

**P-05-922 Withdraw the proposed home education guidance & P-05-923 Are you listening to us? Home Education Rights and Respect!, Correspondence –Children's Commissioner for Wales to Chair, 04.03.20**

Comisiynydd  
Plant Cymru

Children's  
Commissioner  
for Wales

To: Janet Finch  
Saunders, AM

Chair of the Petitions  
Committee

Via email only

04 March 2020

Dear Chair,

**P-05-922 Withdraw the proposed home education guidance & P-05-923 Are you listening to us? Home Education Rights and Respect!**

Thank you for your letter dated 25<sup>th</sup> February 2020, regarding the above named petitions. I was aware of both petitions being submitted and have been following their progress with interest.

As regards P-05-922 and the concerns about legality of the proposed guidance, this is something that I discussed in my scrutiny session with the Children, Young People and Education Committee on 6<sup>th</sup> November 2019. I noted that I would expect the Welsh Government to have had their own legal advice before issuing draft guidance, and that I would expect them to be responding to the concerns raised by these petitioners and others regarding that guidance. Full details can be found in the transcript at paragraphs 208-209<sup>1</sup>. I am unable to give legal advice as part of my role, and would not be party to any advice that the Government has received, so I am unable to develop that point further.

I did however submit a full response to the consultation on that draft guidance, and I will be responding to the current consultation on the database regulations that accompany that guidance in due course. There are consultation events running over the next month which I would encourage anyone with concerns or views to attend in order to express those views. There are also sessions for children aged 11+ to attend to share their views. More information can be found on the Welsh Government website<sup>2</sup>.

Leading on from this, P-05-923 raises a number of issues regarding the draft guidance, notably that it is hostile to home educators, that there is a failure to support and protect home educators, and that undue pressure may have been exerted by my office in relation to this guidance.

To respond to the last of those points, I would refute any suggestion that I have coerced the Government into actions on this or any other policy area. However, in line with the legislative expectations of the Children's

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<sup>1</sup> <https://record.assembly.wales/Committee/5694>

<sup>2</sup> <https://gov.wales/sites/default/files/consultations/2020-02/invitation-to-the%20-table-talk-regional-workshops.pdf>



Tŷ Ystumllwynarth/Oystermouth House  
Llys Siarter/Charter Court, Phoenix Way  
Abertawe/Swansea SA7 9FS  
01792 765600

post@comisiynyddplant.cymru  
post@childrenscommissioner.wales

**comisiynyddplant.cymru**  
**childrenscommissioner.wales**

Commissioner, I have certainly exerted pressure on Government in order to bring about changes to the statutory framework around home education. The principal aim of my role as Children's Commissioner for Wales is to safeguard and promote the rights and welfare of children in Wales<sup>3</sup> and in exercising my functions I must have regard to the United Nations Convention on the Rights of the Child<sup>4</sup>. My remit covers all areas of the devolved powers of the National Assembly for Wales that affect children's rights and welfare and I must have regard to the basic human rights that children everywhere have:

- The right to survival;
- To develop to the fullest;
- To protection from harmful influences, abuse and exploitation; and
- To participate fully in family, cultural and social life.

I fulfil this role in a number of ways including publishing reports and position papers, meeting with officials and Ministers, and speaking out at public events or in the media. I am also required to submit an annual report to the First Minister each year, setting out a review of issues relevant to children's rights and welfare, and the First Minister is required to respond in writing noting the Government's plans or actions in relation to those areas. The First Minister is however entitled to reject any recommendation that I make; I am unable to compel the Government to take any particular actions.

Since my 2016/17 annual report I have made policy recommendations every year in relation to home education. In essence however, I have been making the same recommendation throughout, and have simply been following this through using the Report as an accountability mechanism, as I was concerned that the Welsh Government was not acting on the concerns that they themselves had recognised and accepted.

I am not against home education in itself and I know that many children thrive through their home education. I want to make sure that this is the experience for all children, wherever they are educated. My concerns were raised following a Child Practice Review relating to the tragic death of a home-educated child who was subsequently found to have been largely invisible to universal and statutory services. A report published by CASCADE on behalf of the National Independent Safeguarding Board also brought this topic firmly into focus<sup>5</sup>.

I had heard from a variety of professionals from different sectors, expressing their safeguarding concerns for children who are educated at home and who are not known to any statutory services.

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2000/14/section/72A>

<sup>4</sup> <http://www.legislation.gov.uk/wsi/2001/2787/made>

<sup>5</sup> <http://safeguardingboard.wales/2017/11/16/home-education-children-report/>

Cases coming through to my Investigation and Advice Team also highlighted the fact that many children and their families who are home educating are doing so because of their children's additional learning needs which they feel have not been accommodated by the school system, and in some cases they have been encouraged to deregister from a setting by the school or local authority, so called "off-rolling" practices.

In Wales, the United Nations Convention on the Rights of the Child (UNCRC) is incorporated into Welsh law. In accordance with those rights, it is important that children are consulted on their views of their own education regularly and that these views are listened to and taken into account.

In 2017 the Welsh Government response accepted my recommendation in principle and noted that they were reviewing the potential to introduce legislation to strengthen safeguarding in all services and agencies, not just education. As stated in my scrutiny session before the Children, Young People and Education Committee on 18th October 2017, my review of this policy area was ongoing over these years in order to ensure that actions were taken by Government to ensure that children's rights are being upheld. In July of 2018 I wrote to the Cabinet Secretary for Education to reiterate that this was an area in which I was considering exercising my statutory powers to review the exercise of functions of the Welsh Ministers in response to the death of Dylan Seabridge in 2011. I set out that I would conduct this review unless sufficient progress was made, with firm assurances on the Welsh Government's policy intent.

In 2018, I recommended that the Government should bring their policy proposals forward to consultation that year, with the aim of meeting the following three tests in full:

- Firstly, that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general;
- Secondly, that every child receives a suitable education and their other human rights including health, care and safety; and
- This cannot be achieved without the third aim, that every child should have the opportunity to be seen and their views, including their views about their education, and experiences listened to.

This was accepted by Government and I was given assurance by the then First Minister that the policy intent was to fulfil the three tests as set out in my recommendations. Government's response also noted an intention to strengthen the support to the home education community across Wales as part of their proposals.

In 2019, having been frustrated at a lack of progress from the Government on this issue, I recommended that the Government must implement statutory guidance giving effect to my three tests in full in 2020, to ensure children's rights are being respected wherever they are educated, as they had

committed to do the previous year. This recommendation was also accepted and the consultation on the draft guidance was launched around the same time.

In bringing forward any draft guidance, the Government is required to undertake public consultation, which they have now done and a summary report has been published.

In order to prepare my own response to that consultation and to inform my work in this area generally, I have met home educated children in a home-education group, and also in wider community events and meetings such as at an art event, at a national meeting for cub scouts, in a local authority youth forum, through Young Wales and at a national gypsy and traveller young people's event. I've heard lots of different views and experiences in those meetings, including those who welcome the proposals and those who are strongly opposed.

Below are two paragraphs of the introduction to my consultation response, which raise points that were raised to my office by home educating families and young people:

*"I am also disappointed by the lack of a wider support offer for home educating families provided by the guidance. The home educators' handbook draws together already existent services to which children and young people are entitled, and whilst it is helpful to signpost these, there is a lack of specific and bespoke offers of support for home educated children. Access is not being provided to log in to Hwb, therefore meaning access to Hwb is limited to publicly available resource and not the software tools and packages that login offers. The home educators' handbook makes it clear that families will still need to meet the costs of exams themselves and will still need to themselves contact examination centres to make a request to enter a private candidate. This is despite families explaining that difficulties around this process can create barriers for home educated young people to gain qualifications and their specific requests for help with this at events to inform the development of this handbook. There could be more practical information included in the guidance, such as how families can overcome some of these barriers and adding a link to a list of approved examination centres that could be accessed.*

*I would also like to see more support provided to home educated children and young people to access Relationships and Sexuality Education, and to access support for mental health and wellbeing, not just through therapeutic services but also through accessing services that will support positive mental health and wellbeing. These are elements that can be greatly enhanced in the home educators' handbook but should also appear in the guidance so that local authorities have clear instruction to signpost and support home*

*educated children and young people to have access to local support around these areas."*

I recognise that there is more that could be done to make it easier for young people to sit exams to get other resources and assistance they need. That's something I've consistently raised with Welsh Government and I understand that this is something they continue to work on.

I've also recognised that there can be tension between local authorities and families, as local authorities continue to have a duty to improve the well-being and provide support to all children living in their area. Throughout my engagement and written contributions, I have emphasised the need for local authorities to work with families and build up working relationships; this enables them to provide support to children and their families in a timely manner. I have also stated the importance of including the experiences and views of home educated young people in order to evaluate the guidance as it is implemented. Specifically I have requested that Government conduct a qualitative evaluation of introduced guidance that should include research about how children and young people experience visits, and how the experience of visits can be improved for children and young people.

It is fair to say that there remain areas of the guidance that I would like to see changed or strengthened in the guidance. I have discussed these in meetings with Welsh Government officials as well as in my written response, but this does not guarantee that these changes will be made. Whatever the final outcome, I think that clarity is important. In my view the Government needs to bring this work to a swift conclusion following the conclusion of the current consultation period, so that families and professionals are given clear information on the next steps.

It will be up to the Committee to decide how best to reconcile the issues raised in the two petitions, but I am unable to answer on behalf of the Government in relation to what has/has not been taken into account as they progress this work. As my published quarterly updates on the progress of recommendations will show, there are some areas that the Government does not accept and therefore these have not progressed at all<sup>6</sup>. I do expect the Government to listen to my views, as an independent children's champion, but I will always say that this is no substitute for directly engaging with children, young people and their families to hear their views also. My view is therefore one of many that should be taken into account as part of any children's policy development in Wales.

I recognise that there are strongly held views on all sides of this matter but it is my duty to speak out in relation to children's rights and welfare, wherever they

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<sup>6</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2020/02/Quarterly-Updates-January-2020.pdf>

receive their education. I would be happy to give further evidence to the Committee on this matter should this be requested.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sally Holland'.

Sally

Sally Holland  
Comisiynydd Plant Cymru  
Children's Commissioner for Wales