

HOME TRUTHS – SUMMARY REPORT

An investigation into local authorities' home education policies, practices and relationships with home educators in Scotland



“Individuality, family and community are, by definition, expressions of singular organization, never of ‘one-right-way’ thinking on the grand scale. Children and families need some relief from government surveillance and intimidation if original expressions belonging to them are to develop. Without these, freedom has no meaning.”

~ John Taylor Gatto



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SUMMARY REPORT & RECOMMENDATIONS

Background & Rationale

The Scottish Home Education Forum was established as an online peer support network in 1999, and in recent years has expanded its scope to offer advocacy, training and consultancy services. Its current membership stands at over 3,200, having increased by 1,200 (around 50%) in two years, and it is managed by a steering group of experienced volunteers.

In the absence of reliable statistical and demographic data on home education in Scotland, the forum has published several pieces of research, including on reasons for children being in home education (2018)¹ and home educators' experiences of the health visiting service (2019).²

Home educators have consistently found themselves excluded from policy discussions and adversely affected as a result of failure to acknowledge the existence of 'education by other means' as a lawful and equal alternative to council schooling. The situation was exacerbated by the introduction of the Getting It Right For Every Child (GIRFEC) policy, especially for parents of children with additional support needs (ASNs), who felt their rights had been systematically undermined by the focus on state-dictated outcomes and lack of respect for legitimate parenting choices.

As home educator numbers have grown, driven disproportionately by the cohort of children with ASNs, tensions have increased due to underlying hostility towards parents opting for an alternative to schooling. Forum members have shared myriad concerns about poor treatment by local authorities and other services, and some of the most serious examples have been raised directly with the Scottish Government. The same problems have recurred on a regular basis, despite statutory guidance having been in place for two decades and the current version for 12 years.

Since publication of the Scottish Consumer Council's 2007 report on home-based education, which preceded the current guidance, it has been left to the home education community to gather relevant data and report findings. This current piece of research was prompted by the need to produce robust evidence to inform the Scottish Government's planned review of statutory guidance in 2020.

Although the legislation that accords equal status to council schooling and 'education by other means' has remained unchanged since 1980, policy developments and unlawful data sharing 'advice'³ issued in 2013 have created particular problems for home educators, who were among the first to question the legality of Parts 4 and 5 of the Children and Young People (Scotland) Act 2014. Following the 2016 Supreme Court 'named person' judgment⁴ and



¹ <http://www.home-education.biz/education/3541/>

² <http://www.home-education.biz/wp-content/uploads/2019/06/190623-FINAL-PDF-Home-educators-experience-of-health-visiting-in-Scotland.pdf>

³ https://no2np.org/wp-content/uploads/ICO-statement_2013.pdf

⁴ <https://www.supremecourt.uk/cases/uksc-2015-0216.html>

subsequent abandonment of remedial legislation⁵, the forum submitted a joint parliamentary petition⁶ with Tymes Trust for an independent public inquiry into the human rights impact of GIRFEC policy. It remains under consideration by the Education & Skills Committee.

Methodology

Local authority policies and information for parents



The forum collected wide-ranging statistical, demographic and policy data for the past three years from all 32 local authorities via freedom of information (FOI) requests. All recorded an increase in home educator numbers, but some of the returns were incomplete or ambiguous. Few complaints had been recorded, which lacked credibility, given the significant number copied to the forum, and only around five school attendance orders (SAOs) were said to have been issued.

Provision of a named contact for home education, mandated by statutory guidance, was patchy and invariably seen as an unimportant add-on to an existing school-related role. Training was limited or non-existent, with work shadowing being the most common approach, and specific confidentiality concerns were raised by the cross-council sharing of examples of parental home education provision.

Local authority policies obtained via FOI varied considerably in quality and accuracy, as did their information for parents, which was not always easily accessible. Website searches were also often unsuccessful as home education information was well concealed or non-existent, despite the guidance requiring accessibility.

Policies and information for families, both provided by councils and obtained via independent search, were analysed and assigned scores to reflect how well they met the assessment criteria based around the legislative framework and current guidance. Scores ranged from 1 to 9 out of a possible 10, and while there were several examples of good or excellent local policies, some contained fundamental legal inaccuracies and 'wishful thinking' interpretations of national guidance, as well as 'home schooling' mis-terminology and misconstrual of consent for withdrawal from school as 'permission to home educate'.

Many policies failed to correctly apply data protection principles and the majority of councils appeared to have been conducting unlawful 'background checks' on parents who had decided to exercise a valid, equal choice to educate by other means than schooling. Council policies also routinely confused the threshold test that limits interference with families' Article 8 rights, including data sharing.

Although children with disabilities, chronic conditions and other ASNs, notably autism and severe anxiety, are known to be highly represented in the home education community, some councils also appeared to operate an exclusionary gatekeeping system for services, such as educational psychology, by insisting on access through schools, with few proactively offering no-strings support for home educated children whose parents requested it.

⁵ <https://www.gov.scot/news/children-and-young-people-information-sharing-bill/>

⁶ <https://external.parliament.scot/GettingInvolved/Petitions/PE01692>

Home educators' perspectives

The forum conducted an online survey of home educators which was completed by 272 individuals from all local authority areas, with a disproportionate number of responses from Highland and Aberdeenshire. Due to the small number of responses from some areas, local authorities were 'clustered' according to their policy scores in order to preserve respondent anonymity.

Reasons given for home education were in line with previous forum research, with ASNs being especially highly represented. There were wide disparities in experiences of initial contact with, and responses from, local authorities, which ranged from "helpful" through "disinterested" to "awful".

The information provided by councils about home education varied according to both area and postholder, with some home educators from less advantaged areas perceiving a socio-economic bias on the part of officials. A minority of councils were said to comply with the guidance, but most still expected home visits or meetings and access to children. Few signposted families to home education support networks and some parents had been made to feel they were the only home educators in their area.



While nearly half of respondents felt their local authority had been supportive and the majority reported prompt attention to their enquiries, the presumption of home visits was common to almost all. A small minority of parents reported threats of school attendance orders and referrals to social work or the children's reporter on 'wellbeing' grounds, often by schools or local authorities who disapproved of home education and parental choice. "GIRFEC gang culture" was said to be prevalent in some areas, with services colluding to prevent parents from exercising lawful choices.

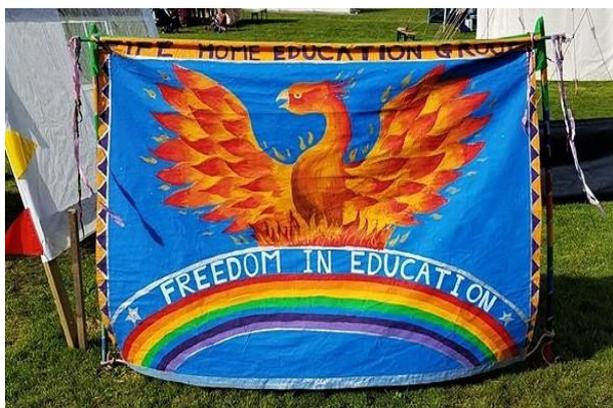
Lack of legal representation and independent advocacy had impacted most adversely on children with ASNs and especially those in rural and island areas. Absence of legal aid and the inability to engage expert witnesses on home education to counter multi-agency school-centric professional bias had further exacerbated the inequality of arms.

A postcode and postholder lottery was especially evident when it came to consent for withdrawal from school, with timescales ranging from "immediately" to "more than a year". A few requests had been refused for declining home visits and access to children, or on other spurious grounds, including undefined "wellbeing concerns" and, perhaps most bizarrely, the council's alleged duty to ensure education as a "corporate parent".

Several parents reported serious data protection infringements, mainly due to the retention and application of unlawful GIRFEC guidance, and malicious referrals to social work were also said to be a problem for a small minority. Although most had come to nothing, families had suffered extreme stress and had their home education plans delayed as a result, while a small number had become embroiled in the child protection system. Several had been doggedly pursuing complex complaints, sometimes over years, in the belief they had been victimised due to exercising their rights and/or complaining.

Victims deplored the lack of action from the Information Commissioner (ICO) and Children's Commissioner (CYPCS)⁷ who were said to have adopted a 'pick and mix' approach to upholding the law and United Nations Convention on the Rights of the Child (UNCRC), enabling a hierarchy of rights and rightsholders to become established and abandoning unpopular minorities in favour of preferred 'partners' and lobbyists.

Survey responses illustrated how the discriminatory consent anomaly – which applies only to pupils of council schools who are expected to attend until the authority authorises their removal from the roll (unless one of the exceptions applies) – had continued to be exploited by local authorities and/or rogue officials. It had placed some parents in an impossible situation, where children were struggling with school attendance but had received child protection referrals or threats, despite both home education and children's hearings guidance acknowledging the defence of 'reasonable excuse' in such circumstances.



Double standards were highlighted by parents whose children had been coerced into giving their views on home education but not on their schooling. Councils were also said to have misrepresented the 'duty to ensure education' as theirs rather than the parents' and failed to apply the legal threshold test for interference with Convention rights, which was seen to be directly attributable to GIRFEC policy and the premature implementation of unlawful named person schemes.

A few parents raised concerns about former partners seeking to use children's home education to undermine and exert ongoing control over their lives. In one case, the parent with day-to-day care remained fearful of a violent ex-partner who had "found a new way to exploit the children". Local authorities were said to be complicit, which had re-traumatised children and created delays in their withdrawal from school or increased pressure for their return. Parents felt that the lack of respect for home education as an equal choice to schooling had enabled controlling individuals to take advantage of institutionalised pro-school prejudice.

Less than a third of respondents felt that their LA understood the law relating to home education and nearly half thought they did not. Experienced home educators had successfully challenged misinformation and poor practice, but improvements were often short-lived due to staff changes, non-existent training and invariable regression to the default pro-school position. Many highlighted the disproportionate impact on vulnerable families and those from less advantaged areas.

Local authority policies were rarely predictive of good or bad practice as experienced by those who completed the survey, although several received consistently positive 'service user' reviews that accorded with their policy scores, notably North Lanarkshire, Moray and Edinburgh. Others whose policies had scored highly were poorly – sometimes extremely poorly – rated by local home educators, notably Aberdeenshire, Highland and Dumfries & Galloway.

⁷ <https://www.change.org/p/children-and-young-people-s-commissioner-scotland-in-relation-to-named-person-girfec-we-request-you-investigate-breaches-of-children-s-right-uncrc-article-16-interference-in-private-life-and-attacks-on-children-s-reputations>

A review and analysis of forum discussions relating to local authority contacts was conducted alongside the survey. Being a peer support group, it was expected that negative experiences would outnumber positives, but these shared experiences nevertheless proved a useful barometer of local authority culture and practice. Some exchanges had to be excluded from the analysis due to their sensitivity and to prevent risk of identification that might compromise legal proceedings.

Findings were similar to those of the online survey, with Moray and North Lanarkshire consistently held up as the most positive examples. At the other end of the scale, Highland was lambasted by dozens of parents as “authoritarian” and a “nightmare” to deal with, despite its published policy being highly rated for quality and accuracy. Illegal data collection and sharing, GIRFEC gang culture and disability discrimination were frequently flagged by parents, many of whom had children with ASNs who had been removed from school due to bullying and safety concerns.

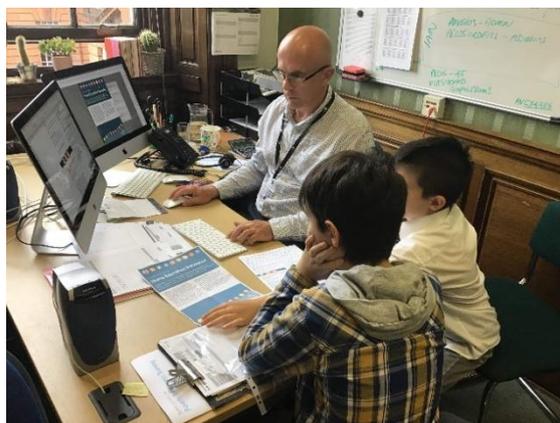
Several parents recounted experiences of referral to the children’s reporter on seemingly spurious grounds, with limited or no access to legal advice or advocacy, and described a culture of home-eduphobia that had spread across services – along with their personal data – and facilitated oppressive practice. Aberdeenshire and Dumfries & Galloway also came in for especially robust criticism, with many of the others not far behind.

Survey respondents and forum members were asked to make and rank a number of suggestions for improvements to the home education guidance, which, along with the analysis of forum discussions, formed the basis of the 16 recommendations set out below. However, it was clear from parents’ reports on their councils’ approaches that the postcode and postholder lottery will not be eliminated by guidance alone, and that home educators must be fully involved and engaged in identifying and implementing solutions if the culture of home-eduphobia is to be successfully tackled and trusting relationships with families re-built.

Council case study

Tensions between Dumfries & Galloway Council and home educators had been growing over a number of years, with withdrawals from school and data sharing being especially fraught issues, and the forum had approached the Scottish Government in 2018 in anticipation of making a section 70 complaint⁸ to Ministers.

The council committee’s approval for a revised ‘home schooling’ policy was subsequently delayed due to complaints raised by the forum and local families, and a formal consultation ensued. This led to improved dialogue and the co-production of a new draft policy, although it has not yet been adopted and local home



educators have expressed continuing dissatisfaction with current practice.

In January 2020, the forum’s lead researcher met with a senior council officer for a constructive discussion in which more areas of agreement than contention were identified. Many of the more acute difficulties had arisen from the 2013 data sharing ‘advice’, later negated by the

⁸ <https://www.gov.scot/publications/section-70-education-scotland-act-1980-guidance-document-users-section-9781788515023/>

2016 'named person' ruling, which had left local authorities stymied by policies that had not been amended to reflect the lawful intervention threshold.

The council was keen to build on the positive foundations laid during recent engagement with home educators and tentatively supported some of their suggestions, including a proposed reduction in the turnaround time for consent, and welcomed opportunities for participation in 'conversations' with home educators at national and local level.

Ongoing work and initiatives



Peer support and advocacy for families has become a feature of the rapidly growing home education movement in Scotland, and parents have become better networked and much more knowledgeable about the law since the current guidance was issued in 2008.

New forum members are sometimes surprised to learn that it is parents, not the state, who have the duty to ensure

children are educated in the compulsory years and that parents are the arbiters of their children's best interests and right to education.⁹ They also quickly come to appreciate that the local authority role is limited to taking action where it is *not* satisfied with the home education provision¹⁰, on the basis of *evidence* of parental failure.

Home education presentations by community members have been well received and have led to requests from a range of organisations for dedicated information resources and training. An account of one such session, delivered to a national conference in 2019, is included in the main report as an example of home educators' collective commitment to debunking myths and combatting home-eduphobia. However, the tide of misinformation and prejudice peddled by vested interests and lobbyists, including self-proclaimed children's rights 'champions', has shown little sign of abating.

In the course of this research, the forum's steering group undertook a review of the effectiveness of current support networks and identified the need for an inclusive new body to address escalating challenges facing the community. Following an inaugural meeting in late 2019, Home Education Scotland was formally constituted as a national membership organisation, whose official launch will coincide with the publication of the Home Truths report.

Summary findings

Although statutory home education guidance has been in place for 20 years and the current version since 2008, home educating families continue to face the same barriers identified in previous research. The inbuilt imbalance of power, whereby local authorities insist on parental adherence to law and guidance without being held to the same standards themselves, has led to intractable problems, especially in relation to withdrawing children from school. Wide disparities in council policies and practice have created both a postcode and postholder lottery, and the research has found significant mismatches between the two in some areas where the treatment reported by families has borne no resemblance to councils' published policies.

⁹ <https://www.legislation.gov.uk/ukpga/1980/44/section/28>

¹⁰ <https://www.legislation.gov.uk/ukpga/1980/44/section/37>

Lack of accurate and accessible information for parents has once again been highlighted, along with local authorities' pro-school prejudice and denial of home education having equal legal status to schooling. Mis-terminology, misinformation and the misconstrual of negative duties as proactive powers have had a polluting effect on local policies, many of which have departed significantly from national guidance. Grey areas and ambiguities within the guidance have also been exploited, especially in relation to data sharing and the threshold for interference with Convention rights. "More GDR than GDPR" was one parent's quip.

In addition, the lack of mandatory training has adversely impacted on 'service users'. They have too often been subject to the whims of officials who have had the home education remit foisted onto them with no preparation, and the expectation that they follow non-compliant local policy 'orders' has created further tensions. A commitment to consultation and engagement with home educators, and to publishing impact assessments, which might have pre-empted many of the problems, has been similarly absent.

The increase in home education is still being driven mainly by families whose children have disabilities, chronic conditions and other ASNs, notably autism and severe anxiety, but some councils have sought to exclude home educated children from services to which they are entitled and directed all their efforts towards returning them to school rather than supporting alternative provision. Only a few councils offer flexi schooling as an option, and access to resources and exam centres for external candidates was said to be difficult by parents who had requested such assistance.



It remains the case that the consent anomaly directly discriminates against parents who have delegated responsibility to council schools, and that some authorities abuse their power by seeking to impose unlawful conditions or unreasonably withholding consent for children's withdrawal. Too many refusals have simply cited "socialisation", "wellbeing" or "curriculum" concerns, despite parents having provided adequate proposals for their children's home education based on the government's own suggested characteristics. In fact, there are very few circumstances in which consent can legitimately be withheld, and the process, which should be a straightforward administrative exercise, can easily be circumvented by parents with the means to move areas or decamp temporarily to an independent school, from which children can be withdrawn immediately.

The home education guidance expects councils to be sympathetic in cases where children are struggling with attendance due to ASNs, bullying or severe school anxiety, rightly recognising that it is the parents' responsibility to determine fitness to attend and the fact that GPs do not issue medical certificates to school-age children. Parents have also successfully argued that the provision of home education represents 'reasonable excuse' for absence in the waiting period, a position that is also supported in the children's hearings guidelines.

The home education guidance has hitherto been developed in co-operation with home educators to agree a set of reasonable recommendations to help steer local authorities, including the non-binding suggestion of annual contact to request updates and broad 'suggested characteristics' of a suitable education. Families say they should have the right to expect local authority officers to have a more mindful and nuanced appreciation of their professional boundaries if they are to recognise their own prejudices and build trusting and respectful relationships with the home educating community.

Recommendations

The forum's investigation has identified key areas of concern over the relationship between home educators and local authorities, and the Scottish Government is invited to progress the following 16 evidence-based recommendations in its forthcoming review of statutory guidance.



- The Scottish Government should consider convening a working group, inclusive of local authorities and home educators, and preferably chaired by a specialist education lawyer, to formulate a model home education policy and information for parents that are fully reflective of national guidance for adoption across all council areas. Proposed local policy changes should always be preceded by equality and rights impact assessments and formal stakeholder consultations.
- The guidance should mandate dedicated training, with input from home educators, for all staff who deal with home education enquiries, withdrawal requests and updates.
- Since the discriminatory consent anomaly remains open to ongoing abuse, and in the absence of planned changes to primary legislation, the Scottish Government should reduce the recommended timescale in the guidance from six weeks to a maximum of one or two weeks, with a presumption of consent where local authorities fail to comply.
- The guidance should expressly state that the parental provision of home education constitutes 'reasonable excuse' where children are struggling or unable to attend school due to stress-related illness or ASNs during the waiting period for consent, with absences marked as authorised.
- The guidance should re-state the requirement for local authorities to publish information about home education as an equal choice, with correct terminology, details of the relevant council contact and direct links to local policy and national guidance, all of which should be immediately accessible on their websites and otherwise available to parents.
- The guidance should close the identified loopholes that enable the delaying of consent, and clarify grey areas, including the management of cross-council withdrawals, the impact on timescales of holidays and staff absence, and the legal parameters of compulsory education age.
- The guidance should address the issue of former partners 'weaponising' home education in order to re-exert coercive control over parents with whom children ordinarily reside, especially where they have already experienced trauma.
- The guidance should strongly encourage councils to make resources available and facilitate exam access for home educated external candidates where parents or young people have requested such assistance.

- In view of increasing interest and positive experience in some areas, the guidance should expand on how flexi schooling could be made more accessible, and how practicalities might be agreed between parents, schools and councils. However, its status should be recognised as distinct from home education, for which parents assume full, not shared, responsibility.
- Since the provision of education is a parental function and parents are the legally recognised arbiters of their children's best interests, the guidance must expressly prohibit councils from routinely gathering and sharing families' personal data for the purpose of processing withdrawal requests. It should similarly prohibit councils from making withdrawal consent conditional upon parents and young people ceding their Article 8 and data protection rights, and the legal intervention threshold should be re-stated as 'risk of significant harm'.
- The guidance should be amended to prevent councils from misleading parents in order to gain entry to the family home, coerce meetings or impose unreasonable conditions, with suitable sanctions for misconduct. Interviewing of children without parental consent should also be proscribed, and children's Article 12 rights to decline to express views or meet with unknown officials must be made explicit.
- The guidance should require councils to promptly provide reasons for unavoidable delays in processing consent, regardless of the time of year or staffing issues. Moreover, any refusal of consent should include detailed reasons, accompanied by evidence of inadequacy of proposed parental provision or risk of significant harm to the child.
- The guidance should require councils to hear appeals by parents and provide details of all available complaint mechanisms, including internal processes, the Scottish Public Services Ombudsman (SPSO), ICO, section 70 complaints and ASN Tribunal applications. Councils should also be required to record complaints from home educating parents and home educated young people about breaches of law and guidance, including allegations of discriminatory treatment in relation to protected characteristics.
- Although beyond the scope of the home education guidance, the government should, in the light of growing numbers of children being withdrawn from school, give early consideration to amending pertinent legislation and guidance so that home educated children and young people with complex ASNs become eligible for co-ordinated support plans (CSPs) on parental application.
- The Scottish Government should commit to a comprehensive policy audit to ensure that the 'orders' being followed by services do not breach overarching human rights and data protection legislation, and that home educators can expect delinquent provisions to be disregarded.
- The Scottish Government should re-affirm its support for home education as an equal lawful choice and commit to meaningful consultation and engagement with home education organisations, including the Scottish Home Education Forum and Home Education Scotland, in order to work towards eliminating prejudice and home-eduphobia.



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