

# To Torfaen CC Scrutiny Committee - 28<sup>th</sup> January 2024

For the attention of the councillors and staff attending the Education Overview and Scrutiny Committee meeting of 1<sup>st</sup> February 2024.

We at Home Ed Cymru are a national peer-led support group for home educators in Wales.

We write regarding the meeting to be held on 1<sup>st</sup> February 2024 by the Education Overview and Scrutiny Committee.

Whilst we are sure others who make representations to the committee would like to address the issues relating to school absenteeism, we note there is also reference in the report and upcoming meeting agenda to the separate topic of elective home education (EHE).

We are aware that those involved in this meeting may well not have personal experience or knowledge of home education, so we trust it would be useful to share some experience of home education here in order to inform and support your discussions.

In addition, we have noticed that there are some erroneous statements in reference to EHE within the report to be scrutinised in that meeting and trust brief clarification of those issues will also be of help.

We also seek to ensure that there is no conflation between the issue of school absenteeism and the separate issue of elective home education.

## **Key Facts about Home Education**

### **We trust it will be helpful for committee members to appreciate that home education is:**

- **lawful.** Indeed, it is the default educational setting legally, with parents who wish to send their children to school needing to choose to opt into the school system by requesting a place. Parental and family rights in education are protected in human rights legislation too, which clearly convey how the state should not interfere with education and simply ensure it is available should parents want to utilise their provision.

- **safe.** Research has clearly demonstrated lower incidents of abuse and neglect within the home in EHE children compared to peers in state schools ([Home Education and the Safeguarding Myth: Analysing the Facts Behind the Rhetoric. - Education Otherwise](#)). Furthermore, EHE kids are not subject to the sexual, physical and psychological abuse and harassment that, sadly, a significant number of children experience within the school environment – (for example, [Harassment: More than 90 schools in Wales named on abuse site - BBC News](#)).

- **effective**. Home education enables every child to have a bespoke education, tailored to their individual needs, interests and learning styles. Whilst outcomes of home education can include those that are also conventional measured in schools, such as exam results, home education often supports more holistic and diverse achievements by its very nature of being individualised and unique to each child's needs, aptitude and interests.

- **necessary** - for a society to be truly diverse, free and democratic, then the styles and modes of education of its children must also be diverse, not only to meet wide spectrums of needs of those children but also for the benefit of continually evolving societies. This choice of education has always been upheld by our governing laws.

- **the responsibility of parents not the state**, as confirmed in law. If the state attempts to assume responsibility for ensuring suitability of education for all children, it must also then assume liability for every case where school provision fails to meet a child's needs and fails to provide them with a bespoke education that is suited to the age, aptitude and ability of each child. At present, parents cannot sue schools when they fail children because, legally, responsibility for suitability of education remains with the parents, as they chose to send that child into the school and are able to remove them. If authorities shift responsibilities to assume that the duty to ensure suitability is theirs, then they leave themselves in a vulnerable position for legal action when their provision is not suitable.

- **does not routinely need oversight or inspection**, as not only is that unlawful, it damages the natural process as that inevitably involves conscious or unconscious comparison to school-related processes or end points/targets, which are not applicable or helpful outside of the school setting.

- **not to be discriminated against**. Home educators so often face prejudice and bias from people in various positions of "authority" because of preconceived ideas and lack of understanding, knowledge or experience, prejudice that would not be tolerated against any other demographic group in society.

- **not to be treated as something to be suspicious and frightened or or concerned about**. Home education is simply parents raising their own children. For home educating parents, education is simply a natural part of parenting.

- **not the same thing as "homeschooling"**, as experienced during lockdown. The "homeschooling" of covid times saw children learning from home with pre-defined work and set timetables, online/ recorded lessons, no social interaction, overseen by stressed parents often also working from home. This is, of course, a completely different process from elective home education where families have made a conscious, informed choice and where the learning incorporates a wealth of different styles, stimuli, experiences, groups and activities based on each child's individual needs and interests.

- **not necessarily school-at-home** – as mentioned above, a common misconception about home education. The beauty of home education is that it is personalised and flexible. Most home educators use a variety of different approaches, tailored to their children. One home ed day might look completely different from the next and rarely features children sat at desks for long periods, instead learning often takes place in a variety of different settings and modes.

**Notes for reference regarding the report written for the EDUCATION OVERVIEW AND SCRUTINY COMMITTEE 1 FEBRUARY 2024**

[\(Public Pack\)Agenda Document for Education Overview & Scrutiny Committee, 01/02/2024 10:00 \(torfaen.gov.uk\)](#)

We fully appreciate that the focus of this report is on persistent absenteeism from schools, however it does appear on reading this document that there is some conflation between **school absenteeism** and **elective home education**. Children who are electively home educated are not on the school roll and thus the concept of absenteeism in relation to home educated children is inappropriate and inapplicable to these children, neither are they the responsibility of the local authority. Educational psychologists and home educators alike find it both confusing and intriguing that authorities often look to find the answers to school absenteeism in a community which exists apart from the school system, rather than scrutinizing that system itself. Furthermore, conflation of children enrolled at school but failing to attend school and children who have deregistered or never been registered at school due to EHE only leads to further misunderstandings of both parties, which ultimately does little to support those school children who may require additional support due to poor attendance.

There may of course be reasons why parents choose to deregister their children from school that may overlap with the reasons that children may have difficulty attending school, however if authorities wish to better understand the reasons why parents choose to deregister then any requests for information regarding this must be on a purely voluntary basis and conducted in a way that allows parents to freely express their experiences without fear of negative repercussions for or impressions of their family. Thus, information gathered on reasons for deregistration as part of any informal enquiries authorities may make of home educating families may not be the most reflective of their actual experiences, especially given the private and sensitive nature of the reasons for deregistering. If authorities want to glean a better understanding of the reasons for deregistering in order to improve provision in schools, this information should be gathered separately and on a purely and clearly voluntary basis, without inference of home education being a second best or less desirable form of education in the eyes of the authorities.

Although there is little reference to home education itself in the report, there are a few very concerning errors and misconceptions that are vital to clarify to ensure a respectful and accurate depiction and discussion of EHE, particularly in reference to Point 4.19.

- “Policy ensures that children who are educated at home receive a suitable education while safeguarding their welfare and well-being”. This misunderstands the legal role of local authorities in relation to home education.
  - The duty of local authorities as given in the Education Act of 1996, s436a, is to establish identities of those who are not in receipt of a suitable education. There is nothing in the Education Act, or any other primary legislation, to say that authorities have a duty to ensure that all children, including home educated children, are in receipt of such an education. This seemingly subtle difference is profoundly significant. When authorities know that a child is electively home educated and therefore not a child who is missing education, their legal duty ends. Authorities do not have a legal duty to monitor home education or routinely screen safeguarding issues - unless there were a specific reason in an individual case to do so – just as authorities have no right to know what children eat at home, or other home arrangements, unless there is a specific cause for concern in a given situation. This is because education, like parenting, is a parental responsibility in law and authorities only act in individual cases IF there is reason to believe there is cause for concern.
  - This can unfortunately be readily forgotten in a mistaken assumption that education is a role and duty of authorities, as if authorities are somehow co-parents.
  - Furthermore, the caveat “as far as possible” in s436a of the Education Act is there to clarify for authorities that they must not breach other laws, principles and rights in any endeavours to identify such children, including the rights to privacy and the vital principles of informed consent and GDPR, to name just a few.
- The report states that, “The LA has a duty to be sure that the best interests of the child are at the heart of their education plan”, but the authority does not have such a proactive duty.
  - Authorities are only to act “if it appears” that a child is not in receipt of a suitable education - the reactive duty described in s437 of the Education Act of 1996.
- “A designated officer will conduct an assessment on at least an annual basis to determine if the home education being provided is suitable, efficient, and full time”.
  - This is not a legal duty under primary legislation and cannot be lawfully engaged in without fully informed consent. Authorities may update their records periodically, but the legal basis for monitoring home ed by periodically assessing it is extremely dubious. Given that the simple and singular lawful duty of authorities with respect to EHE is to establish the identity of children who are not in receipt of a suitable education, then once the authorities are aware that a child does not belong in this category, that they are not a child who is missing education (CME), there

should be no reason to suspect this is likely to have changed without evidence or reason to believe so.

- To routinely and automatically assume that parental provision has to be somehow routinely “reinspected” every year means that any previous categorisation of a child as EHE not CME is now being questioned without cause or reason to believe that it needs to be, as there are no routine reasons to believe “*it* (no longer) *appears*” that the child is not receiving a suitable education.
  - To routinely monitor educational provision in EHE and expect a parent to be regularly evidencing their provision when there are no grounds to progress to s437 of the Education Act would be highly questionable legally, and furthermore is not the appropriate way to build relationships of trust and respect with home educators. There is no legal duty to monitor the lives and experiences of home education including the perceived suitability of educational provision, as both parenting and education are the responsibility of parents and not the state. As above, authorities only have a reactive duty to act “if it appears” a child is not in receipt of a suitable education, not a proactive duty to inspect the provision for every child.
- *"Seeing the child and ascertaining the child's views will be a key factor in assessing suitability also. If the LA cannot conclude that a child is receiving a suitable education, or their welfare is at risk, it may take appropriate legal action... "*
    - Authorities “seeing” and speaking to every child without consent of the child and /or parents is not lawful, neither are forcing or coercing parents into meetings under the guise of some duty to assess the suitability of their provision in person. Neither are such meetings necessary. Furthermore, is it not helpful, as to do so is based on the assumption that parents are not seeking the child's best interests unless they can prove to authorities that they are, which is clearly not acceptable or an appropriately lawful approach.
    - In addition, the concepts of mandatory or coerced snapshots into children's lives would be a highly unreliable form of screening (even if they were legally and morally justifiable, which they are not).
    - Following the publication of the revised Wales EHE Guidance in May 2023, the Education charity Education Otherwise, successfully brought a legal challenge to the WG, which were forced to concede that mandatory meetings with parents and children would be unlawful. Moreover, the UNCRC, especially article 12, supports that, while children may be provided the opportunity to share views on their education, this should neither be insisted on or coerced.
    - Linking the concept of “seeing the child” with mentioning issuing legal proceedings in the following sentence is at best unhelpful and risks being misleading by potentially giving the false impression that legal proceedings can be issued if parents and children exercise their lawful rights to not consent to any such meeting. It is important for authorities to

ensure that any communications and comments that relate to the actual duties of both parents and local authorities are clear and accurate.

- We appreciate there has been some outdated documentation seemingly mistakenly released by the Welsh government that appears highly misleading on these issues, and we are in the process of addressing this.
  
- Likewise, the grounds for issuing legal action against parents, such as Notice to Satisfy or School Attendance orders are not accurately represented here. To clarify, authorities only need to be “satisfied” that there is suitable provision in place if in the first instance there was reason to believe that it was not in that particular case, and enquiries did not sufficiently satisfy the authorities that there was.
  - So, any requirement of authorities to be “satisfied” of educational provision does not apply routinely in every case because of their reactive not proactive duty, as addressed above.
  
- Furthermore, in Table 6, there is a typographical error, referring to new “requests” in relation to children “coming off roll” to home educate. Deregistration is an **instruction**, not a “request” (for mainstream schools). Parents and children do not need permission to electively home educate, as education is a parental responsibility. Deregistration is a parent deciding to reverse their previous decision to delegate the delivery of education to a school, but responsibility has always remained with the parent. Whilst this may seem an issue of semantics, it can be a vital one in underpinning misleading perceptions of the role of the state in education.

We hope that the information provided here is received in the manner it was intended – to aid in a better understanding of home education (and its distinction from other matters, such as school absenteeism) and to improve relations between LAs and the home educating community. We trust that the above will be of use in any discussions you have as councillors regarding these matters. There are of course potential issues that may cause parents to choose to deregister from school, which are beyond the scope of this initial letter, but, whilst an increase in deregistration may well be a red flag of potential shortcomings within the school system, of areas where the school-system is sadly not able to meet every child’s needs, please ensure that home education itself is not a cause for concern, it is not something to “fear” despite the unfortunately fearmongering rhetoric and negative image of EHE that we sometimes see portrayed in the media.

May we also suggest that if council plans to discuss matters relating to elective home education, that experienced home educators within the area are invited to attend and contribute, as is often good practice when discussing any minority groups or matters where the decision-makers may have limited personal experience or knowledge. This would help ensure all key information is accurate and that any discriminatory or fear-based rhetoric that we have sadly seen elsewhere is not given place.

Please do let us know if we can help with any further information.  
We look forward to your response on the above and hearing the outcomes of the discussions at the meeting of the 1<sup>st</sup> of February, 2024.

Kind regards,  
Home Ed Cymru