

The Welsh Children’s Commissioner is wrong to recommend that the home education model should be limited

The UK has historically given home educators a large degree of freedom in choosing the method and manner of their child’s education. Yet in February, the [Welsh Children’s Commissioner called](#)¹ for the Welsh government to do more to reform home education policy and enact the [Dylan Seabridge Child Practice Review recommendations](#).² Central to this was the recommendation that children’s voices and wishes should be heard and recorded by local authorities on an annual basis. As a ‘critical friend’ to the Welsh Government, the Commissioner advised that the United Nations Convention on the Rights of the Child (CRC) demanded a stronger State-led child focus on home educated children. She urged policy makers to increase the supervision of home educated children, even when parents are not suspected of inflicting harm.

In pushing this recommendation, the Commissioner urged the Senedd to reverse the presumption that parents look after the best interests of their children and provide a suitable education when they home educate - unless there’s evidence to the contrary. She also assumed that the local authority should be the primary arbiter of children’s views and that these are more important than parental views.

Yet, home educators should take heart. The Commissioner’s legal arguments were weak.

First, the report’s recommendation goes against the legal presumption that parents *do* act in the best interests of their children when home educating. Under section 7 of the Education Act 1996, it is parents’ sole responsibility to ensure that children receive efficient full-time education suitable to their age, ability, aptitude, and specific educational needs – “*by regular attendance at school or otherwise*”. This judgement call lies within the sole hands of parents. The assumption underwriting this is that parents have the primary responsibility to determine the method of education that is most suitable to their child. Without risk of harm or poor education, local authorities should not intervene. The Education Act 1996 gives local authorities [powers to address these issues](#)³ if they arise. This is also written into the [Welsh government’s statutory guidance](#).⁴

Secondly, neither the CRC nor any other international legal text relevant to the UK assumes that government employees should intervene in private educational provision. Parents are legally recognised as primarily responsible for the ‘upbringing and development’ of their children, and the family stands as “*the fundamental group unit of society and the natural environment for the well-being of all its members, particularly children*.”⁵ The family is entitled to “*protection and assistance*” if they require it; yet, the State must respect parents’ ‘rights and duties’ without undue interference or intrusion. A child’s right to be cared for (primarily and predominantly) falls within the scope of parental oversight in international law.

Even when individual European countries have imposed outright bans on home education, there has been UN pressure to reinstate the model. For example, the UN Special Rapporteur on the Right to Education has [directly advised Germany](#)⁶ (which has banned home education since 1919) to reverse the ban and allow parents to formally teach their children within the home.

Third, the Commissioner’s assumption that the CRC requires public bodies to talk to home educated children under the ‘right to be heard’ is incorrect. This claim ignores at least two fundamental human rights that the UK is obliged to honour: the right to a private and family life, and the right to privacy. It is also not true to the plain meaning of the CRC text.

Article 8 of the European Convention on Human Rights (ECHR, which is directly applicable in UK) provides: “*There shall be no interference by a public authority with...this right except such as is in accordance with the law and is necessary in a democratic society*”. The European Court has held that this right, when applied to the topic of safeguarding, means that countries cannot presume that the interests of the child are different to those of their parents unless there’s clear and compelling evidence of harm. Yet, the recommendation for children to be interviewed outside their parents’ consent, and absent of any threat of risk to the child, introduces a “preventative” measure; it tries to introduce public authority interference in legitimate private activities without justification. This could infringe Article 8 and could create complications between the Senedd and Westminster. The [current legal challenge](#)⁷ to Holyrood’s law making regarding the CRC should give the Senedd caution here.

The right to privacy is also a core human right. The CRC provides “*no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence*”. Underlying this, “*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection*”. This means that children’s physical and mental immaturity places parents as their privacy shields until they can appreciate their evolving capacities. As children are forming their own private views, parents should inform, guide and nurture development. Any intrusion on a child’s privacy when overseen by parents, such as by local authority interviews in the absence of harm or blatantly negligent educational provision, could disproportionately interfere with this principle.

Moreover, the Commissioner has misunderstood the context of the ‘right to be heard’ as a legal right within her report. The right was included in the CRC *primarily* for countries to acknowledge and encourage the voice of the child in ‘judicial or administrative proceedings’ on matters impacting them – including relating to health, living conditions, education, or protection. Whilst the [UN Committee on the Rights of the Child](#)⁸ has also acknowledge that the ‘right to be heard’ should *additionally* be relevant to school and education, it has advised that the right does not include views about the type or method of education provided to the children. Instead, the guidance highlights situations of “*authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms*”, where a child’s voice should be heard and listened to. It encourages governments to build opportunities for children to speak about their negative experiences for the “*elimination of discrimination, prevention of bullying and disciplinary measures*” and also to participate in decision-making processes such as class councils, student councils and student representation boards to discuss school policies and codes of behaviour. This is a far cry from the Commissioner’s recommendations.

Therefore, the Welsh Children’s Commissioner will need to provide a more robust and legally persuasive case for the limitation of parental freedoms in home education if she wants to be successful in changing the law. Home educating families should continue to hold the Senedd to account to make sure that any proposed legislation is in compliance with national and international obligations.

References - Summary of a submission to the Welsh Government obtained by Families First in Education - Wales

- [1] https://www.childcomwales.org.uk/wp-content/uploads/2021/02/ReviewofWG_FINAL_ENG.pdf
- [2] https://www.whatdotheyknow.com/request/452376/response/1084174/attach/2/CYSUR%202%202015%20CPR%20Report%20080716.pdf?cookie_passthrough=1
- [3] <https://www.legislation.gov.uk/ukpga/1996/56/section/437>
- [4] <https://gov.wales/sites/default/files/publications/2020-09/statutory-guidance-help-prevent-children-young-people-missing-education.pdf>
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