

Regarding the “child-friendly” children and young people’s targeted consultation on proposals for “children missing education” databases.

Dear Ms Neagle,

We at Home Ed Wales had hoped that our initial contact with you would have been on a much more pleasant and encouraging note than the reason for this letter, as sadly we have to ask for your help and intervention as we place a formal complaint about the conduct and content of the “child-friendly” version of the “children missing education database” consultation.

We, as a large support network for home educators throughout Wales, ask for your personal input and action on this urgent issue, rather than a deflection to Equity in Education, especially as there are only 20 days left in this consultation.

We are, of course, aware that this is something that was instigated before your time in office, and we trust that you will appreciate the unacceptable nature of the problems with conduct and content, as we share with you how children and young people in Wales have been either excluded or misinformed.

We request that the documentation for that “child-friendly” “targeted” version of the consultation on “children missing education” be immediately withdrawn for review and reflection, that it be re-written and then circulated in a way that makes it accessible for all children in Wales, not only a selected, invited, limited subgroup- and most especially made available to those children who would be most impacted by the proposals. The consultation process will of course need to be extended to allow time for this.

The problems that need to be addressed and rectified include how the consultation has only been accessible to a selected limited population of children and young people, as far as we can ascertain by invite only, with no way being made public for other young people in Wales to respond, including home educators who would be most impacted. This selective harvesting of data is clearly unacceptable as are other issues of the conduct of this “child-friendly” consultation. The consultation cannot claim to want to hear the voices of children but only give a select few the opportunity to speak. Likewise, there are significant issues with the content of both the “survey” questions and the accompanying information document that is meant to guide and inform the understanding and response of children and young people.

To address each of these problems:

**1. Issues with content of the information sheet on the child friendly version.**

- a. The information sheet conveys a highly stigmatising and discriminatory approach, in written content and in demeaning visual imagery. The imagery confers the message that children are invisible and objects of suspicion

simply because of not being on a particular list in a local council. The document, including the imagery, create and perpetuate negative stereotypes in the minds of children and young people, creating a climate of suspicion to feed into the next generation.

- b. No evidence is given, only insinuations.
- c. This has to raise the question of how can the “*targeted*” consultation be “*child-friendly*” when its core information document stigmatises children, creating a climate of suspicion and “othering” about children, just because they’re not on a council’s list.
- d. It also surely has to raise the question of how can there be a claim to be concerned about the concept of “ghost” or “*invisible*” children, as mirrored in the imagery of the information document, when the highly selective children and young people’s consultation treats home-educated children that are already know to their LAs as “invisible” by not involving such families in the “targeted” consultation, nor providing access to it when this has been asked for.
- e. It also has to raise the question of just how useful council databases/lists/registers are, when no local authority in Wales has used such existing collations of contact details to notify and inform home educating families of any feature of this consultation, let alone share “invitations” to complete this “*child-friendly*” consultation.
- f. This cannot be because of any claims that this consultation is not to be related to home education, when even the initial announcement of these proposals to the Senedd clearly stated they were because the government “*really do not have a handle on*” the home educating community, believing that the government had to know how many families were home educating. <https://record.assembly.wales/Plenary/4901#A10000068>.
- g. Problems with what the “Child-friendly” version (CFV) information document **does not say**:
  - i. The document does not explain the misleading nature of the title of the databases. These cannot be “children missing education” databases as the vast majority of children who are missing education are on school rolls and therefore would be immediately excluded from being placed on such registers. The proposals consider being on a school-roll to always equate to receiving a suitable education, regardless of attendance, regardless of unmet needs or the many reasons that children on school rolls miss having a suitable education.

- ii. The document does not inform children and young people of basic aspects of the proposals, such as the intention to mandate that GP surgeries must be data-holders and data-providers to the council over non-healthcare related issue.
  - iii. Neither does the consultation warn children and young people that the enactment of the relevant legislation would enable powers to be readily granted to mandate the use GP surgeries and other health care sources as data-sources on a whole range of other issues, including opening up the realm of monitoring use of and engagement with various aspects of healthcare.
  - iv. There is no conceptualisation of the issues of breaching confidentiality of access to healthcare or of overriding the vital principle of informed consent. There is no conceptualisation that using healthcare services as data-sources without consent impacts how safe people feel accessing healthcare and impacts their experience and access to it.
  - v. There is no reference to the fact that this consultation was run previously on extremely similar proposals and was met with considerable opposition with an extremely wide range of issues, concerns and problems with the fundamentals being raised.
  - vi. There is no reference to how attempts elsewhere at mandatory data-sharing or confidentiality breaches have failed due to damaging effects on the community involved and unsurmountable risks of data-breaches.
  - vii. A further example of the vital omissions of information is the lack of reference to the extensive range of data to be gathered and held without consent on such databases. Neither does it give any reference to potential impact on all adults whose data would be held on such under points 5-7 of the schedule, or what that data would be used for.
  - viii. The document does not give any indication of risks or negative implications of the proposals. It is extremely one-sided. It reads, to be frank, as a propaganda piece rather than an informed evaluation, or as a genuine desire to be guided by the views and opinions of others.
- h. Problems with what the CFV information document **does** say:
- i. The document tries to gain approval for increased powers to meet duties that the authorities do not actually have in law.

- ii. The documentation deliberately misleads children and young people about the actual duties of local authorities by misquoting the Education Acts.
- iii. The documentation incorrectly cites the Education Act of 1996 as saying/meaning that councils must “*make sure all children in their area have an education that meets their needs*”.
  - 1. It does not.
  - 2. There is no such legal “duty to ensure every child has a suitable education” as cited by Welsh Government elsewhere. This is a misrepresentation of the Education Act which only instructs local authorities to act in a reactive capacity “*if it appears*” such provision is not in place – if there is good reason to believe this is the case.
    - a. This narrative originated with the statement to the Senedd in 2018 by Kirsty Williams, the then Education Secretary, that included her opinion that “*I believe that we have a moral duty to ensure every child has a suitable education*”. The terms “*I believe*” and “*moral*” in that statement of personal belief were subsequently omitted from statements from the department of Equity in Education, such as here, giving the impression of a legal duty that does not exist.
  - 3. Increased powers are therefore being sought to fulfil a duty that does not exist.
  - 4. Likewise, the “*child-friendly*” version states, “*The Education Act 2002 says local authorities must: make sure all children in their area have an education and are safe and well in all areas of their life*”.
    - a. This is a misrepresentation of the law.
    - b. It refers to s175 of that Act, which states, “*A [F2local authority] shall make arrangements for ensuring that [F3their education functions] are exercised with a view to safeguarding and promoting the welfare of children*”.
    - c. This states “*with a view to*”, i.e., be mindful of in what you do.
    - d. It does not say or mean “*must ensure*”, nor does it say “*all children*” or “*all areas of their life*”.
    - e. In addition, the section of legislation refers to children who have been placed into the care of institutions with governing bodies. It relates to the conduct of those bodies towards those children while they are in their care. S175 was added to the 2002 Act following the murder of a schoolchild as until that point there was no legal duty of safeguarding on schools.
    - f. It does not universally apply to ALL children, neither does it confer a coparenting role or duty onto local

authorities.

- iv. The proposed concept that local authorities have to ensure all children in their area have an education that meets their needs would present very interesting problems if it were true. It is not a legal duty, and neither would it be attainable. What is true is that the LA must make sure that, for those families who wish to use them, that there are sufficient school places of an appropriate standard, alternative provision must be of a high standard, additional learning needs must be met, safety in the school environment ensured and suitable travel arrangements be in place.
- v. Local authorities often fall short. There are many registered pupils missing out on education because they are not attending school including pupils unable to attend because of mental health issues or unmet ALN or because transport is not available. However, the children missing education database is not for these children. There are also many pupils in alternative provision on part-time timetables. The database is not for these children either. Instead, it is proposed that the database is used for children whose home education might be judged negatively in future on the grounds that these children are “potentially missing education”.
- vi. If there were such a legal duty on local authorities to ensure the wellbeing and safeguarding of all children, then all local authorities would be “breaking the law” if they don't have sufficient school places, or if their schools are failing, or if EOTAS is not available or is insufficient, or if any additional learning needs are not met, or if school transport arrangements are inadequate. Local authorities clearly are not considered to be, demonstrating the lack of such a legal duty.
- vii. The misrepresentation of legal duties raises yet another question, that when existing duties are misrepresented and wrongly stated, then how can such authorities be trusted with even more powers to fulfil their actual ones.
- viii. The goalposts on what is expected and required of home educating families shift throughout the document.
  1. In the section entitled “*The Problem*”, the problem is claimed to be that unless parents told the local authority they are home educating their child the LA wouldn't know about them.
  2. In the next section, entitled “A Solution”, the document states that even if parents do tell the local authority that they're home educating their child (for example in response to a query what

arrangements have you made for your child's education) it will be too late, they'll already be on the database.

3. Now, in order to get off the database the child needs to be not only known to be home educating but “*known to be having a suitable education at home*”.
- ix. Likewise, the goalposts shift throughout the document on who the databases are of, with references about databases of children changing to references such as “need to follow up with **families** on the database” by the section entitled “*A Solution*”, connoting investigations of families rather than of education.
  - x. The concept of the database consisting of children “*not known to the local authority*”, as stated in the paragraph entitled “*A Solution*” is rather contradictory. It would seem to be suboptimal drafting if this is meant to refer to children who were not previously known to the local authority.
  - xi. There is a puzzling and concerning reference to information being gathered from “*nurseries*” in the paragraph entitled “*How It Works*”, given that the database is meant to be of children of “*compulsory school age*”.
    1. It is unclear if this is a mistake or if it is the government’s intention to collect data on children who are not of compulsory school age too.
    2. If so, no information is given in any of the consultation documentation of a purpose for collection of data on such children given that the concept of “*children missing education*” only applies to children of compulsory school age.
    3. It is unclear if the product of this extensive data-sweep would be to create sub-lists and sub-databases that have not been mentioned or named.
  - xii. The section entitled “*Checking information*” mistakenly states that the lists will be used to “*check registers and see if the child is in school*”.
    1. This is more than a simple semantic error, it demonstrates a vital failing of the proposals that the document does not address.
    2. The proposals do not intend to check for children’s attendance in school, with those with low attendance being placed on such databases, as these children would be missing education by definition, if their educational provision is school based.
    3. However, no child on a school roll would be placed on these databases, even if have 0% attendance. The databases are not of children missing education.

- xiii. The section entitled, “*Adding names to the new Database*” states, “*If they find a child who is not getting an education or the local authority is unsure, their name would be added to the Children Missing Education Database*”.
1. The document does not clarify to children and young people that the only reason that a local authority may be unsure is because the proposals do not allow them to accept a parental word that they are, because the proposals mandate that parents are not believed and that, as the impact assessment of the main consultation states, children can only be removed following “formal enquires”.
  2. The only reason LAs are “*unsure*” or “*unable to establish*” is because the LA is being induced to believe that a formal assessment is necessary, even when parents inform them or confirm that they are home educating. This is not conveyed in this document.
- xiv. The document does not clarify that the proposals by setting this requirement mean that children who are receiving a suitable home education are on such databases, nor does it address the error of progressing immediately to “*formal enquiries*”.

## **2. Issues with content of the “survey” questions**

- a. The use of the term “*survey*” in both the online questionnaire format and the pdf is confusing and potentially misleading. Children and young people are not told how the answers they do or do not provide will be used, including if or how their answers would feed into a government consultation. They are not told how the government intends to portray this data, or where that interpretation will be shared and used.
- b. The “*survey*” contains questions that cannot be answered without the answer conveying agreement with the proposals or passivity towards them.
  - i. For example, question 4 does not contain any option to express disagreement with the fundamental principle.
    1. It asks – “*Do you think the name, address, gender and date of birth of a child is enough information to help them find children missing education?*”
    2. One can only answer
      - a. “*yes*” – implying that agree with such data collection from LHBs,
      - b. “*no*” – conferring that you believe it should happen even more often and therefore agree it should be collected,

- c. or “*don’t know*” meaning have no view of relevance, which confers the permission to do whatever is wanted.
  - d. There is no way to respond to indicate disagreement with LHBs being used in such a way.
- c. Other questions cannot be answered because the wording and phrasing is too unclear. For example:
  - i. Question 2: “*Do you think this will help local authorities make sure children are cared for, safe and having their needs met?*” is not a question about missing education. It is also very confusing for respondents to speak of just “*helping*” local authorities when the information sheet presents the law as saying local authorities **MUST** do this.
  - ii. Question 8 refers to “*young parents and carers*”, but quite what is meant by this is very unclear. Is this a typo, and it should read “your parents and carers”? Or does the “survey” only seek information on how, eg teenage parents would be impacted but not parents who are not “young”? Or are does the question refer to “young carers” – which is a different concept to “young parents”? Thus, this question cannot be properly answered.
- d. Other questions cannot be answered as the information in the question and in the information document is incomplete.
  - i. For example, Question 3 makes no reference to the proposed mandate on GP service contractors.
  - ii. The statement in section “*Some last questions*” of “*Some people might need more support to take part and get involved in an education*” is not only ambiguous but would seem to refer to a completely different topic to the parallel question in the main consultation.
    1. The main consultation asks how those with protected characteristics would be negatively impacted by the proposals themselves.
    2. This question would seem, instead, to infer that those parents who have protected characteristics are less likely to be able to deliver a suitable education to their families – which would be encouraging children and young people to think in a discriminatory and stereotyping manner and propagate such beliefs.
    3. It could also be inferred to mean that parents of children with such characteristics are less likely to be meeting their children’s needs, which is also discriminatory. To ask children to name groups of society who they think are less able to provide a

suitable education would not be acceptable, yet this is one ready interpretation of this question.

4. At best, the ambiguity of such questions risks encouraging prejudicial attitudes, it could even potentially be seen to be planting the seeds of such concepts into young minds.
  5. That of course would be clearly unacceptable, which is why this documentation must be immediately removed to allow time for reflection and reframing of the narrative.
- e. More questions still are inappropriate as they are leading questions.
- i. For example, Question 1: “Do you think this will help local authorities know about all children in their area and make sure they get an education?” is presented as if parents OUGHT to have to tell people what they are doing, as if they are doing something wrong by not telling the council about their family life.
  - ii. Question 6 – “We think local health boards should have to share information once a year. Do you think that’s a good idea?” is not only an extremely leading question, it also omits to mention that GP service contractors would “have to share information” too.
- f. And many questions cannot be answered within the life experience and understanding of the targeted consultation which has seemingly excluded the children and young people that the proposals are targeted at.

### **3. Issues with conduct - Lack of transparency and accessibility**

- a. The former Education Minister claimed a “targeted” CYP consultation would be to **“ensure that their views are heard...so that we can engage the widest audience possible”** (<https://record.senedd.wales/Plenary/13744#C576197>).
- b. However, despite keenly watching out for the opportunity for home educating young people to also be able to respond to this consultation, we only found out about this information document of the CFV and the “survey” by accident, gathering that an organisation funded by Welsh government, Children in Wales, were sending out an information sheet and online “survey” to selected members. We could find no public information about this on their website or indeed on the Welsh Government’s website, including the consultation page; indeed, there is still no public information on either website, with only 20 days until the close of the consultation that has been running since January.
- c. Having learnt by accident of what appeared to be likely to be the CFV that Mr Miles had promised, but being puzzled as to whether or not this was the main one as he had also promised that this was to reach the “widest possible

*audience*”, we immediately enquired with EIE on 24<sup>th</sup> of March, 2024, to ask if there were any further plans that they would share on such a “*child-friendly*” consultation.

- i. Some days later, EIE responded with the pdf information sheet, “for your information”, with the comment that they had used their “*networks*”. However, no way was provided for home educating children or young people to be able to respond to this “*child-friendly*” consultation or “*survey*”, nor was the link for the online survey shared that had been sent by Children in Wales to selected respondents.
- ii. Despite our immediate further enquiry by return email on the 27<sup>th</sup> of March 2024, we still have had no response from EIE on how children and young people such as home educators can respond to this “*child-friendly*” consultation, despite the deadline rapidly approaching.
  1. Neither have EIE given any information on what “*networks*” they have used to harvest responses to this CFV, despite this information being requested.
- d. Even if the government had provided a link for children and young people to be able to respond to this consultation, it is still unclear exactly what role this survey fulfils.
  - i. There is no indication if each response to this survey counts as a stand-alone response, equal in weight to responses using the main consultation response form, or if these responses are somehow given a different consideration or weighting, or if they are collated by the “*networks*” to then provide their own response to the consultation or used in other ways.
- e. The selective harvesting of data mean that the “*targeted*” consultation is aimed at a different group than the proposals themselves are targeted at.

Thus, not only is the CYP consultation not accessible to the children most affected by the proposals, it is also not fit for purpose even if it were accessible. Instead, there is at the very least the appearance of selective harvesting of data, the collection of data that was elicited using false and misleading information, and both the stigmatisation and exclusion of the children and young people who would be most affected by these proposals.

Therefore, the required response to this formal complaint is that:

1. This discriminatory, stigmatising and misleading document must be immediately withdrawn.
2. Responses elicited in relation to this document must be disregarded as these were obtained using misleading and discriminatory information.
3. A more appropriate, balanced, respectful document must be produced, one that is free from stigmatisation, false conflation and misrepresentation.
4. This must be made readily accessible to the general public, including engaging with home educating communities and individuals around Wales.

5. Thus, the consultation process must be paused to allow this failure of due process to be addressed and rectified. As a minimum, the consultation deadline must be extended by a further 12 weeks from the date of the enactment of an appropriate children's consultation.

It is indeed very regrettable that our first communications with you personally in your role as Cabinet Secretary for Education are to bring a complaint to your attention. We would of course have far preferred to be corresponding on a more positive topic or note. However, we trust that by bring matters to your attention that require urgent action, by highlighting issues of what we trust would be shared concern, we are building not only healthy foundations for constructive future relationships but also bridges rather than walls to helpful communication.

We look forward to your help in addressing this urgent matter,

Kind regards,

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