PSHE brighton

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An Open Letter to School Governors in Brighton & Hove

Ref: Safeguarding, Law, and Your Personal Responsibility

Dear Governors,

You are now operating in a materially changed legal and safeguarding landscape.

Since September 2024, the position has been clarified by the findings of the Cass Review[2], the judgment of For Women Scotland v Scottish Ministers[3], the reinforced application of Equality and Human Rights Commission guidance[4], and updated statutory expectations set out in Keeping Children Safe in Education[1]. These developments are not abstract. They go directly to your duties.

The Key Point

Under Section 175 of the Education Act 2002[5], safeguarding is a non-delegable statutory duty of the governing body.

School governors of maintained schools cannot regard safeguarding failures as an operational matter for staff alone. They are under a legal obligation to ensure that arrangements to safeguard and promote the welfare of pupils are both in place and effective in practice. While liability will ordinarily attach to the governing body as a corporate entity, individual governors may nonetheless be exposed to personal legal and regulatory consequences where there has been a failure to exercise reasonable care, skill, and diligence in discharging that duty—particularly where known safeguarding risks have not been acted upon, where appropriate systems and oversight have not been implemented, or where there has been a failure to interrogate and challenge obvious deficiencies[10].

If foreseeable risks are not identified, recorded, and addressed, liability does not sit elsewhere — it sits with you.

Consequences of Failure

Where governing bodies fail to discharge their statutory safeguarding duties, the consequences are not theoretical. Under Section 175 of the Education Act 2002[5], responsibility rests with the governing body, and failure may trigger regulatory intervention, including adverse inspection outcomes and formal action by the Secretary of State[11]. While liability will ordinarily attach to the governing body as a corporate entity, individual governors may nonetheless face removal from office or disqualification where they have failed to exercise reasonable care, skill, and diligence in overseeing safeguarding arrangements[12]. In cases where harm arises, civil liability in

negligence may also follow, particularly where risks were foreseeable but not acted upon[13]. For academy governors acting as charity trustees, additional duties under charity law apply, with potential regulatory consequences for breach[14].

By way of illustration, a governor with designated safeguarding oversight who is aware of a material safeguarding risk but fails to ensure it is properly recorded, escalated, and addressed may be subject to personal regulatory consequences where harm subsequently arises. Liability does not arise from designation alone, but from the combination of knowledge of a material risk, a duty to act, and a failure to exercise reasonable care, skill, and diligence in response.

Non-Delegable Duty and Reliance on Guidance

The Supreme Court in Woodland v Essex County Council confirmed that schools owe a non-delegable duty of care to pupils, meaning responsibility cannot be avoided by reliance on third-party guidance or delegated functions[16]. Governing bodies must therefore ensure that any policies adopted—whether local authority guidance or external "toolkits"—are lawful, evidence-based, and safe in practice. While governors are generally protected from personal liability when acting in good faith, that protection may be undermined where there is awareness of material safeguarding risk but a failure to take reasonable steps in response[17]. Governing bodies remain legally responsible for compliance with the Equality Act 2010, and must exercise independent judgment in safeguarding matters rather than relying uncritically on external guidance[18].

Recent Legal Authority: Public Body Liability in Practice

A recent Employment Tribunal ruling in *LS v NHS England* (2026) illustrates the legal consequences of adopting policies based on gender identity without adequate regard to statutory protections. The Tribunal upheld claims of indirect sex discrimination and harassment where NHS England permitted access to single-sex facilities on the basis of gender identity, finding that the policy placed women at a particular disadvantage and could not be justified as a proportionate means of achieving a legitimate aim. The Tribunal further confirmed that there is no general legal right under the Equality Act 2010 to access single-sex facilities on the basis of gender identity alone, and that failure to consider less intrusive alternatives contributed to the unlawfulness of the policy.

This judgment reinforces the principle that public authorities cannot rely on prevailing guidance or institutional practice where such policies conflict with statutory duties. The legal responsibility remains with the governing body.

Three Risks Governors Can No Longer Ignore

1. **Single-Sex Spaces**

The Supreme Court has clarified that, in law, the term "sex" is to be interpreted as biological sex in key statutory contexts, reinforcing the legal basis for single-sex provision under the Equality Act 2010[6].

Any practice allowing opposite-sex access to changing rooms or similar spaces creates safeguarding risk, risks breaching statutory duties, and is increasingly subject to legal challenge, including cases involving families in Brighton & Hove.

2. **Social Transition in Schools**

The Cass Review[2] concludes that social transition is a significant clinical and safeguarding intervention, not a neutral act[7].

Where schools facilitate transition without proper safeguarding assessment, exclude parents from material decisions, or allow staff to act beyond their competence, they create foreseeable safeguarding risk.

3. **Evidence and Policy Failure**

Governors should be aware that published legal opinion by Karon Monaghan KC has identified potential unlawfulness in aspects of local Toolkit guidance[8]. International evidence, including longitudinal approaches adopted in countries such as Finland, emphasises caution, psychological assessment, and avoidance of premature medical pathways[9].

Reliance on contested, incomplete, or outdated evidence will not protect a governing body where harm arises.

A Simple Governance Test

Ask yourselves:

- Have these risks been formally identified and recorded?
- Are they included in your safeguarding risk register?
- Is there documented evidence of board-level discussion and decision-making?
- Have appropriate mitigation measures been implemented and reviewed?

If not, the issue is no longer policy. It is governance failure.

Why This Matters

Across Brighton & Hove, families have raised concerns for years.

Those concerns are now reflected in national reviews, clarified in law, and increasingly tested through formal complaints and legal processes. The question for governors is no longer whether this issue is contested. The question is whether you have acted on known and identifiable risk.

These matters are increasingly relevant to inspection frameworks, complaints procedures, and potential judicial review[15].

What We Are Asking

We ask every governing body to:

- Review safeguarding and equality compliance in light of current law
- Confirm that single-sex provision is lawful and effective in practice
- Ensure social transition is treated as a safeguarding matter, not a pastoral default
- Maintain a clear safeguarding risk register with active and recorded oversight

Final Point

This is not about ideology.

It is about whether those responsible for children's safety recognised risk, recorded it, and acted. Where that does not happen, legal and regulatory accountability may arise[13].

PSHE Brighton
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Further Information

A detailed Governor Safeguarding Briefing is available, including:

- legal duties
- safeguarding expectations
- practical governance checks

Footnotes

[1] Department for Education, *Keeping Children Safe in Education* (Statutory Guidance), September 2024.
[2] Cass Review, *Independent Review of Gender Identity Services for Children and Young People: Final Report*, April 2024, pp. 32–35, 157–170.
[3] For Women Scotland v Scottish Ministers.
[4] Equality and Human Rights Commission, guidance on the Equality Act 2010 (2023–2024 updates).
[5] Education Act 2002, s.175.
[6] Equality Act 2010, Schedule 3, Part 7.
[7] Cass Review, pp. 165–170.
[8] Karon Monaghan KC, legal opinion on Brighton & Hove Schools Toolkit (2023).
[9] Council for Choices in Health Care in Finland, *Medical Treatment Methods for Dysphoria in Minors* (2020).
[10] Department for Education, *Governance Handbook* (2024).
[11] Department for Education statutory intervention powers; Ofsted, *School Inspection Handbook*.
[12] Education Act 2011; Department for Education, *Governance Handbook* (2024).
[13] *Barrett v Enfield London Borough Council* [2001] 2 AC 550.
[14] Charities Act 2011; Charity Commission guidance.
[15] Ofsted, *School Inspection Handbook*.
[16] Woodland v Essex County Council.
[17] School Standards and Frameworks Act 1998, s.50(7); Department for Education, *Governance Handbook* (2024).
[18] Equality Act 2010; Equality and Human Rights Commission guidance.