase of Annex 6 of the Supplementary materials and bears the questionable title “*Annual EHE review contact letter*”.

This appears to be intended as a follow-up to a meeting which has already taken place, although it goes on to press for initial information about the education being provided as if it has not already been established that the child in question is EHE and not CME.

Unfortunately, once again, if this appendix is used as drafted, this would convey overstepping in both the tone and assumption that, even if annual contact were a requirement, that this should be in the form of meetings. Again, it does not offer the option of any alternative forms of communication, and thus requires revision.

Furthermore, this letter conveys the concept that parents have to continually re-evidence their innocence of educational neglect in the absence of any concerns raised to suggest this, as addressed in of the summary of issues with the appendix, provided above.

*6.2 The review process will again focus on educational content, parents’ approach and progress of the child as well as any necessary adjustments to support the child’s educational needs. The views of both the child and parent will be central to assessing suitability. In order for a local authority to satisfy itself of the suitability of education provided by the parents, the local authority should ideally see and communicate with the child.*

The concept of “*reviews*” as a form of monitoring has already been addressed in this feedback, as have the issues of “*seeing*” and eliciting the “*voice of the child*”.

*6.3 Where it is identified that a parent wishes their child to return to school, the Local Authority delegated officer will provide advice and guidance and facilitate and support necessary transitions where required in accordance with the Local Authority’s ‘Schools Admissions Policy’ and ‘Fair Access policy’*

It is of course appropriate that the council have a system in place to help families who have found that they need to change their child’s educational provision.

## 7 Legal Action

*7.1 If the Local Authority cannot conclude that a child is receiving a suitable education, or their welfare is at risk, it may take appropriate legal action, including issuing a school attendance order (SAO) or applying for an Education Supervision Order (ESO) (Appendices 11,12,13,14)*

**Appendices 11,12,13 and 14** are taken from Annex 1, 7, 8 and 9 of the Supplementary materials respectively, so again we appreciate the confusing position council staff have been placed in with the provision of inappropriate documentation from Welsh Government.

Regarding appendix 11 (a copy of Annex 1), This document lists a number of steps beginning with *“Are you satisfied that the child(ren) are receiving a suitable, full-time, efficient education?”* and concluding with either “yes” or eventual prosecution. However, at each step, “yes” cannot be achieved without evidence being provided, even though the Education Act places no duty on parents to evidence their educational provision.

Of particular concern in terms of implications for staff employed by Torfaen council, this flow chart directs the member of staff to take the course of action of threatening parents with School Attendance Orders and ultimately Care Orders if a meeting does not take place. This document is a gross misrepresentation of the law.

**Torfaen council must be aware that following this pathway as presently written risks leading their staff to act unlawfully.** The Education Act only gives lawful duty to local authorities to act *“if it appears”* that educational provision is not in place following any informal enquiries; there is no legal requirement for parents to meet with the local authority.

Appendices 12, 13 and 14, taken from Annexes 7,8 and 9 of the Supplementary materials, lead incrementally to the legal action against families of issuing of a School Attendance Order.

These documents mistakenly deem a (lawful) refusal to agree to a meeting between families and the local authority, an automatic escalation to section 437 and even to subsequent legal proceedings against parents.

There is no legal obligation for home educating families to meet with the council. Therefore, these templates are highly misleading for council staff and parents alike.

If a council were to attempt to implement such pathways and rationale for legal proceedings based on lawful choices of loving families to not meet with/accept visits from the council, this would the council to act unlawfully. If any council were to follow such a pathway based on families’ choices of how to respond to informal enquiries, it would also be intimidating and coercive towards law-abiding and caring families. We trust that this is not an approach that TCBC would ever consider taking, and thus this section of policy must be revised to reflect what we trust is always respectful practice.

## 8 Safeguarding and Welfare

*8.1 A parent's decision to home educate is not in itself a ground for concern about the safety and wellbeing of the child. However, it is important that all children enjoy the right to be safe, regardless of how and where they receive their education.* It would be a helpful reminder to note here that the duty to ensure this lies with the parent not the council.

*8.2 While the primary responsibility for safeguarding and welfare rests with the parents the Local Authority will intervene if there are concerns about the child's well-being and will follow established safeguarding procedures in cases where there are indications of child welfare issues.*

This confirms that the duty of the council is reactive, only applying where there are indications of child welfare issues.

Points 8.1 and 8.2 have been addressed in the feedback for Appendix 1, above.

*8.3 The Local Authority will act quickly and robustly when they identify a child as missing or potentially missing in education. The Local Authority's 'Policy and Guidance to Prevent Children and Young People from Missing in Education' should be referred to for further details.*

## 9 Policy Review

*9.1 This policy will be reviewed annually to ensure it remains in compliance with current legislation and best practices.*

At present there is no reference to the involvement in policy reviews of those with **lived experience**, of those who are **directly impacted** by such policies and practices in the review of any policy relating to home educated families. We trust that this is an oversight and that moving forward Torfaen council will be keen to appreciate and develop policies drawn from feedback from those with lived experience, to develop policies that are lawful, workable, respectful and represent efficient use of taxpayers' money, directing services to where there is most need. It would be inappropriate use of the limited resources available to the council to spend money on unnecessary attempts of questionable lawfulness to intrude into the lives of families.

## 10 Contact Information

10.1 Contact details for the designated officer(s) responsible for handling EHE notifications and inquiries are as follows:

Rachael Williams

Rachael.williams@torfaen.gov.uk

EWS@Torfaen.gov.uk

01495 766080

EWS@Torfaen.gov.uk

It is helpful to note that such contact information is accessible through such policies and via the TCBC website, as this is not always the case with each council.

## **Conclusion**

*This policy is designed to promote positive collaboration between the Local Authority and parents/guardians who choose elected home education for their children. It aims to ensure that children receive a suitable education while upholding their welfare and well-being in accordance with the Education Act for Wales (1996).*

Unfortunately, this policy concludes on a contradictory note, as “positive collaboration” is not promoted by inappropriate claims of the council having a “duty to ensure suitable education”. Likewise, concept of councils as the upholders of children’s welfare and wellbeing is not referenced in the cited Education Act of 1996.

The concept of “*positive collaboration*” is a somewhat questionable one, as the council are not “educational partners” or a form of co-parent. Home education is not a process that requires a relationship with the council when a child is EHE not CME, any “*relationship*” or engagement must be voluntary and based on the foundations of lawful approaches, clear and not misleading information, informed consent and respect.

**In conclusion**, we trust this feedback from home educators will be of benefit and will be received in the spirit in which it is sent, namely a desire to encourage policies and practices in relation to home educating families that are lawful, respectful, appropriate and honouring to the community.

We have previously reached out to councils in Wales, for example in raising concerns about the content of the non-statutory supplementary materials, and in 6 monthly feedback emails reflecting general experiences of Welsh home educators. Whilst we do not appear to have received responses from TCBC to those communications, we trust that, moving forward, this engagement will allow development of a more productive and cost-effective policy for all.

If you would like to discuss any of the points made here further, please do not hesitate to contact us.

Kind regards,

Home Ed Cymru