



Families First in Education Wales

Website: familiesfirst.wales

Email: correspondence@familiesfirst.wales

Date: 30 November 2021

To: Jeremy Miles - Minister for Education

Dear Mr Miles,

Thank you for your letter of 28 October.

We very much appreciate your comments, especially the confirmation that the “Children’s Commissioner for Wales is an independent body that acts as a ‘critical friend’ to the Welsh Government.” We acknowledge that her views “do not necessarily reflect and should not be regarded as those of the Welsh Government.”

Even though that is the situation, the previous administration accepted on several occasions her three tests^[1] of what their policy on elective home education [EHE] should include. Of these, the third relies heavily on her interpretation of UNCRC Article 12, “that every child is seen and their views and experiences are listened to. This is essential for the first two tests to be met.”

The submission, which we have already provided to you,^[2] asserts that “Interference in the home education model could be incompatible with other human rights,” (Section ii) and “The CRC ‘right to be heard’ does not require home educated children to be annually interviewed by Local Authorities,” (Section iii). Whilst your recent reply lists the Welsh Government’s commitments through The Rights of Children and Young Persons (Wales) Measure 2011 and the Children’s Rights Scheme 2014, it does not directly respond to our chief concerns that the Children’s Commissioner’s three tests lie outside the scope of such legislation.

Further, we remind you that whilst you state, “the Welsh Government has adopted the UNCRC,” this is not directly applicable in UK domestic law. We are sure you will be aware that the Scottish parliament voted to fully ratify the Convention earlier this year, but their action was deemed unlawful by the Supreme Court in early October.^[3] There are therefore limitations on which aspects of the UNCRC the Welsh Government is able to act upon, and we are not aware that these have been taken into account in the CCfW’s three recommendations.

On 22 March the previous Welsh government, commenting on the Commissioner’s review of their functions in regard to EHE and independent schools,^[4] published a ten page response.^[5] On page 2, they listed the Commissioner’s second policy recommendation which in part states:

In respect of home education, there can be no further missed opportunities. This Review concludes that the time has come to introduce primary legislation in order to avoid the pitfalls around identifying, seeing and speaking to children that the Government has unsuccessfully grappled with throughout this Term.

To which that administration responded:

The Welsh Government agrees that there is a need for reform in the policy and legislative framework for Home Education and believes that the work carried out to date provides a solid foundation for future work in this area. Whilst we are unable make a commitment for a future Government, it is [sic] our intention to implement the reforms that we set out for delivery before the onset of the pandemic.

We would very much appreciate it if you would clarify whether the present Government sees the work of the previous administration as providing a “solid foundation” for future policy on EHE, and if it also accepts the Commissioner's three tests of any changes in regard to this.

The need for such clarification was highlighted on Friday 19 November when the Association of Directors of Education for Wales and the Association of Directors of Social Services for Wales released a joint statement calling on the Welsh Government to adopt the CCfW’s proposals.^[6]

Families First in Education Wales find this statement very troubling and are taking time to consider it fully before making a formal response. There is no evidence in the statement that either organisation has sought to engage with home educating families before making this comment, and therefore initially this appears at best to be an example of institutional “othering” of law-abiding citizens who are exercising their freedom to make choices which are different to those of the majority. We are concerned that should the Government seek to meet their demands, it would risk undermining the rights of minority groups to elect for a suitable education outside of formal schooling.

The ADEW / ADSSW statement does however emphasise how important it is that your office directly address the issues raised in our submission concerning the usage of the UNCRC by the CCfW in regard to the rights of electively home educated children. We therefore request a meeting with you personally, along with a representative of the NGO which is supporting us, to discuss these matters further.

In closing we appreciate your offer for representatives of our group to meet and discuss EHE in Wales with the appropriate officials from your Department, “to ensure the voice of those with ‘lived experience’ informs activity.” We would be happy to do this at some point, provided doing so does not distract in any way from our central concern in relation to the interpretation and application of the UNCRC with regard to electively home educated children. We believe this matter must be prioritised and discussed at the highest level.

We look forward to hearing from you.

Yours faithfully,

Families First in Education Wales

References

- 1] Home Education - Children’s Commissioner for Wales
<https://www.childcomwales.org.uk/our-work/policy-positions/home-education>
- 2] Submission to rebut the unjustifiable use of the UN Convention of the Rights of the Child by the Children’s Commissioner for Wales in her February 2021 “Review of the Welsh Government’s exercise of its functions.”
<http://familiesfirst.wales/wp-content/uploads/2021/10/Submission-To-Rebutt-FFiEW.pdf>
- 3] Supreme Court upholds challenge to two Holyrood bills - BBC News
<https://www.bbc.co.uk/news/uk-scotland-scotland-politics-58794698>
- 4] A Review of the Welsh Government’s exercise of its functions: Home education and Independent Schools - Children’s Commissioner for Wales
<https://www.childcomwales.org.uk/a-review-of-the-welsh-governments-exercise-of-its-functions-home-education-and-independent-schools>
- 5] ADSS Cymru and ADEW's joint statement on Elective Home Education
<https://www.adss.cymru/en/blog/post/home-education-elective-statement>
Full PDF statement:
<https://www.adss.cymru/en/blog/view/home-education-elective-statement/fileAttachment>