

Local authority education databases

i) Do you think that the information requested is reasonable and proportionate? What are the reasons for your answer?

It is neither reasonable nor proportionate, and highly likely to be legally challenged as any such disclosure is incompatible with Convention rights. The UK Supreme Court disposed of a similar scheme in Scotland, describing it as totalitarian, and since it is parents who have the duty to educate children in the compulsory years, there must be strong justification for gathering and sharing personal data on law-abiding citizens without their prior informed consent. A minister's 'assurances' are patently insufficient to evidence compelling necessity, as the Scottish government found (to the taxpayers' £500,000 cost) when it ignored the weight of legal opinion against its flawed, under-scrutinised legislation.

Excerpt from 'Home Truths' report (Scottish Home Education Forum, 2020):

"The 2016 Supreme Court 'named person' judgment [<https://www.supremecourt.uk/cases/uksc-2015-0216.html>] prohibited actions by public bodies that could arbitrarily interfere with Article 8 of the ECHR, holding that nothing in Article 3 of the UNCRC could extend the state's powers to interfere with the negative rights in Article 8 [<https://www.bailii.org/uk/cases/UKSC/2016/51.html#para89>] The court also re-affirmed the intervention threshold, already upheld by the 2013 Haringey ruling [<https://www.bailii.org/ew/cases/EWHC/Admin/2013/416.html>] which had found "serious departures from permissible practice [that] were unlawful" in relation to the council's data processing without consent."

ii) If you do not think that the information requested is reasonable and proportionate, what would you propose is the best way(s) for LAs to meet their duty to identify children of compulsory school age to ensure they are receiving a suitable education?

LAs can only do so within the parameters of overarching human rights and data protection legislation and the presumption of innocence still (allegedly) applies equally to all citizens. Parents have the legal responsibility to ensure the education of their children in the compulsory years, while the state has a (negative) duty to intervene where they have evidence of parental failure. Fishing expeditions are unlawful, as affirmed by CJEU case law. See above for legal references and the 'Home Truths' report for a full discussion of similar misrepresentation of the law in Scotland. [<https://leahurst66.files.wordpress.com/2020/03/200310-home-truths-full-research-report-converted-3.pdf>]

Question 2 – Currently there is a situation where LAs are responsible for children in their area that they do not know about. Under section 436A of the Education Act 1996 LAs must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but i) are not registered pupils at school, and ii) are not receiving a suitable education otherwise than at school. Do you think the database will help LAs, as far as it is possible to do so, to identify children not currently known to them and/or children missing education in their area? What is the reason for your answer?

No. The LA is not responsible for the education of all children in their area, no matter how many times the statement is made in an effort to misrepresent the law and circumvent Convention rights. Some families choose not to use schools, just as some choose not to eat meat or follow a particular belief. Such a totalitarian measure is akin to the butcher's federation seeking to justify creating and maintaining a database of vegetarians, with a view to changing their thinking on their chosen diet, simply because a minister mentioned salmonella in eggs.

Question 3 – Without a database, what reliable and consistent alternative method would enable the LA to identify a child they have no prior knowledge of?

They have no legal justification to conduct fishing expeditions and such activity would be incompatible with Convention rights and GDPR. See above for legal references and a reminder of where the duty to educate lies - with parents. LAs have consistently failed to educate children in schools and should be focusing attention on those who are seeking state provision, especially SEND support.

Question 4 – The draft Children Act 2004 Education Database (Wales) Regulations 2020 propose local health boards disclose the information in Schedule 1 to LAs annually. Do you agree with an annual return? If not, how often do you think this information should be provided to LAs and when would the most appropriate time be?

There is no legal basis to share such information, as confirmed by the UK Supreme Court in 2016, as to do so would be incompatible with Convention rights. The Scottish government had to repeal Parts 4 & 5 of its Children & Young People Act 2014 as the information sharing provisions were held unlawful. They went on to waste three years and public money seeking to circumvent that judgment with a remedial bill [<https://beta.parliament.scot/bills/children-and-young-people-information-sharing-scotland-bill>] before being blocked by the parliament and finally admitting defeat in 2019. The Welsh government should learn from that debacle and stop targeting a law abiding minority group for discriminatory treatment based on ignorance and prejudice.

Question 5 – The Draft Education (Information about Children in Independent Schools) (Wales) Regulations 2020 propose independent schools disclose the information in Schedule 1 to LAs annually. Do you agree with an annual return? If not how often do you think this information should be provided to LAs and when would the most appropriate time be?

No legal justification to do so, ever. The duty to educate is parental, and parents are entitled to use independent schools without their Convention rights, and those of their children, being subject to arbitrary interference, See above for legal references and David Wolfe QC's recently published opinion that the proposed regulations are unlawful.

i) local health boards

Wilful misappropriation of public money and resources through arbitrary interference with Article 8 ECHR, Article 16 UNCRC and breaching of GDPR. Legal challenge would be likely, with the potential for more unnecessary squandering of resources.

ii) independent schools

Wilful misappropriation of public money and resources through arbitrary interference with Article 8 ECHR, Article 16 UNCRC and breaching of GDPR. Legal challenge would be likely, with the potential for more unnecessary squandering of resources.

iii) LAs

Wilful misappropriation of public money and resources through arbitrary interference with Article 8 ECHR, Article 16 UNCRC and breaching of GDPR. Legal challenge would be likely, with the potential for more unnecessary squandering of resources.

iv) other.

Wilful misappropriation of public money and resources through arbitrary interference with Article 8 ECHR, Article 16 UNCRC and breaching of GDPR. Legal challenge would be likely, with the potential for more unnecessary squandering of resources.

Question 7 – Who, within the LA, would need access to the database in order to carry out their functions?

No lawful basis for such a database, so those complicit in its creation would be acting illegally. The lessons of Contactpoint and eCAF should have been learned by now Excerpt from Joint Committee on Human Rights - Nineteenth Report (2003/4):

[<https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/161/16102.htm>]

"We are concerned that, if the justification for information-sharing about children is that it is always proportionate where the purpose is to identify children who need child welfare services, there is no meaningful content left to a child's Article 8 right to privacy and confidentiality in their personal information."

Question 8 – Do you think anything in the draft regulations could have a disproportionate impact on those with protected characteristics, and if so, what?

Yes. Those with protected characteristics of Disability, Religion or Belief would be disproportionately adversely affected. Children with special needs, disabilities and chronic conditions are highly represented in home education communities across the UK (often due discriminatory treatment by schools, e.g. off-rolling, bullying, failure to make reasonable adjustments or to keep them safe). Families whose educational aims and philosophies do not accord with those of state schools, e.g. are rights-based as opposed to state outcomes-driven, frequently experience home-edophobic prejudice and discriminatory treatment by LAs and other 'services'. Recent research by the Scottish Home Education Forum has revealed a culture of anti-home education hostility, with disproportionate impacts on those with protected characteristics, which is similarly reflected in public services across the UK. [<http://www.home-education.biz/home-truths-report-reveals-a-postcode-and-postholder-lottery-for-home-educators/>]

Question 9 – Does this proposal allow for the LA to meet their section 436A duty to make arrangements to identify children in their area who are of compulsory school age and not receiving a suitable education?

LAs have no such duty under section 436a, which was never intended to infringe Convention rights or permit the targeting of home educators who are exercising an equally valid, lawful choice and must be free from arbitrary interference with Article 8 and GDPR rights. All LA duties, including those under section 436a, are subject to the limiting provisions of overarching legislation that the Welsh government has no competent powers to circumvent..

Question 10 – In order to identify the effectiveness of the database the Welsh Government will request from LAs an annual return on the number of children identified using the database not currently known to LAs. When would be the most appropriate and reasonable time to request this?

Never. Such a database would infringe human rights and is therefore beyond the powers of the Welsh government to bring into effect. See above for legal references, QC's published opinions, and concerns over similar proposals by the Joint Committee on Human Rights in their Nineteenth Report (2003/4): [<https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/161/16102.htm>]

Question 11 – Do you think a voluntary database of all statutory school-age children ordinarily resident within an LA area would assist LAs to meet their section 436A duty?

No, it is neither necessary, nor justifiable, since parents have the responsibility for their children's education in the compulsory years. Ensuring children's wellbeing, welfare and education is the parents' role unless the threshold test for non-consensual intervention is met and the risk documented and evidenced. Any such 'voluntary' database would have the effect of stigmatising a minority group, would breach GDPR and would inevitably become de facto compulsory through coercion, overreach and mission creep. Would a 'voluntary' database of vegetarian families be justified to assist health boards to identify potentially malnourished children? Or would it be seen as arbitrary interference with the exercise of a lawful choice?

There are also significant data security risks with all government databases, as a cursory online search will reveal. The Deloitte security review of ContactPoint, only released by order of the then ICO, identified multiple security issues

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221884/deloitte_20contactpoint_20dsr_20report.pdf] See also the Report for the Information

Commissioner from the Foundation for Information Policy Research

[https://www.fipr.org/childrens_databases.pdf] and ARCH Database Masterclass

[<http://databasemasterclass.blogspot.com/>]

i) Parents/carers

ECHR and GDPR rights would be interfered with without any legal basis and breaches Convention rights. See the Contactpoint references and David Wolff QC's recently published opinions (plural) on the the Welsh home education proposals. The UK Supreme Court has already re-affirmed the illegality of similar proposals in Scotland that were struck down following JR.

ii) Children and young people

UNCRC rights would be effectively trashed by any such data mining and sharing. See 'Protecting the Virtual Child – the law and children's consent to sharing personal data' [<http://medconfidential.org/wp-content/uploads/2013/03/Protecting-the-virtual-child.pdf>] and prevkous legal references, especially the UK Supreme Court's unassailable 'named person' judgment in 2016.

iii) Local health boards

Health boards would be breaking the law if they were to accede to demands for data disclosure that has no legal basis and breaches Convention rights. UK Supreme Court has affirmed this in relation to similar proposals in Scotland that were struck down following JR.

iv) Independent schools

Independent schools would be breaking the law if they were to accede to demands for data disclosure that has no legal basis and breaches Convention rights. UK Supreme Court has affirmed this in relation to similar proposals in Scotland that were struck down following JR.

v) LAs

LA would be breaking the law if they were to accede to demands for data disclosure that has no legal basis and breaches Convention rights. UK Supreme Court has affirmed this in relation to similar proposals in Scotland that were struck down following JR.

vi) Other

Private and third sector organisations would also be breaking the law if they were to accede to demands for data disclosure that has no legal basis and breaches Convention rights. UK Supreme Court has affirmed this in relation to similar proposals in Scotland that were struck down following JR.

Local health boards

Question 13 – Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

Databases do not prevent inappropriate communications with the bereaved. I have personal experience of this in the case of a (lawful) database in which individuals' records were mixed up, causing both distress and inconvenience.

Question 14 – Can you identify any key privacy risks and the associated compliance and corporate risks?

Likelihood of legal action by those whose Convention rights have been interfered with in the absence of legal necessity. Misuse of public funds by participating in illegal databasing. Data security risks as referenced above.

Question 15 – Do you have any previous experience of this type of data disclosure/processing?

Yes, over 20 years, plus close involvement in JR raised in Scotland.

Question 16 – What are the resource and technical implications of processing and disclosing the required data to LAs?

Misuse of public funds due to incompatibility with Convention rights is likely to lead to legal challenge (draining resources unnecessarily and losing public trust and goodwill along the way) and unnecessary data security risks (both internal and external) risking fines under GDPR and legal action by data subjects. Government databases are always leaky, as has been shown repeatedly.

Independent schools

Question 17 – Can you identify any key privacy risks and the associated compliance and corporate risks?

Same risks as above due to incompatibility with Convention/GDPR rights of such data disclosure, security risks and loss of trust of parents and young people.

Question 18 – Do you have any previous experience of this type of processing?

Yes, from the perspective of challenging unlawful disclosures to LAs on behalf of parents and young people who did not consent to their data being processed without lawful basis or compelling necessity.

Question 19 – What are the resource and technical implications of processing and disclosing the required data to LAs?

As above, increased risk of data security breaches, external attacks including phishing and ransomware demands, with no bottomless pit of public money to cover losses from fines and legal action by data subjects.

LAs

Question 20 – Is there anything missing from the Schedule of Information to be included in the database?

A legal basis.

Question 21 – Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families?

They should, but do not, mainly due to data inaccuracies, corruption of records and basic incompetence. See previous comments.

Question 22 – Can you identify any key privacy risks and the associated compliance and corporate risks?

As above.

Question 23 – Do you have any previous experience of this type of processing?

Yes, from the perspective of challenging the legality of such data processing without consent or legal necessity.

Question 24 – We would like to know your views on the effects these draft regulations would have on the Welsh language, specifically on: i) opportunities for people to use Welsh ii) treating the Welsh language no less favourably than the English language. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated? Supporting comments:

Such draconian proposals, if brought into effect despite not complying with Convention rights, GDPR and the Equality Act, would treat Welsh home educators less favourably than their English counterparts, thereby disproportionately disadvantaging Welsh citizens and speakers, and discriminating on the basis of one of more protected characteristics.

Question 25 – Please also explain how you believe the proposed regulations could be formulated or changed so as to have: i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language. Supporting comments:

Ditch the database proposals and focus on tackling the home-edophobic attitudes and hate speech that spawned them. Celebrate Welsh-medium home education rather than facilitating discrimination and fuelling anti-home education prejudice.

Question 26 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Newly published research into local authorities' home education policies, practices and relationships with home educators in Scotland covers many of the problems that have arisen from the databasing 'virus' which has lost the trust and goodwill of home educators (and other protected minority groups) who have been targeted by outcomes-driven 'services' exceeding their limited powers and ignoring children's and families' Convention and GDPR rights.

[<https://leahurst66.files.wordpress.com/2020/03/200310-home-truths-full-research-report-converted-3.pdf>]

Submit your response

You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name Alison Preuss
Organisation (if applicable) Scottish Home Education Forum

If you want to receive a receipt of your response, please provide an email address. Email address

alison.preuss@gmail.com