

WRITTEN SUBMISSION

Consultation on draft Trans Schools Inclusion Toolkit – submission to Learning and Culture Scrutiny Committee for meeting on 9 February 2023

It is welcome that the Council has belatedly withdrawn the Trans Inclusion Toolkit it adopted in 2018, which seriously misrepresented the law. The new draft Toolkit is better in some respects than the unlawful 2018 Toolkit but is still a highly ideological document with significant flaws.

The contents of the draft Toolkit

The guidance in the draft Toolkit is more balanced than the guidance in the unlawful 2018 Toolkit, and better reflects the position under equality law and other legislation. In particular, it does now recognise that when dealing with trans-identifying children it is also necessary to consider the interests and wishes of other children; and it no longer claims that trans-identifying children must always be admitted to the toilets, changing rooms, sleeping accommodation and sports teams of the opposite sex on request. However, a number of concerns remain.

The draft Toolkit is far too long and contains contradictory statements. In particular, it sets out quotations arguing for opposing positions without choosing between them, or quotes views that are at odds with the direct statements in the guidance. As a result, it is hard to tell what the guidance is saying about various issues, and very difficult to see how teachers would be assisted by it.

In relation to “social transition” or “social affirmation”, the draft Toolkit makes unclear and inconsistent statements. On the one hand, it rightly notes that these are active interventions rather than neutral acts and may have significant psychological consequences (on pp 12 and 17), and says that the generally recommended “watch and wait” approach should be adopted (on p 26), although it does not explain what that involves. (It should.) But at the same time, it quotes the RCPCH’s call for affirmation of gender identity (on p 26), and generally assumes that schools will facilitate “social transition”. It even states that it is “vital” to provide support to pupils who are “transitioning” and tells schools to help pupils come up with answer to other people’s questions about that (on p 28).

The guidance should point out that some aspects of “social transition” (such as using facilities for the opposite sex) may be unlawful, and that staff and pupils cannot be compelled to go along with other aspects. In particular, it should state that staff and pupils have the right not to believe in gender identity and not to treat another pupil as having changed sex. Schools cannot require staff or other pupils to pretend to hold beliefs that they do not, and should not be expected to help pupils come up with ways of defending those beliefs. Appendix 3 of the draft Toolkit (on the legal framework) does mention that the protected characteristic of belief “has implications” for the extent to which pupils can be required to affirm another child’s gender identity, but does not explain the implications. They need to be set out clearly in the body of the guidance.

The draft Toolkit gives guidance about the use of changing rooms and accommodation on residential trips that is inconsistent and unhelpful. Section 6.6 of the guidance, relating to residential trips, notes that requiring pupils to undress in the presence of members of the opposite sex may give rise to legal challenges, but section 6.3 fails to make the same point in relation to changing rooms, where it is equally relevant. Instead, it says that use of changing rooms should be assessed on a case-by-case basis. This aspect of the guidance is particularly worrying and needs to be changed.

A “case-by-case” to use of facilities is likely to be unworkable and may be very damaging. On what basis is a school to assess whether a particular child should be allowed to use changing rooms for the opposite sex? A school cannot be expected to make decisions about whether a particular trans-identifying boy is safe to place in a girls’ changing room or bedroom, about whether the boy is “really” trans, or about whether the girls are genuinely happy to share with him rather than being under social pressure to say so. It is unreasonable to put teachers in the position of having to guess about these things, and unfair on trans-identifying pupils to subject them to an individualised “risk assessment”. A more likely outcome is that, once one “case-by-case” decision has been made to allow a trans-identifying boy to use the girls’ changing room, it will be impossible to resist requests by other such boys, with the result that facilities become mixed-sex. Adopting mixed-sex facilities is likely to have a much worse effect on participation than maintaining segregation by sex.

For these situations, schools must adopt clear rules and apply them consistently. The rule must be that changing rooms and accommodation are provided on a sex-segregated basis, and it must be applied equally to all children, including those who identify as trans, with no individual exceptions. Other solutions must be found if a trans-identifying child is unwilling to use the facilities for children of their sex, such as providing separate facilities. On that approach, all children would be offered the choice of using the changing room provided for their sex, or a separate facility if they had a reason for wanting extra privacy. That would maintain safeguarding and be fair to everyone.

On pronouns, section 6.7 of the draft Toolkit states that respecting a child’s request to change a pronoun is an important part of supporting and validating their identity and that it is “important consistently to use correct pronouns” (by which, of course, it means incorrectly using pronouns referring to the opposite sex). But it is no part of a school’s role to “validate” a child’s gender identity, and children and their parents have no right to dictate how teachers use language. Many teachers will not believe in the concept of gender identity and will not wish to engage in what they consider to be incorrect use of language. Those beliefs are protected by law. The guidance should make clear that teachers cannot be compelled to use “preferred pronouns”, and it should not suggest that they will be made to “apologise” for a “mistake” if they refer to a child using correct sex pronouns.

The process followed by the Council

There are also concerns about the process around the preparation of the new draft Toolkit.

First, the only engagement that seems to have taken place in producing the new draft has been with Brighton & Hove Council and Allsorts Youth Project, who represent a particular “trans-affirming” perspective and were responsible for a Transgender Schools Inclusion Toolkit that the Council used as the model for its unlawful 2018 Toolkit. Similarly, nearly all the quotations and links in the draft Toolkit come from the same perspective, despite there being many organisations representing a more cautious and realistic position that have produced much more helpful guidance on the issues. I invite the Committee to consider the clear and sensitive guidance for schools produced by Sex Matters (<https://sex-matters.org/posts/updates/schools-guidance/>) and Transgender Trend (<https://www.transgendertrend.com/product/school-resource-pack-3rd-edition-digital-download/>). They are also much shorter than the bloated document the Council has produced.

Relatedly, I am concerned to see that the Council has made a donation to the Sussex-based Allsorts Youth Project, the same organisation whose Toolkit the Council used as the basis for its unlawful 2018 Toolkit. Using the Allsorts Toolkit must have cost local authorities across England and Wales –

including the Vale Council – huge sums in dealing with the various legal challenges that were made, and most of the other authorities withdrew their toolkits as a result. Furthermore, Allsorts is an organisation that provides services in the South East of England. How can it be an appropriate use of Vale of Glamorgan Council Taxpayers' money to give funds to an English organisation?

Secondly, as with the unlawful 2018 Toolkit, the Council has failed to produce an adequate assessment of the impacts of the Toolkit. Its Equality Impact Assessment contains hardly any information. Under questions about the robustness of evidence and various other issues, it states that evidence will be gathered as the work proceeds. In response to questions about impacts and various other issues, it merely asserts that the impact on children exploring their gender identity will be positive, without offering any assessment; and says virtually nothing about the impact on other protected characteristics that will clearly be relevant, such as sex and religion or belief.

The purpose of the EqIA is to enable the Council to fully consider the implications of its proposed policy and show that it has done so; but also to enable people to understand the evidence for the policy, particularly in the context of the consultation. This EqIA falls far short of doing any of those things. It contains almost nothing that would help anyone to understand what impact the Council thinks the draft Toolkit will have, or how it intends to maximise positive impacts while minimising negative ones. The Council seems to be hoping the consultation exercise will generate material to fill in the gaps, but that is the wrong way around: the EqIA should inform the consultation.