

Petitioner submission of 3 April 2023

PE2001/B: Withdraw the 'Supporting transgender young people in schools' guidance from Scottish schools

Since submitting our petition, we have obtained further information that we believe will offer a significant addition to the information already provided.

1. EHRC Technical, Guidance to Schools- Current Revision Work

The Scottish Government guidance relies heavily on the [EHRC Technical Guidance to Schools](#) (p.58/59) for its position that pupils who announce a trans or non-binary identity should immediately and unquestioningly be supported in any social transition, with or without parental awareness (p.14, 35, 39, 41/42). However, the EHRC Technical Guidance is now out of date, with the webpage stating:

“Updated 3 November 2022:

This guidance is out of date. The policy areas covered are evolving and the guidance is under review.”

We have had sight of correspondence from the Chair of the Equality and Human Rights Commission (EHRC) to the Bayswater Support Group, which confirms it is the section on Gender Reassignment which is being revised. In one letter, dated 21 November 2022, the Chair states:

“The debate on gender identity continues to evolve, not least as concepts are tested in the courts. We recognise that our 2014 guidance has become outdated in terms of tone, language, and some specific policy areas, which no longer comprehensively reflect our position, which has evolved in line with case law. We are now clearer that failing to affirm a young person’s new name or pronouns does not immediately constitute unlawful discrimination, and we would set out more fully the need to consider the child’s age and developmental stage, any coexisting conditions, or factors (for example, neurodiversity or same-sex attraction, as you say), medical advice, and of course the views of parents.”

In a further letter, dated 23 November 2023, the Chair provides clarification about the status of a non-binary identity within the Protected Characteristic of Gender Reassignment:

“In terms of your question about the protections for non-binary people, you are right that this has not been fully tested in the courts. There has

so far been a single employment law case (Taylor v Jaguar Land Rover, 1304471/2018) which found that an individual who identified as non-binary did fall within the protected characteristic of gender reassignment. However, that decision was very specific to its facts within an employment context and was made by an employment tribunal and so is not binding on other courts. It is difficult to form a view from this case as to whether pupils identifying as non-binary would fall under the protected characteristic of gender reassignment. Even if they do, it does not automatically follow that the refusal of a school to adopt the pronouns as requested by a child would necessarily constitute discrimination. There are important contextual factors that schools will need to consider in these decisions, including in relation to safeguarding, bullying, and the impacts on the education and wellbeing of all pupils and students.”

The Scottish Government Guidance is now not in line with the evolving EHRC position, and their inclusion of the EHRC Technical Guidance without caveat is out of step with the EHRC’s current views.

2. Use of Statistics

Page 38 of the Scottish Government Guidance shows several statistics around “trans youths with “supportive parents” vs those with “unsupportive parents”. The independent policy collective analysis group, MurrayBlackburnMackenzie (MBM) have published a blog questioning the use of these statistics.

Source: <https://murrayblackburnmackenzie.org/2021/08/19/use-of-statistics-in-the-scottish-government-publication-supporting-transgender-pupils-in-schools/>

The statistics were drawn from the 2012 Canadian TransPulse survey which looked at a sample of trans identified young people aged 16-24. MBM have raised several concerns around the suitability for the inclusion of these statistics by the Scottish Government, including:

“The Trans PULSE survey gathered all its data in a single snapshot and so does not allow for causal inferences to be drawn. In a separate paper, its co-authors state that findings from the survey ‘must be interpreted cautiously’ (Rotondi and Bauer, 2011). The emphatic presentation of figures from the report by the Scottish Government as generalised statements breaches that advice.”

And

“To produce statistical findings generalisable to a wider population, data has to be drawn from a random sample of a relevant population and reported with appropriate estimates for the margin of error, which will increase as the sample size falls. This study therefore does not provide

any basis for making robust estimates for effects beyond the immediate group involved in the study. Although a separate report from the Trans PULSE project clarifies: ‘all statistics presented are generalizable to the population of networked trans people in Ontario (those who know at least one other trans person’ (Sheim and Bauer, 2015: 1), in the absence of random sampling even this claim is questionable. There is no basis at all for assuming its findings will predict experiences with any accuracy for Scottish school children aged fifteen years or under.”

The use of these statistics within the Scottish Government guidance is, in our view, unsafe and lends to the message that schools must work to move parents who wish to take a more cautious approach instead of immediately supporting their child’s social transition, from their perceived “unsupportive” position to a “supportive” one.

3. Mermaids

The Scottish Government guidance signposts schools to the charity Mermaids on pages 40 and 63. Mermaids are currently under investigation by the [Charity Commission for England and Wales](#). This is in response to serious safeguarding concerns around the charity.

We have provided a dossier to the Charity Commission as part of its investigation. This dossier has also been shared with the former Cabinet Secretary for Education, Shirley-Anne Somerville, with a request that the Scottish Government remove reference to Mermaids as a precautionary measure as has happened in England and other areas, for example, NHS Lothian. This request was refused by Ms Somerville.

The dossier makes clear the safeguarding risks around Mermaids which schools may or may not be aware of.

We have also received an impact statement from a parent with personal experience of the guidance and how it directly impacted her child and family.

This statement can be found on the SOS Scotland Website - <https://sossotland.com/testimonies>

Here is a direct copy from the website:

<https://img1.wsimg.com/blobby/go/03c7cf6b-6a1f-4df0-9b77-b71108ce59e5/downloads/IS.pdf?ver=1680709609122>