

P-04-646 Petition against Welsh Draft Non-statutory Guidance for Local Authorities on Elective Home Education – Correspondence from the Petitioner to the Committee, 08.07.15

The published draft guidelines do not reflect the previously strongly stated views of those home educating families. We believe that these draft guidelines are poorly written, misleading and likely to lead to further breakdown in relationships between home educating families and local authorities.

We call upon the Welsh Assembly Government to retract the draft guidelines as not being fit for purpose. Instead local authorities should work towards demonstrating their knowledge of the existing law on home education, and adhere to the existing, clearly defined guidelines.

1. We are concerned that areas of the new Guidance overlook part of the Education Act 1996 s436A:

(2)In exercising their functions under this section a local education authority must have regard to any guidance given from time to time by the Secretary of State

The relevant guidance is Statutory guidance to help prevent children and young people from missing education, Welsh Assembly Government Circular No: 006/2010 which states:

1.22 The duty does not apply to children and young people whose parents have chosen to electively home educate them. There is no such duty to identify the suitability of the education.

The parts of the new guidance which ignore this are as follows:

Page 7: 'Under section 436A of the Education Act 1996, local authorities have a duty to make arrangements to identify children not receiving education and the suitability of that education'.

Page 9: 'The local authority should consider whether there is existing evidence to indicate a cause for concern over the withdrawal. Advice should be sought from education welfare services where there are concerns'. There is no mention that local authorities should assume a suitable education is taking place.

Page 22: *'local authorities have a legal duty to establish the identities of children who are not registered at school and not receiving a suitable education'*.

Page 22: *'It is recommended that an initial meeting take place with families to discuss their provision and any advice and support needs they may have'*. This is monitoring. After the initial confirmation of EHE status local authorities should revert to the aforementioned guidance 1.22.

Page 22: *'Thereafter, it is recommended that the local authority should seek to make contact with home educating families on at least an annual basis. These meetings should be seen as an opportunity to provide information and support to home educating families, to listen and respond to any concerns that they may have, as well as considering evidence that a suitable education is being delivered'*. This is routine monitoring with no basis in law. Evidence should not be sought unless there are concerns a suitable education is not taking place.

Page 23: *'local authorities do not have the right to insist on observing education in the home, and where a parent elects not to allow access to their home, alternative arrangements should be made'*. This implies local authorities have the right to routinely monitor. Evidence should only be sought where there are concerns a suitable education is not taking place.

2. Page 8 states *'Parents whose children are registered pupils at a school should ensure that their names are removed from the school admissions register when they withdraw them from school to home educate to avoid being liable to prosecution for failing to ensure their child's regular attendance at the school where they are registered'*. This contradicts the Education (Pupil Registration) (Wales) Regulations 2010 s8(1)(d) whereby it is the duty of the Headteacher to remove the name of the pupil from the school register.

3. Page 9 states *'Under section 437 of the Education Act 1996, where it appears to a local authority that a child of compulsory school age is not receiving suitable education, either by regular attendance at school or otherwise, the local authority may serve a notice on the parent requiring the parent to satisfy them (within a period of at least 15 days specified in the notice) that the child is receiving such education'*. This should specify that it is a period of 15 school days.

4. Flexischooling is not mentioned.

5. Page 2 states *'The overriding priority of this approach is to secure the best outcomes for children and young people who are electively home educated through developing constructive partnerships between EHE families and local authorities'*. The document is not laid out clearly and is likely to confuse both local authorities and EHE families. Such confusion is likely to cause conflict and will not help foster good relationships. The document needs severe editing to ensure clarity.

6. Legal points need to be accurate and clearly stated.

7. Page 2 states *'This new guidance has been developed through an extensive process of engagement. This process of engagement has taken on board the views of local authorities, the elective home educating community in Wales, and key strategic stakeholders'*. We would question how extensive this engagement has been. Many EHE families in Wales have reported they received no communication regarding this, despite being 'known' to their local authorities. Also stakeholders who were interviewed report that their views appear to have been ignored.

8. Page 11 draws attention to UNCRC: *'Article 12 provides that children have the right to say what they think should happen when adults are making decisions that affect them, and to have their opinions taken into account'*. There is an incorrect implication here that parents and children are in conflict. Article 12 provides a right to express views and for due weight to be given to those views in accordance with the age and maturity of the child, not a right to have opinions taken into account. It also ignores Article 5:

'Parties shall respect the responsibilities, rights and duties of parents or, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'.

It also appears to contradict page 19 of the Guidance: *'It is important to keep in mind that the decision to home educate rests with the parents. Local authorities and schools should respect parental choice'*.

9. Page 12/13 states *'This should help to minimise the removal of children from education as an action of last resort by the family. Schools and local authorities should bear in mind that parents often opt for EHE as a last resort when such*

conflicts cannot be resolved. This implies EHE is regarded as second-class form of education and implies local authorities would prefer it if children were in school.

10. Page 15 mentions approaches adopted in Caerphilly. *'A special pre-Christmas event included a visit to the local zoo for the 'children who wouldn't get a school trip'.* This is exceptionally patronising to EHE families whose children regularly go out on visits. Many EHE families would reject the idea of a regimented 'school trip' which contrasts with the relative freedom EHE provides.

11. Page 15 states *'It is important to establish a consistent approach towards home educators across Wales. Many home educators will have moved from one local authority to another'.* Yet Page 16 contradicts this by stating *'Working on a regional basis, consortia could formulate their own regional responses to EHE tailored to the communities within their area, working with partners on a regional level'.* It is imperative that local authorities adopt a consistent approach to EHE across Wales.

12. Page 17 states *'In addition, it is recommended that local authority officers, in the course of their engagement with these groups, raise awareness of opportunities to undertake training on safeguarding and child protection that are already available to a range of practitioners working with children and young people'.* There is concern that training people who run local EHE groups in child protection is likely to break down their relationships with families who may feel they are now under suspicion simply for choosing EHE.

13. Page 22 states *'The views of home educated children and young people regarding the education they are receiving, their preferences, aspirations and ambitions should be discussed in these meetings'.* This implies children should be compelled to share their views with local authorities – there is no legal requirement for this.

14. Page 24 states *'local authorities should also inform parents and, where appropriate, their children of possible problems that they might encounter if their qualifications are not sufficiently recognised by employers, or further or higher education establishments'.* Informing children is the role of the parent; this usurps that role.

15. Page 28 states *'It is of great concern to many local authority officers with responsibility for overseeing EHE that there are some children and young people living within their local authority area that they are either unaware of, or have been unable to see'*. Firstly there is no responsibility for the local Authority to 'oversee' EHE, that is the role of the parents. Secondly local authorities have no legal remit or duty to 'see' children.

16. Page 28 states *'Tracing children and ensuring that they are safe is a real challenge for local authorities'*. Local authorities have no proactive duty to make sure children are safe and no legal remit to do so.

17. Page 28 states *'It is the lack of visibility of some EHE children that often concerns many local officers that support the EHE community'*. EHE children are not invisible. They are often out in their local communities being seen by a wide range of individuals including – but not exclusive to – health professionals, tutors, neighbours, leaders of organised activities such as Scouts etc, staff at shops and educational facilities, and the wide network of other EHE families.

18. Page 32 states *'Home educating parents need to be made aware that professionals involved in truancy sweeps may need to verify any information given to them in these circumstances'*. If a child identifies themselves as EHE then no further information should be sought as there is no legal basis for verifying information during a truancy sweep. There is no legal right to demand information from the child unless an officer suspects that they may have committed an offence. Truancy is not an offence committed by the child.

19. Page 3 of the guidelines explains how they seek to 'build consensus and trust between local authorities and EHE families in Wales, and develop positive engagement and appropriate support'. However there is an overwhelming view that the thrust of the document is about local authorities establishing a hierarchical system of control and monitoring over EHE families. There is little to promote 'consensus' or 'trust'.