



Safe Schools Alliance UK



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## Equality and Human Rights Commission

Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

Monday 23rd September 2019

Dear Equality and Human Rights Commission,

Further to our previous letters dated 24/06/19 and 10/07/19, we are writing to put on record our serious concerns about the leaked guidance for Scottish schools regarding transgender pupils. We have been informed that the guidance for England and Wales is the same. Please kindly confirm that this is the case.

We are extremely concerned about this draft guidance, particularly the lack of transparency regarding who has been consulted. The safeguarding of children is of clear public interest and so we find this secrecy alarming. Schools are in desperate need of clear guidance and this guidance must prioritise the safeguarding of all children.

We would like to outline some of our major concerns below.

### **Abrogation of legal responsibility**

Page four of the guidance states that 'this guidance does not and cannot deal with all the considerations that schools need to take into account, such as safeguarding, data protection, confidentiality and maintaining a delicate balance between school and parental responsibilities'. Whilst this caveat may absolve the EHRC of legal responsibility (and instead pass the liability onto the leadership of individual schools), this does not prioritise safeguarding. Children *will* be harmed due to misinterpretation of this guidance. This is already happening. The EHRC cannot simply wash their hands of this.

### **Biased guidance**

Furthermore, the draft guidance fails to meet your declared aim (in your letter dated 05/07/19) 'to balance the needs of all pupils'. We find the draft guidance to be heavily biased and we believe that it fails to adequately take into account the protected characteristics of Disability, Religion or Belief, Sex and Sexual Orientation. Schools following this guidance will be left vulnerable to time-consuming parental complaints and even discrimination claims. It is unacceptable for the EHRC to put schools in this position with misleading and inadequate guidance. Due to Equality Act exemptions, it is lawful for schools to take discriminate on the grounds of sex where it is to achieve a legitimate aim. This can be objectively justified by the rights of pupils to privacy and dignity and the need to safeguard students against underage pregnancy. This needs to be made explicitly clear to schools.



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### **Promotion of a subjective approach to safeguarding issues**

There can be no 'case by case' basis in this matter. Safeguarding must be objective, never subjective. Providing children with the dignity, privacy and safety of single-sex spaces is a legitimate aim which must be applied uniformly to toilets, changing, sleeping arrangements and contact sports within a school setting. Advocating a 'case by case' approach leaves schools vulnerable to lobby groups who may misrepresent the law. It seems that the EHRC themselves may have been influenced by such lobby groups, resulting in this biased guidance which does not accurately or fully reflect the law.

### **Conflation of 'sex' and 'gender' and the use of politicised terminology**

We remain concerned about your poor understanding of the distinction between sex and gender. We would also like it on record that it is paramount that school accurately record the biological sex of all pupils, regardless of how they may identify. This is essential for the safety of individual pupils and also for effective data monitoring.

We are also alarmed to see terms such as 'gender identity', 'birth gender', 'non-binary', 'gender-fluid' and 'non-gendered' used in this draft guidance in relation to the Equality Act 2010. None of these terms appear in the Equality Act 2010, nor do they have any legal meaning. The inclusion of these terms in this guidance suggests to schools that they are taken from the Equality Act 2010, leading to widespread confusion. Why is a government department using legally meaningless terms in official guidance? Again, we question whether the EHRC have been unduly influenced by lobby groups who promote the use of this misleading, subjective and politically-charged jargon.

### **Sex education**

This draft guidance can easily be interpreted to mean that a male pupil should receive female sex education if he identifies as a girl. Not only does this fail to respect the rights of the girls in the group, but it is clearly of no benefit to the trans-identified child. Topics such as breast development and the menstrual cycle are of no relevance to a male child. Instead, they will need to learn about male puberty. This is important for their own safeguarding. The EHRC must understand that whilst it may be inappropriate to force a trans-identified male pupil to participate in sex education with boys, it would be equally inappropriate to place them in the girls' group. A solution could be to offer the trans-identified pupil individual sex education lessons if they do not wish to be placed with their biological sex group. The trans pupil should be reassured that robust anti bullying policies will be in place and used in practice, should they choose the option of participating in sex education with their biological sex group.

### **Harrasment**

This guidance defines harrasment as:

'unwanted behaviour related to a protected characteristic, which has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. 'Unwanted' means unwelcome or uninvited. It is not necessary for the person to say that they object to the behaviour for it to be unwanted'.



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Where female pupils have a reasonable expectation that provision will be single-sex, we consider the inclusion of males in this provision to meet this definition of harassment. We strongly believe that girls must be actively consulted regarding the removal of single-sex provision as, in line with the EHRC's own definition of harassment, it is not necessary for an individual to explicitly object in order for a behaviour to be 'unwanted'. Efforts must be made to ascertain how *all* girls within any particular school setting feel about lack of (or removal of) single-sex provision. Any consultation must be done anonymously. Girls must be reassured that they have a right to assert their own boundaries and that doing so is perfectly legal.

### **Compelled speech**

We would also like express our strong objections to compelling pupils and staff to use 'preferred pronouns' even where they do not subscribe to gender identity theory themselves. The recent Irish Gay Cake ruling makes it explicitly clear that compelled speech is unlawful. The judgement stated that 'it does the project of equal treatment no favours to seek to extend it beyond its proper scope'. This seems very relevant to these draft guidelines. The rights of one group must not infringe of those of another.

### **Fostering good relationships between protected characteristics**

In addition, schools are obliged under the Public Sector Equality Duty to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. There are numerous statements in the EHRC's draft guidance that are likely to hinder relations between children who identify as trans and children who do not. For example, a teacher assuming that a female pupil is 'trans' due to having a short hair style is a sexist and regressive enforcement of gender stereotypes.

It is our belief as parents and educators that the best way to support *all* children (including trans-identified children) is for schools to have robust bullying policies in place and to effectively challenge gender stereotypes and sexism on a daily basis.

### **Conclusion**

The public debate around this issue has become utterly toxic. The emotive issue of child well-being is being misrepresented, manipulated and exploited by lobby groups and other adults who have a purely political agenda. Lesbian, gay, bisexual and trans-identified students are being used as pawns, often putting them in harm's way. This is of grave concern to us.

We seek guarantees from the EHRC that no guidance will be published before the government has responded to the Women and Equalities Select Committee and other organisations who have expressed concerns about this issue. The EHRC must also await the outcome of the Government Equalities Office proposed enquiry into the alarming rise in referrals of children, especially girls, to Gender Identity Disorder Services.

We are calling upon the EHRC to listen to parents, teachers and governors who are best-placed to comment upon the impact that this ill-thought-out guidance will have. We are enclosing a summary sheet of our concerns and aims and urge the EHRC to consult groups such as ourselves and Transgender Trend when drafting future guidance.



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Yours faithfully,

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