

Document purpose:

To provide a space to collect opinions and feedback about each survey question in the Draft Brighton & Hove Trans Inclusion Schools Toolkit. This will be used by PSHE Brighton to create an informed guidance document to help interested parties give the best and most useful feedback to the council.

Draft Brighton & Hove Trans Inclusion Schools Toolkit Consultation Link

<https://yourvoice.brighton-hove.gov.uk/en-GB/projects/trans-toolkit-consultation>

How to use this document

- Follow the link to the consultation, each survey question is contained within the survey. Each survey question is listed below
- Each question in the consultation survey is followed by an area for you to add your feedback in the form of bullet points

- Add as many bullet points as you like
- You don't have to give feedback against every question. Focus on the ones where you think you can help the best
- Don't worry about repeating something someone else has said, this is not the final document
- Please do not change the survey questions in any way or their order or it will get confusing!
- Each question has been numbered by us to aid in navigation, those numbers are NOT in the survey itself
- Opening the draft toolkit in another window, with this document next to it, will probably be easiest to respond to as each question generally refers to a numbered section of the draft document.
- The survey does NOT ask questions about every section of the draft toolkit, however there is space for general comments, question 35, which is the last question in the survey. If you have a point that does not fit against a specific question, put it there.

Survey questions begin here:

1 Are you responding as an individual or on behalf of a group or organisation?

Our response: State whether you are responding as an individual member of the public or on behalf of an organisation.

2 In what capacity are you responding to this survey (for example parent, teacher, young person, other)?

Our response: State whether you are responding as a member of the public, taxpayer or in a specific role such as parent, school governor, teacher, social worker.

3 Please provide the first four characters of your postcode (e.g. BN3 7)

Our response: Type the first four letters of your postcode. If you do not live in Brighton and Hove you can also specify that you hold an active interest if you live and/or work in an area that contributes taxpayer funds to Brighton and Hove City Council, you or your relatives are pupils, staff or volunteers in the children's social services or schools within the Brighton and Hove area, and/or are interested because the Brighton and Hove Trans Inclusion Toolkit has been proliferated to many other Local Authorities across the country and therefore you have an interest.

4 Do you have a child/children at a school or college in Brighton and Hove?

Our response: State if you have children attending nursery, primary, secondary, 6th form or further education in Brighton and Hove

5 Do you agree the underlying principles set out in section 1.2 of the toolkit are correct and appropriate?

Our response:

· No

6 Please provide comments on whether you think the underlying principles are correct and appropriate

Our response:

- We do not consider the underlying principles correct and appropriate. They promote a clinical overreach in the presumption towards gender affirmation, the result of which will effectively be clinical decision making amongst schools and local authority services. This is beyond the clinical competence of practitioners.

- We contest the underlying principle that informs the language choice of ‘trans’ children. Many children are gender questioning, but there are indications that desistance may be much higher than previously thought, as shown by a national analysis of insurance data in Germany (https://www.researchgate.net/publication/381030303_Gender_identity_disorders_among_young_people_in_Germany_prevalence_and_trends_2013-2022_An_analysis_of_nationwide_routine_insurance_data). Given the numbers of children and young people who no longer have a diagnosis, it would not be reasonable to conclude that being trans is an immutable identity, and language should be carefully chosen to reflect that for many children and young people, identity development is an ongoing process. This is not an immutable identity, and language should be used that keeps the ongoing process of identity development open.
- The toolkit refers to the protected characteristic of gender reassignment. The protected characteristic means that any children and young people who may fall under the definition of the protected characteristic of gender reassignment have protections from discrimination. It does not mean that falling under this definition requires that such children and young people should be treated in line with any trans identity.
- In the definition of trans there is selective quoting from Cass to make inferences that research is limited and that some children have spoken positively of their social transition. By quoting out of context, the trans inclusion toolkit gives a misleading impression: it fails to recognise complexities in children’s and young people’s presentations; the cases of poorer outcomes and experiences following transition; the increased likelihood of progression to medical pathways; and the fact that evidence overall does not suggest that social transition significantly improves mental health amongst young people. Furthermore, the pursuance of social transition could undermine family relationships, particularly where schools work against parents/carers, and the draft toolkit makes no reference to attachment and safeguarding risks by undermining families. Evidence-based policy requires the balance of evidence to be considered in full.
- The toolkit effectively passes legal obligation to schools and governing bodies. Whilst they are liable for the compliance with the law, the toolkit cannot abrogate the responsibilities of the council in the issuing of the Toolkit.
- Given the need to act within the law, it is surprising that no reference is made to the legal opinion by Karon Monaghan KC, who provided an extensive analysis of how the previous iteration of the toolkit was unlawful. As the response below shows, this current draft

version does not appear to take into account the Monaghan Opinion in any significant way and the legal shortcomings that would deem the last toolkit unlawful are apparent in many parts of the current consultation draft.

<https://content.doyleclayton.co.uk/hubfs/Advice%20of%20Karon%20Monaghan%20KC.pdf>

- Several principles stated in section 1.2 are sound, but they are contradicted or ignored in subsequent sections of the draft document. These include:
 - Non-conformity to gender stereotypes or support to a gender exploring child does not mean that a child or young person is or will be trans
 - Identities are developing throughout childhood and adolescence into adulthood
- The principle that schools *may* consider a watch and wait policy is insufficient; the presumption should be that schools should consider such a policy, unless there are legal or medical reasons not to. As Dr Hilary Cass states, social transition is “not a neutral act” but “an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning and longer-term outcomes.”
<https://cass.independent-review.uk/home/publications/final-report/>.
- There is no issue with members of educational settings supporting children to develop an understanding of trans and non-binary identities and experiences, but this should not be done at the expense of protecting sex-based rights, e.g. single-sex sports or single- sex residential accommodation. These are covered in detail below.
- It is appropriate that children are signposted to additional support. Young people and parents, however, need to be assured as to the quality of the support, e.g. in terms of policy, the materials they use and the qualifications of their staff. Their approach should be in line with evidence-based best practice. The only specialist support offered in the Trans Inclusion Schools Toolkit is Allsorts Youth Project. This organisation employs clinically unqualified youth workers and offers a service called *Talk It Out*, which are one-to-one ‘talking’ sessions between an Allsorts adult and an unaccompanied child. We recommend the rewording of this section to: “signposted to a suitable therapist who will allow the child and their parents to explore factors that may be driving the trans or non-binary identity and broader distress, including any mental health issues or traumatic events like bereavement or bullying.”

- You state that decisions about medical transition are made outside of schools. This is welcome but given the evidence on social transition as compiled by Cass, we believe that these decisions should also be taken outside of schools, and overseen by suitably qualified medical personnel with suitable expertise, in partnership with children, families and in the context of a multi-disciplinary and multi-agency team. We cannot envisage a circumstance where school staff are qualified or competent to assess and prescribe social transition.
- On this basis the recommendation that support be provided on a “case by case” basis should also require that decisions about the nature of support be taken with appropriately qualified professionals. We contend that teachers and social workers are not competent to determine whether a gender affirming approach or support for social transition should be taken.

7 Does this toolkit clearly highlight the roles and responsibilities of school staff, governors and school leaders?

Our response:

· No

8 Please provide comments on whether you think the roles and responsibilities of school staff, governors and school leaders are clearly highlighted.

Our response:

- There is reference made to school governor responsibilities, but not directly to school staff or leaders.
- The overall approach of the Toolkit is to abrogate the Council from responsibility. It points to schools' general requirements under the Public Sector Equality Duty, but states that schools should apply the Toolkit and use their discretion in the application of the policy and case-by-case decisions. This (a) leads to clinical decision-making beyond the competence of teachers and school leaders, and (b) fails to reference the responsibility of the Council and Allsorts.
- Governors are not asked to consider safeguarding in the list of responsibilities set out in section 2.2. This is a key omission, as safeguarding should be one of the central planks on which the Toolkit is based. Governors will be liable should any risks transpire, particularly as they relate to safety in sports and mixed-sex toilets or residential accommodation (for example, the Toolkit's guidance would facilitate the rape or sexual assault perpetrated by a boy/young man who identifies and therefore is accommodated as a woman).
- Under Section 111 of the Equality Act, if the Trans Inclusion Schools Toolkit contains guidance that causes schools to discriminate unlawfully (and our contention is that it does) then both Brighton and Hove City Council and Allsorts Youth Project, as authors, could also be liable.
- Although reference is made to the Equality Act (2010), there is insufficient guidance as to its application. The guidance is also incorrect in parts (see below), which exposes school leaders, governing bodies, the council and Allsorts Youth Project to legal risk.
- Furthermore, we are concerned that training is signposted to Allsorts Youth Project, which teaches contested beliefs such as 'transwomen are women'. Governors, leaders, social workers and teachers have the right to hold gender-critical beliefs, upheld by the Forstater ruling in June 2021 and a subsequent number of Judgements and settlements including but not exclusively including social workers Meade and Pitt and counsellor Esses.
 - https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf
 - [R Meade v Westminster City Council and Social Work England.pdf \(publishing.service.gov.uk\)](#)
 - [Cambridgeshire council admits discriminating against social worker over gender-critical views \(archive.ph\)](#)

- [Litigation with James Esses \(metanoia.ac.uk\)](http://metanoia.ac.uk)
- Several comments relating to other sections within Chapter 2, 'A whole setting approach', require comment. These are:
 - Brighton & Hove City Council consider it to be best practice for all staff to be provided with training that develops trans awareness and confidence in terminology and vocabulary e.g. appropriate use of pronouns and names. "It is recommended that training is provided to staff delivering PSHE classes to ensure they have a better understanding of the issues, the confidence to use the toolkit and to provide appropriate support to trans children and young people." 'Appropriate support' is defined here as 'the appropriate use of pronouns and names'. This negates the right of teachers who are concerned about safeguarding and do not want to socially transition vulnerable young people because of the risk of medical transition, and legal implications such as future lawsuits from detransitioners.
 - "Schools may find they are approached by parents and carers about their trans inclusive practice. Schools should listen openly and respectfully to any questions or concerns, provide information and offer the following kinds of reassurance: The setting is working to develop its equality practice across all protected groups and efforts are being made to ensure all groups feel safe, represented and included." Female students' rights are negatively impacted by a trans-inclusive policy, e.g. Muslim and Orthodox Jewish girls may adhere to strict religious codes that prohibit them from being in a state of undress in front of unrelated males and the creation of such a barrier would be discriminatory in this instance. Any approach to accommodate needs related to protected characteristics need to be balanced in a way that takes into account all characteristics.
 - The toolkit states, "Schools need to be able to recognise the difference between freedom of expression of a genuinely held belief sensitively expressed, and behaviour and language which amounts to harmful prejudice or bullying. 'Misgendering' could be defined as bullying." This is unlawful. A student referring to a biologically female trans-identified student as 'she' is a material fact. Staff cannot compel students to use preferred pronouns. Any attempt to do so would itself be discriminatory, as gender critical beliefs are protected under S10(2) of the Equality Act just as much

as beliefs that support the primacy of gender identity and a view that sex can be changed depending on gender identity.

- Similarly, section 2.6 recommending the erasure of sex-based language is problematic. Girls (human female children) and boys (human male children) are material facts. Their continued use does not negate being appropriately sensitive to young people who may have a non-binary identity but will still be biologically male or female. To prohibit such use of language negates material reality.

Curriculum advice and information

9 Is the advice and information provided in section 2.7 of the toolkit about the curriculum effective in providing support to teachers?

Our response:

· No

10 Please provide comments on whether the information and advice provided about the curriculum is effective in providing support to teachers.

Our response:

- We agree that the curriculum should challenge gender stereotypes. However, this is not achieved by the widespread application of 'gender neutral names', meaning that a child may not necessarily know if the person in a case study is biologically male or female. It is more appropriate to promote stories that include both men and women carrying out activities where sex-based inequality in participation remain (e.g. promote notable female scientists, promote men in the role of primary caregiver). Moving to gender-neutral terminology would make it impossible to challenge stereotypical assumptions and promote equality for all.
- We are concerned about the promotion of content that relates to "diverse responses to puberty". This may be highly leading or suggestive towards an assumption that children and young people are 'born in the wrong body'. Adolescence is a challenging life stage for many children and young people, and is likely to be more so if the child is female (due to greater degree of physical change through puberty, the onset of menstruation and social factors such as unrealistic beauty standards promoted in popular culture); if a child is same sex attracted; if a child is ASD, ADHD or otherwise neuro-atypical; if a child has experienced trauma (e.g. close bereavement at a young age, or sexual assault). For all these reasons, curriculum content relating to anti-discrimination (e.g. appropriately teaching that trans people exist, have and deserve protection under the law etc., may face particular challenges and complexities relating to everyday life as a trans person) would be appropriate content. Content that promotes the idea that if children are uncomfortable with their puberty, you may be 'born in the wrong body' is dangerous, risking putting them on a medical transition pathway resulting in future infertility, loss of sexual function and lifelong health issues. Such an approach may lead children and young people to acquire a false belief that any distress related to life stage can be ameliorated through transition, when this is not likely to be the case.

- It is not wrong to teach that men have penises and women have vaginas. This is biological material reality.
- Health promotion and health-related self-care cannot be effectively taught without reference to biological sex, e.g. the need for women to undergo cervical screening and for men to be screened for prostate cancer. Curriculum content that confuses and blurs biological sex and gender may increase public health risk. Although the toolkit recognises such screening is sex specific, the overall approach of the toolkit risks effective teaching about necessary sex-based specifics needed to stay healthy.
- Reference is made to 'trans health' content provided by Terence Higgins Trust. This information is for medical transitioners and would therefore not be appropriate for the vast majority of children and young people reporting gender distress.
- The toolkit recognises that there are circumstances where teaching takes place in single-sex groups, particularly in relationships, sex and health education. This is appropriate due to the sensitive nature of content where the curriculum would necessarily cover reproductive health, menstruation and other intimate sex related matters, which may be embarrassing to cover in a mixed-sex group. The suggestion that "the school will need to consider where it is appropriate for a trans child or young person to be placed" is therefore inappropriate. It implies there are circumstances in which it is appropriate to place a male in a female RSE class and vice versa. This could be indirect discrimination against children where discussion of sex and bodies with the opposite sex is prohibited (sections 10, 19 and 85(2) of the Equality Act). Such an approach is likely to deter full participation.

Individualised approach

11 Does section 3 of the toolkit provide enough clarity around the advised individualised approach to support?

Our response:

No

12 Please provide comments on whether there is enough clarity around the advised individualised approach to support.

Our response:

- We welcome a philosophical approach that recognises that there is no one size fits all approach, and that gender-questioning children and young people should be met with kindness, compassion and support. However, this section is problematic: the individualised approach needs to be set in the context of the whole family, and the section of working with parents, carers and siblings is fundamentally flawed.
- The toolkit states, “Very occasionally, parents and carers will seek to prevent their child from making any steps towards a [social] transition and extra time, support and care will need to be offered to both the child and the family.” The problem here is that there is a presumption that ‘extra time’ is needed to bring the parents and carers round to supporting transition, rather than there being a serious consideration of their legitimate safeguarding concerns and openness to the possibility that transition might not necessarily be a good outcome.
- There is no mention that the majority of trans-identified young people are neurodiverse, especially ASD or ADHD. There is no mention that a high proportion of trans-identified young people are gay, indicating that internalised homophobia could be a strong factor driving a trans identity, as might mental health comorbidities where it is often not the case that such distress arises due to a child being trans. A failure to refer to these compounding factors and complexities that require a specialist, holistic, multidisciplinary input (as recommended by Cass) wholly negates any claim to the toolkit supporting an individual approach.

Policy and practice around potential transition

13 Does the toolkit provide effective advice and information to support schools with regard to developing policy and practice around the potential transition of trans students?

Our response:

No

14 Please provide comments on whether there is effective advice and information to support schools to develop policy and practice

Our response:

- The original studies of trans-identified children in the Netherlands that informed the Dutch Protocol (<https://pubmed.ncbi.nlm.nih.gov/25201798/>), found that 62 of the 70 original participants were same sex attracted. 80-90% of children seen at the Tavistock were same sex attracted <https://pubmed.ncbi.nlm.nih.gov/25431051/>
- The Toolkit states that schools should ordinarily not support a child or young person under the age of 18 to transition socially without involving parents and carers, unless there are genuinely exceptional and documented reasons to do so. However, 'genuinely exceptional' reasons are not defined, meaning that schools (potentially with advice from

the Council) can decide to socially transition a child without parental knowledge. Social transition without parental knowledge or consent should only happen through appropriate social work intervention, backed up by the family court, where it can be demonstrated that the local authority is acting in accordance with the best interests of the child and is acting in compliance with the Children Acts (1989 and 2004). Where there is statutory intervention, social workers should not overreach. Appropriate holistic, multidisciplinary and clinically competent assessment should apply.

- We would contest whether Gillick competence could apply in this instance. No child can be Gillick competent to consent to a pathway that can lead to loss of fertility; suppression of sexual function; removal of healthy body parts; and multiple and profound medical complications, along with reduction in both quality of life and life expectancy. The reference to appropriate authorities determining Gillick competence in the assessment of looked-after children means that the perspective and knowledge of a child/young person by foster carers is not taken into consideration.
- The only specialist recommended in the Trans Inclusion Schools Toolkit is Allsorts Youth Project. If any form of transition is being considered, this should be managed by a clinically competent, multi-disciplinary team delivering a Cass compliant model of care. We accept that the post-Cass services are yet to be implemented, but the referral and signposting to activist organisations is clinically irresponsible.
- We are concerned about the reference to supporting children and young people to develop scripts such as, 'I have always been a boy/girl'. This is a form of autosuggestion – the discussion of the concept in itself may foster a belief that did not escape or compromise appropriate assessment because the child has learnt a script. Indeed, given the prevalence of social media, it is likely that children and young people may already have been subject to online coaching from trans-identified adults online, and assessment needs to be mindful of this risk. It is certainly not for educational settings to be leading children or inadvertently giving them a language that leads to clinical intervention that may not be indicated.
- The suggestion that a child can determine transition 'when they are ready' implies that transition can happen at any age. This ignores what we know about child and adolescent brain development. It implies that such decisions are made irrespective of children's level of understanding or the complexities of their needs, and that the decision to transition should sit wholly with the child, leaving adults only to affirm such a decision to transition.

This contradicts all evidence and reference to a watchful waiting approach, the advice of Cass and the need for holistic, clinically competent and specialist care.

- Reference is made to a child moving from primary to secondary school. If a child had socially transitioned at primary school and the child and/or caregivers are questioning this decision then this could be a point where social desistance takes place (with less embarrassment relating to making such a change). The presumption in the Toolkit is that the move from primary to secondary is only one way, and the guidance effectively compels secondary schools to automatically support a social transition between years 6 and 7, irrespective of the full needs and circumstances of the child.
- Whilst the Toolkit references the fact that schools do not make decisions about medical transition, reference should be made to the fact that puberty blockers are now prohibited as part of gender-related medicine outside of a properly regulated clinical trial. Reference should be made to the powerful and irreversible nature of cross-sex hormone treatment and its side effects.
- Finally, any advice 'must prohibit the promotion of partisan political views and schools should take steps to ensure the balanced presentation of opposing views on political issues when they are brought to the attention of pupils' <https://www.gov.uk/government/publications/political-impartiality-in-schools/political-impartiality-in-schools>

Pupils and students with additional vulnerabilities

15 Does section 3.5 of the toolkit provide clear and accurate information about supporting trans students with additional vulnerabilities?

Our response:

No

16 Please provide comments about supporting trans students with additional vulnerabilities?

Our response:

- The toolkit states that, “Staff, parents, carers, and wider professionals may need support in understanding that a child or young person with SEND is just as likely to be lesbian, gay, bisexual, trans or gender exploring as any other person. The National Autistic Society includes articles on its website about this.”. The National Autistic Society acknowledges that autistic young people are more likely to be trans-identified, but it fails to speculate why that might be. It is well documented that many ASD children lack social skills and are more likely to be bullied, and in adolescence are likely to experience greater degrees of confusion related to their puberty and greater awareness of how they may differ from their neuro-typical peers. Additional care needs to be taken to ensure that such children are not prematurely or inappropriately affirmed.
- It is reasonable to conclude that a child or young person’s words or actions are not automatically attributed to their SEND, for example, preferences for clothing types or hair length being seen as a sensory need, or behaviours described as a new special interest, fascination, curiosity or phase. The toolkit states that, “Whilst this may be true in some instances, it is important to listen without judgement so that expressions of questioning gender identity are not dismissed.” However, this conclusion undermines the fact that the cycling through of different interests and identities while transitioning from a child to an adult is a universal experience, and therefore extreme caution needs to be taken before it can be reasonably concluded that such changes are likely to relate to gender dysphoria, especially where SEND may be part of a child’s presentation.
- The draft toolkit states that it is “important that a child or young person’s actions are not automatically attributed to their SEND, for example, preferences for clothing types or hair length being seen as a sensory need” Whilst true, the implication is that being gender non-confirming is equated here with questioning gender identity. This is highly sexist and

homophobic and contradicts other text that states that stereotypes should be challenged. Nothing related to gender identity or indication of gender transition should be inferred from the play and clothing preferences or personality of a child.

- A vulnerable child should not have a one-to-one with an activist teacher or youth worker, such as those from Allsorts Youth Project, who does not appreciate the safeguarding risks of social transition. There is no mention of parental information or consent for such a session.
- The Toolkit refers to teachers potentially needing to provide additional support to ensure safety online. 'Safety online' should include safety from online predators who may seek to exploit a child's vulnerability by convincing them that their sense of difference and social difficulties are because they are 'trans'. This is not mentioned in the toolkit.
- The toolkit states that BRM [Black and Racially Minoritised] trans people are likely to face discrimination based on their race and gender, and this can make seeking support harder. By coming out as trans some children and young people of faith may risk losing their communities. This makes the prejudicial assumption that parents from BRM backgrounds will reject their children if they are Trans-identified. Such an assumption flags parents as an automatic safeguarding risk, empowering teachers to facilitate transition without parental consent or knowledge. This, itself is discriminatory.
- Whilst children who are in care/care-experienced children are referred to in the Toolkit, it includes no consideration as to the possibility of any association of experience of care with trans identification. Such incuriosity exacerbates vulnerabilities as such children will not only have to contend with the various life experiences that make them vulnerable but for whom there could be a risk that a trans identification could be linked to prior trauma that may have led to care experience, being falsely assessed as being trans when the reality is likely to be more complex for care experienced children and young people.

Managing specific issues - toilets

17 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to

support trans students effectively on a case-by-case basis regarding toilets?

· No

18 Please provide comments about supporting trans students effectively regarding toilets.

Our response:

- ‘Competing sensitivities’ downplays the legal right of girls to single-sex spaces (see below). We note that the question specifically relates to ‘trans’ students but does not address the rights of other students. This is a failing and a breach of the Equality Act (2010), Human Rights Act (1998) and School Premises (England) Regulations (2012).
- It is surprising that Brighton & Hove City Council has “seen no evidence either in research or in the city’s schools that a trans child or young person (as defined under the gender assignment definition in the Equality Act 2010) using facilities aimed at a gender that is not the one assigned at birth presents any more of a threat to another child or young person than any member of their peer group.” Although we may not know of such experiences in Brighton and Hove it is worth noting experiences from elsewhere. Having a mixed-sex toilet at an Essex school enabled a boy to assault girls <https://www.bbc.co.uk/news/uk-england-essex-66052546>. Evidence presented to parliament proves that patterns of criminality remain the same among males who identify as female – risks of assault relate to sex, not gender identity. ‘The researchers state: ‘male-to-females . . . retained a male pattern regarding criminality. The same was true regarding violent crime.’ <https://committees.parliament.uk/writtenevidence/18973/pdf/> Furthermore, girls may not feel able to complain about having to use a mixed-sex toilet as they may fear being called transphobic.

- The Toolkit notes that there is “evidence of exclusion of ‘trans girls’ (male children) from female toilets could constitute a ‘particular disadvantage’. For example, there are health risks for children unable to access toilets during the school day (such as urinary tract infections) and the feeling of exclusion can be harmful to their mental health”. There is no mention of girls who may be menstruating and feel unable to use mixed-sex toilets for privacy and safety concerns, and so are equally at risk contracting urinary tract infections but in far greater numbers
- As such, a policy of not allowing a trans child or young person to use the toilet facilities that aligns with their gender, might amount to prima facie indirect discrimination that would need to be justified. For prima facie indirect discrimination to be justified, the policy must be a proportionate means of achieving a legitimate aim. This would need to be assessed on a case-by-case basis in discussion with the individual child or young person and considering the potential impacts on other children and young people, for example the privacy concerns of girls using the female toilets.
- A decision to allow a child to use a toilet designated for the opposite sex does not take into account rights under the Equality Act, nor Articles 8 (privacy and family life), 9 (religion and believe), Article 2 Protocol 1 (education and religion) and 14 (discrimination) of Human Rights Act for the children of the sex for whom the space is reserved. Nor does the approach take into account the Public Sector Equality Duty and the safeguarding duty under S175 of the Education Act 2006.
- Furthermore, irrespective of whether a child identifies as trans, allowing them to use a toilet designation for children of the opposite sex breaches regulation 4 (2) of the School Premises (England) Regulations 2012.
- Only a Gender Recognition Certificate (Gender Recognition Act) 2004 could confer rights for a person to be considered to have changed sex (for some purposes) under the law. Only adults over the age of 18 can apply for Gender Recognition Certificates and therefore, irrespective of identity or gender reassignment status, children remain legally their natal sex. Any allowance of children to use toilet provision designated for the opposite sex is therefore unlawful.
- The toolkit states that, ideally, where funding and space allows, schools should provide children and young people with access to a mixture of toilets including:
 - single-sex toilets

- blocks of floor to ceiling cubicle toilets that can be used by all, with bins for menstrual products in each cubicle ('toilets for everyone'). These unisex toilets must conform to the structure set out in the 2012 legislation.
- Once inside such a 'toilet for everyone', a girl is far less safe than in a single-sex toilet because all of the other cubicles could be being used by boys. Girls may feel more safe in an all girls toilet block than in individual cubicles.
- We would therefore contend that where possible there could be a number of designated single self-contained (i.e. including washing facilities within) toilets with floor to ceiling doors and placed in locations where there is likely to be good adult supervision/visibility, but these must be stand-alone. Boys and girls must have access to genuinely single-sex toilet facilities for privacy and dignity, safety, and legal reasons.

Managing specific issues - changing rooms

19 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to support trans students effectively on a case-by-case basis regarding changing rooms?

Our response:

· No

20 Please provide comments about supporting trans students effectively regarding changing rooms.

Our response:

- Again, there is no reference to the needs of students who do not identify as trans, nor evidence of any consultation.
- The Toolkit recommends a 'case by case' approach. This implies that there are circumstances in which it is appropriate for children to use changing facilities allocated to the opposite sex, which there are not. The safeguarding and discrimination shortcomings that would apply to the use of toilet facilities apply equally here.
- The Toolkit states that any child or young person who has a need or desire for increased privacy, regardless of the underlying reason, should generally be provided with a reasonable alternative changing area, such as the use of a private area or with a separate time to change. This implies that a girl who objects to a mixed-sex changing facility may be offered separate accommodation, whereas reasonable efforts should be made to accommodate the trans-identified child in a way that does not breach single-sex provision, not the other way round.
- Such accommodation would affect girls' safety, privacy and dignity and the impact could be severe. Such an approach also increases risk of sexual violence and harassment and would be a breach of the safeguarding duty under Section 175 of the Education Act 2006. There may also be religious discrimination, e.g. Muslim or Orthodox Jewish girls may be prohibited from being in a state of undress in the presence of unrelated males, and therefore the council's proposed approach could lead to indirect religious discrimination.
- When considering whether to permit a trans-identifying child access to single-sex changing accommodation designated for pupils of the opposite sex, the school should consider unlawful indirect sex, religion and belief, and/or gender reassignment discrimination (sections 19, 7, 10, 11 and 85(2) of the Equality Act; Harassment related to sex (sections 26 and 85(3) of the Equality Act; a breach of the Convention of Human Rights (Articles 8, 9, Article 2 Protocol 1, and Section 14, Schedule 1 of the Human Rights Act). Accommodating a child in accordance with trans identity but changing rooms

designated for members of the opposite biological sex would be unlawful on multiple grounds.

Managing specific issues - residential

21 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to support trans students effectively on a case-by-case basis regarding residential?

Our response:

No

22 Please provide comments about supporting trans students effectively regarding residential.

Our response:

- We are concerned about the allocation of students to opposite bedroom accommodation on a 'case by case' basis. Like the situations described above in terms of access to other single-sex basis, this puts an unacceptably onerous burden on individual teaching staff,

and may cause them to act unlawfully; it also presents serious risks for the children involved

- The practice of allowing trans- identified biological boys into girls' sleeping accommodation overnight presents unacceptable risk in that:
 - Such provision is likely to cause distress amongst girls who may have to undress in front of boys, and it could also be a manifestation of indirect religious discrimination. Girls are increasingly vulnerable due to the duration of such an intrusion and the fact that they will be asleep.
 - The risk of sexual violence and harassment to girls is increased by the presence of boys. Of particular concern is the suggestion that "sharing a bedroom with trusted friends with appropriate safeguarding arrangements", implying that as if a mixed sex sleeping arrangement may be acceptable if the people concerned know each other. The majority of perpetrators of sexual and violent crime are known to their victims and this suggested approach to management is a safeguarding red flag.
 - This arrangement would be a breach of the safeguarding duty under Section 175 of the Education Act 2006 and Article 8 of the Human Rights Act regarding right to respect for private life.
- Under no circumstances could mixed-sex dormitory accommodation be considered legal or safe.

Managing specific issues - uniform

23 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to

support trans students effectively on a case-by-case basis regarding uniform?

Our response:

· No

24 Please provide comments about supporting trans students effectively regarding uniform.

Our response:

- There are no comments per se about uniform, but we would recommend that a uniform policy be applied consistently. Whilst the majority of schools may have historically had a boys' and girls' uniforms, pragmatically many are now stating that both options are unisex. There is no problem per se with a boy expressing a preference to wear a skirt, but this in itself would not be indicative of gender distress. The 'case by case' approach would undermine a consistent and equitable approach to uniform policy.

Managing specific issues - names and pronouns

25 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to

support trans students effectively on a case-by-case basis regarding names and pronouns?

Our response:

· No

26 Please provide comments about supporting trans students effectively regarding names and pronouns.

Our response:

- The Toolkit suggests that should parents not support a child's request to change the name and pronouns by which they are known, further advice would be sought. This implies that schools can override parental consent. We would contend that this should not be the case in any circumstance unless an appropriate local authority requested safeguarding provision is put in place (e.g. a Care Order).
- The Toolkit states that respecting a child or young person's request to change name and pronoun is an important part of supporting and validating their identity. This effectively mandates social transition (please see earlier in this response for discussion of the risks and legalities of such an approach) and denies the right of teachers and students to express safeguarding concerns.
- The Toolkit makes reference to suggesting that appropriate challenge and, if necessary, action, be taken (against staff) with reference to the setting's equality and anti-bullying policies. Again, this could effectively be the mandating of social transition and indirect discrimination, e.g. against staff who hold gender-critical views

- No reference is made to appropriate support for trans-identified young people. It is reasonable, on a therapeutic basis to question why a child or young person would wish to adopt a different name or set of pronouns, but the Toolkit's effective mandate to adopt child-requested changes (with threat of application of school Equality and Anti Bullying policies) undermines a watchful waiting approach, discriminates against those who hold gender-critical beliefs, and is unlikely to be in the best interest of any trans-identified child.

Managing specific issues - confidentiality and data sharing

27 Section 4 of the toolkit is about managing specific issues for trans students. Does it provide enough information to support trans students effectively on a case-by-case basis regarding confidentiality and data sharing?

Our response:

· Yes

28 Please provide comments about supporting trans students effectively regarding confidentiality and data sharing.

Our response:

Equality Act 2010

29 Please provide comments on whether there is enough information in the toolkit on the Equality Act 2010 to support a school's decision making.

Our response:

- No. The guidance in the Toolkit is insufficient. There is no information related to other protected characteristics. The Toolkit effectively requires education settings to breach the Equality Act in multiple ways, as set out in the responses to questions above.

Confidentiality and information sharing

30 Appendix 2 of the toolkit provides information on confidentiality and information sharing. Please leave any comments you might have on this section.

Our response:

- Overall, the principles of confidentiality and information sharing seem sound, but for major life changing decisions parents should be involved, not excluded, from the decision making process unless there is a significant risk of harm to the child or young person.

- However, the premise of the guidance is flawed from the first sentence of the second paragraph, “when a child or young person initially discloses, they are trans”. This implies this a permanent state of affairs, yet we know that this could be transient given how children and young people may cycle through different identities throughout childhood and adolescence.
- We have concerns about schools positioning themselves as a child’s advocate when dealing with parents. This undermines familial attachments and genuine partnership between schools and parents.
- Whilst a significant risk of harm may be a legitimate basis to withhold information from parents, we are concerned that the definition of ‘significant risk of harm’ is not defined in the toolkit and could include a refusal to affirm. We would contend that the premature and inappropriate affirmation of children is a significant safeguarding risk and schools should avoid the presumption of affirmation.
- Whilst it may be best practice for staff to share information with another member of staff.

Glossary of terms

31 Appendix 3 of the toolkit is a glossary of definitions. Please leave any comments you may have on this section.

Our response:

- There are no specific comments on the glossary of terms per se. However, the definition of ‘transition’ makes reference to the fact that a young person cannot have surgery in the UK until they are an adult. Given that reference is made earlier to interventions such as puberty blockers and hormone therapy it would be appropriate to state that puberty blockers cannot now be prescribed outside of a properly regulated, ethics committee approved clinical trial, and hormone treatment for minors could only be initiated within a specialist clinical service.

Challenging prejudiced language and gender stereotyping

32 Appendix 4 of the toolkit provides ideas for schools to use in responding to prejudiced language and gender stereotyping. Please leave any comments you may have on this section.

Our response:

- No comments are provided here.

Protected characteristics

33 Do you have any comments regarding the potential impact of the toolkit on those who share a protected characteristic under the Equality Act 2010, whether negative or positive?

Our response:

- Comments in relation to other protected characteristics are embedded in the rest of this response, but the Toolkit fails to have sufficient regard in relation to the characteristics of sex, disability, religion and belief (which includes established religions such as Islam and Judaism or protected philosophical beliefs such as gender critical views).

34 How could any adverse impact be reduced and are there any other ways we could advance equality of opportunity or foster good relations between those who share a protected characteristic and those who do not?

Our response:

- Each section within the Toolkit fundamentally fails to advance equality of opportunity or foster good relations between those who share a protected characteristic and those who do not. In fact, the toolkit undermines equality of opportunity in relation to most protected characteristics (e.g. .in setting out circumstances where a trans identified child and young person could use single sex changing facilities in line with their identity rather than biological sex could lead to sex and religious discrimination.

General comments

35 Do you have any general comments on how effectively the toolkit will support schools in developing policy and practice?

Our response:

- There are several areas where the pro-forma does not provide for consultation response to some fundamentally important content within the draft toolkit. These are therefore presented here.

Managing PE and sports

- We note that there is no specific set of questions related to PE and sports, but this is of fundamental importance.
- The Toolkit states that trans-identifying children and young people (who come within the gender reassignment protected characteristic under Equality Act) should be able to take part in PE lessons in accordance with their gender identity as appropriate to their age, stage of development and guidance from sporting bodies.
- This is unfair and unsafe. It is notable that the toolkit makes no mention of fair competition <https://www.acsm.org/news-detail/2023/09/29/acsm-releases-expert-consensus-statement-the-biological-basis-of-sex-differences-in-athletic-performance>. Self-evidently pubertal and post-pubescent trans-identified boys will disadvantage girls and undermine fairness.
https://www.researchgate.net/publication/224914505_Physical_Fitness_Differences_Between_Prepubescent_Boys_and_Girls
- The Equality Act acknowledges the sex-based differences in strength, stamina and physique between the sexes. Self-identification through the 'acceptance of people as they present' may only be appropriate in those sports that are not sex affected.
- A case by case basis consideration is not going to be practicable, fair or safe. Mixed-sex teams risk indirect discrimination against girls.
- This also exacerbates a social phenomenon that girls are more likely to drop out of competitive sports than boys. 'Trans inclusion' in this context means the exclusion of girls.
- The handling of changing facilities in sporting fixtures (both home and away games) is particularly problematic given the safeguarding issues related to changing facilities as described above.

Appendix 5: A trans inclusive approach to policies

- This recommends that a setting's local equality policy could reference the Trans Inclusion Schools Toolkit. Whilst the Toolkit fails to adhere to equality and human rights legislation in relation to all protected characteristics, this approach is likely to direct educational settings to act unlawfully.
- In reality, the policy should describe gender-questioning or trans-identified children and young people. Research on adolescent development shows that identities continue

developing into adulthood. We know, in the absence of social transition, that only a small proportion of trans-identifying children end up persisting in these identities.

- A recommendation for trans students to “access changing facilities where they feel safe” is a safeguarding red flag, particularly for girls (as described elsewhere in this consultation response).
- Discussions on how to be inclusive to trans (and presumably trans identifying) children and young people for school visits, trips and residentials should also note the need to maintain sex segregation and uphold safeguarding concerns as the primary objective.
- PSHE education policies should promote good relations with people with all characteristics, including those with the characteristic of gender reassignment. However, care should be taken to ensure that curriculum content does not teach gender identity theory as empirical fact (such as human biology) but as an unverifiable and unfalsifiable contested belief to which some people adhere, but not others. Care needs to be taken to ensure that children are not led down a path of thinking that discomfort around adolescence in particular should be described as being, ‘born in the wrong body’. Instead, content should acknowledge that there are multiple challenges related growing up. Curricula could emphasise the need for compassion and holistic care for gender questioning children and young people regardless of whether gender transition ends up being an appropriate outcome or not, without stating or implying that gender identity exploration should lead to a settled trans status.
- Whilst identifying as trans in itself is not a safeguarding issue, the inappropriate or premature affirmation of gender, together with body changing actions (e.g. use of breast binders or the sourcing of hormone treatment outside of an appropriate specialist service) could be.
- There needs to be cognisance of increased prevalence of trans identification amongst neuro atypical children and young people, as well as same-sex attracted children and young people, those who have experienced trauma (e.g. sexual assault or bereavement) and those who are care experienced. A sensitive approach will seek to understand why there is such an association and be open to the possibility that these may contribute to a temporary reporting of gender dysphoria that could resolve.