



Education &  
Early Years

# OFFICIAL RESPONSE TO THE GOVERNMENT CONSULTATION

# GENDER QUESTIONING CHILDREN

**Community | Education & Early Years**

465c Caledonian Road

London

N7 9GX

[www.Community-TU.org](http://www.Community-TU.org)

## About Community Union

Formerly PAT/PANN and latterly Voice, the Education and Early Years section of **Community Union** represent thousands of serving teachers and support staff, headteachers, lecturers, nursery and early years workers, nannies and other education professionals in schools and academies, nurseries and early years settings, colleges and universities across the whole of the UK.

We provide legal and casework support to our members and regularly engage with them in determining our response to policy proposals.

**Community Union** is affiliated to the Trades Union Congress (TUC), to the Irish TUC, Scottish TUC and Welsh TUC as well as the General Federation of Trades Union (GFTU).

This Official Response has been prepared on behalf of members of the Education and Early Years section of **Community Union** by:

**Martin Hodge**  
Head of Education Policy  
[MHodge@Community-TU.org](mailto:MHodge@Community-TU.org)

**Jennifer Dean**  
Head of Equalities  
[jdean@community-tu.org](mailto:jdean@community-tu.org)

It was submitted via email, to [gqcguidance.consultation@education.gov.uk](mailto:gqcguidance.consultation@education.gov.uk) on 12 March 2024.

This is a public document which will be published on our website following the consultation close.

The information shared within this response may be used and quoted as appropriate for the purposes it was gathered, and Community Union should be acknowledged as a contributor. We would be happy to discuss the comments in this response with the DfE or a research body acting on its behalf using the contact details supplied.

## The draft non-statutory guidance

93% of Community Union members agreed that there was a clear need for guidance to assist teachers and school staff to care for and support students, parents and colleagues on issues relating to gender identity. We have been waiting a long time for this guidance and have been concerned by the numerous delays and the impact that this has had on the children and staff in our schools and colleges.

However, the guidance, as published is not as clear and unambiguous as we had hoped. The guidance is very light on detail, does not give enough detail or any case studies and fails in its primary aim which is to provide practical advice to support schools, colleges and their staff to meet their legal duties. We also have concerns that following some of these recommendations could lead to disciplinary action being taken against staff, or legal action being taken against staff and schools.

Around half of respondents to our survey had read the DfE draft guidance document and of those, most felt they could agree with at least some of the advice it contained, for example:

*"I like that the issue is being addressed."*

*"it highlights some obvious pragmatic issues in need of consideration ... but I'm not sure it can get much credit for stating the obvious."*

However, it was clear that it was not easy to follow, with some respondents noting that it contradicted itself too many times and this made them question its reliability.

Some members commented that it was too focussed on the rights of people other than the child themselves and worried about the lack of support being made available to the vulnerable children the guidance was expected to provide.

As we have already stated, the guidance document is too brief to cover the wide range of circumstances we would have expected from a document so long in gestation. Its 18 pages do not even begin to scratch the surface of the specific issues being managed in our schools and colleges every day. When compared to the 71 pages of guidance published for Scottish schools in 2021, we can clearly see a major discrepancy.

As members observed:

*"Children are rarely clear nor fall into simple categories. The guidance does not say what to do if parents/carers disagree with the guidance. The guidance does not support schools in the event that a child refuses to attend school because their gender is not recognised. The guidance does not support the school when the child is in mental health crisis linked to gender."*

In short, the guidance fails to support children, it fails to support their parents and it fails to support the staff who will be navigating a path of supporting children. It is inadequate because it fails to address the concerns that are being and will continue to be raised.

## Serious Concern

Whilst we understand that this guidance covers areas that remain untested in the courts, the very essence of that sentence gives us cause for concern. It will be necessary for teachers, school and college staff to make decisions on the basis of this guidance without any assurance that they will be legally protected. This is simply unacceptable.

Again, whilst we appreciate that it will not always be possible for the guidance to state a definitive legal position on all areas – this legal position may well move over time – the guidance does not provide clear and unambiguous positions on so many of the issues that it could and there are too many issues on which the guidance is completely silent.

The document identifies some of the factors that schools and colleges should consider when making decisions but fails to provide the necessary case studies, background legislation or legal position that may help staff to make decisions that may have profound and career altering decisions, as well as having a profound impact upon the lives of the children and young people they work with.

Some members noted that the views of young people themselves do not appear to have been sought, nor reflected in the guidance, saying:

*“I’d like LGBTQ+ young people to be asked what they would like to see, along with families of young people who are trans. Someone should ask the mum of Brianna Ghey, for example, to say what might have helped her daughter as she transitioned.*

In short, *“In no way does the guidance consider the child themselves.”*

According to the draft document “This guidance applies to all schools”. Therefore, this could equally apply to a child in reception as to a young person in post-16 education or training. Whilst the same overarching principles of love, care, understanding and tolerance, should apply, the way that circumstances are managed will be radically different. For example, at what age does a child achieve the appropriate awareness, understanding and capacity to challenge and change their gender?

Members commented:

*“I think the guidance is flawed because it talks about ‘children’ and ‘legal adults’ but doesn’t distinguish between children and young people in different stages of life.*

*“Different settings need different guidance, and this should be reflected in the guidance. You can’t blanket all settings for children aged 3-18 in the same way, as developmentally they are not the same.”*

*“I don’t think it’s appropriate for children under secondary school age to socially transition, as I think gender questioning at this age is more a kick against stereotypes. However, as children work through secondary school, their needs change. [For example] I think a young person in yr10 and above will have a clear sense of their gender, and certainly in a sixth form. Settings should be enabling young people from KS4 onwards who want to socially transition to do this, easily, not by putting up a million barriers.*

*Pupils who want to socially transition in sixth form should be able to do this freely and easily, without drama. It's a really hard thing to do, they are going to struggle all their lives, and they need kindness and respect, not barriers and threat."*

By failing to differentiate between differing ages and stages at all, the guidance fails to meet the needs of any child in our education system and fails the adults working in our schools. In fact, it could put schools and their staff at risk by determining capacity when this is contested by other involved parties.

Another major failing is that the guidance seems to assume 'ground zero', when in fact there are already children in our schools who have been questioning their gender for some time, exploring what it means and making decisions. Members want to know where the guidance is to cover these vulnerable young people?

*"It should be clearer as to how to proceed when children already arrive in school with a different gender. It does not give clear guidance on how to approach this retrospectively."*

Schools and colleges have already begun to make adjustments and adaptations to registers, uniforms and accommodation to meet the needs of their young people and to protect them from harm, as defined within Keeping Children Safe in Education. For example, most schools allow trousers to be worn by all pupils regardless of gender. Similarly, uniform adaptations are made on grounds of faith and belief as is appropriate. Adaptations for children considering their gender can be made in similarly subtle and unobtrusive ways.

By failing to provide explicit, legally-sound guidance supported by case studies, schools which rely solely upon this proposed guidance face undoing much good work, putting themselves, their staff, and most crucially the children and young people, at increased risk – this surely must be considered and addressed before anything is published. As members noted:

*"It needs to provide actual practical advice for difficult scenarios, based on the work done by leading schools in this area, both nationally and internationally. It needs to back up any of what it says with actual research, data and citations. It also needs to be written in a way that is actually supportive of transgender children."*

Other adaptations may well be more obvious and visible but must nonetheless be considered and implemented wherever possible. Requiring a child or young person to continue with a pronoun they do not wish to be known by could place the individual at risk. Equally, allowing a change of pronoun, but failing to provide the support and insurance to protect the individual from harm, would be unthinkable. Again, the guidance document does not give specific detail on how this situation should be managed, how support should be given and who is the authority able to make decisions.

Instead the guidance suggests that pronoun change will be the exception stating, *"It is expected that there will be very few occasions in which a school or college will be able to agree to a change of pronouns."* Why should this be so hard to agree?

And, despite the guidance stating that *“bullying of any child must not be tolerated”* it tacitly agrees to allow pupils and staff to, intentionally or accidentally, misgender individuals *“when adapting to a new way of interacting”* or when referring to them collectively. It is our view that this leaves the judgment of intent far too open to interpretation. And whilst this this may provide a modicum of protection in accidental circumstances it is a situation which must not be encouraged.

Where there is a request to change the legal name, for example to update the admissions register, schools must continue to operate under the Data Protection Act 2018. But informal name change is a very straightforward and easy thing for schools to address and has been simply managed for decades. For example, recording a different ‘known as’ name and using this in day-to-day interactions is as simple as using a shortened form of a child’s name as requested. Any requirement to formalise this in cases where children are questioning their gender risks making this request a much bigger issue and putting the individual at risk of harm. Furthermore, this would require treating these children differently than other children requesting a name change, which is contrary to the Equality Act 2010.

Keeping Children Safe in Education (KCSIE) sets out the legal duties that must be followed by all staff in schools and colleges to safeguard and promote the welfare of all children under the age of 18 in schools and colleges. And yet this guidance seems to be at odds with this aim.

*“If I were to give the authors the benefit of the doubt, I would say that they have inadvertently created loopholes that tacitly give permission for staff to mistreat trans students.”*

*“I could keep going on about this guidance - the issues I have with safeguarding of pupils - those from ethnic minority backgrounds or strict religious backgrounds who would be seriously harmed if their parents found out - I could NEVER tell a parent in that instance. I teach in a city with huge numbers of children from the Indian subcontinent - it would not be safe for many of them to tell parents about this. After plucking up the courage to tell a teacher, the last thing to keep that young person safe would be telling parents.”*

Although around half of respondents felt the guidance did provide some of the support needed by their school, 56% felt there were still questions which the guidance did not answer, and they would have liked more information and support.

*“I feel like the guidance has been drawn up without asking teachers to help, nor the LGBTQ+ community, specifically trans groups. That means the guidance is flawed.”*

The fact that the guidance has so many contradictions and gaps could lead to an increase in safeguarding referrals with almost three quarters of respondents feeling that this guidance would have an impact on safeguarding in their workplace.

In particular, there are concerns around watchful waiting and the vague and unspecified “*period of time*” before considering a request. To be clear, is the Department advocating delaying action following a direct request from a parent, a medical professional or a child who may be at risk of harm, because it relates to them questioning their gender. Given that gender is a protected characteristic under the Equality Act 2010, we could not support such a proposal.

It is our view that watchful waiting must not be a part of the duty of anybody within the education system and must remain the sole responsibility of the medical profession.

Equally concerning is the suggestion that school or college staff are in a decision-making position of whether or not to allow a child or young person to be in control of their own circumstances. School staff do not want, nor should they have such ultimate authority over another person.

And where is the mental health support for children? Too many schools wait excessively long periods of time to speak with CAMHS services, with current wait times of over 18 weeks for around 25% of children in Scotland and as long as three years in some parts of England. And raised thresholds mean that as many as 60% of children referred by their GP are not offered treatment at all.

*“The mental health of the students who are gender questioning is often poor, as is their self-esteem which needs to be acknowledged and addressed.”*

*“The LGBTQ community has a worryingly high rate of suicide and I don't want my students to be taking their own lives due to lack of mental health support at the early stages of their thinking about gender issues.”*

There are parts of the guidance which are missing or inadequate, and areas which members felt needed to be changed or improved. As has been mentioned previously, we have grave concerns around the lack of specificity, research and exemplars within this document.

As a member noted:

*“A little more consideration for the child, taking into account their concerns, including their parents.”*

Finally, there was some concern that this document was political rather than a practical document, relying too much on a particular interpretation of a limited set of data.

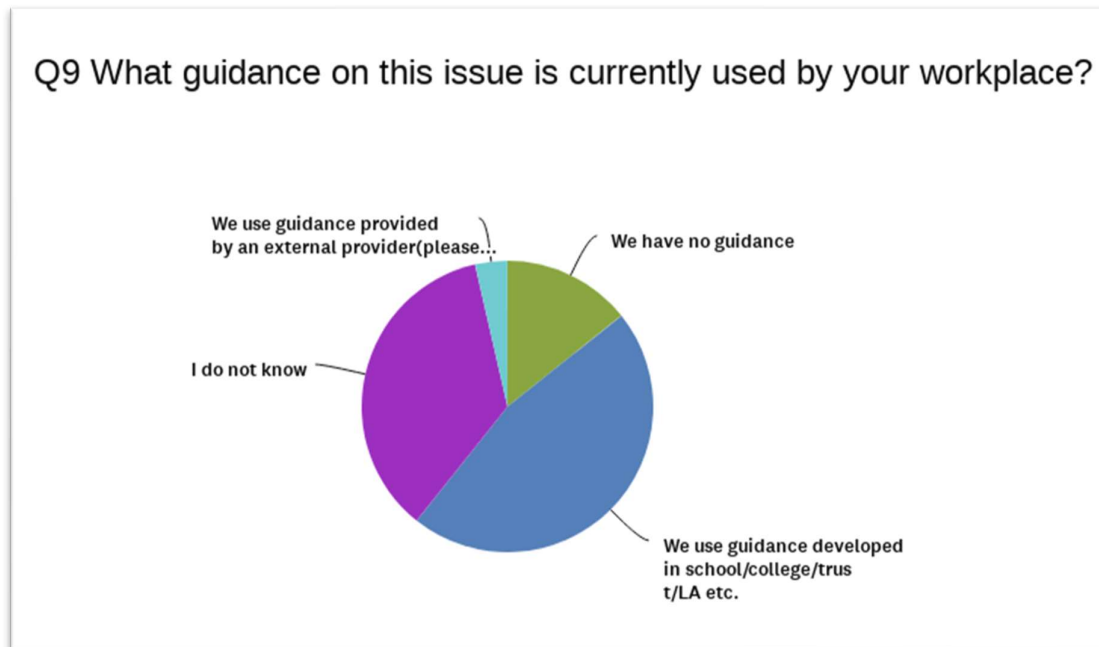
*“Data, research, citations - all actually done properly, rather than what the guidance currently does, which is occasionally quote the Cass review out of context and distort the finer points of that (much better) document. Specific advice for difficult scenarios regarding single-sex spaces. A much more tolerant and inclusive approach to preferred pronouns and gender-neutral language: something that is surely a simple accommodation and an easy win, but that the guidance treats as if it's equivalent to asking people to walk across hot coals.”*

## What the sector needs

Schools and Colleges need robust, tried and tested guidance which they can rely upon. Community notes that the consultation with the workforce was not there and by going directly to publication missed a vital step of workforce consultation. Therefore, Community welcomes the consultation on this guidance and the opportunity to feedback because we have been asking for this opportunity for many months.

Many schools and colleges are wary because they do not understand the law in sufficient detail and look to government guidance to provide the surety and backing they need when making decisions.

Because of the unfathomable delay in producing this draft document, schools have looked elsewhere for guidance and support. Many have created their own in-house documentation with others delaying until the government guidance was available. Still other have sought external guidance, some of which is of questionable legality and has concerning political or religious influence.



We suspect that those settings who have been waiting for the government guidance, will be frustrated by the draft document provided and the paucity of the advice it contains.

Members explained what the guidance should look like:

*"It needs to provide actual practical advice for difficult scenarios, based on the work done by leading schools in this area, both nationally and internationally. It needs to back up any of what it says with actual research, data and citations. It also needs to be written in a way that is actually supportive of transgender children."*



As already noted, the guidance seems to assume 'ground zero', but there are children in our schools who are already questioning their gender, exploring what it means and making decisions. Members commented:

*"We have several transgender pupils who have experienced varied issues."*

*"One pupil transitioned between y11 and y12 - Made more difficult being a boys' school."*

*"It should be clearer as to how to proceed when children already arrive in school with a different gender. It does not give clear guidance on how to approach this retrospectively."*

These are not especially rare nor one-off situations, and yet there is nothing in the draft guidance to suggest that they had even been considered.

The single biggest issue for staff working in our schools is to ensure that they provide proper support for all their students. That the students are safe and not placed at risk of harm (as defined in safeguarding legislation).

*"All we need is for people to treat each other unjudgementally and equally."*

Respondents were very aware that the decisions made by them and their school could differ from the opinions of the parents/carers and that there needed to be legal protections for the school, staff and most importantly for the child in these cases. Unfortunately, on such key issues, the government guidance is not clear.

*"What to do if parents disagree with the guidance? How the school should respond if medical professionals say not supporting social transitioning (if it is against the guidance) would be detrimental to the mental health of the child."*

And respondents felt there needed to be a "proper discussion of the potential harms to children" both if children are supported in school to transition and if they are not, and what about the harms that may occur outside of the school setting?

Issues already being experienced in our schools:

*"I have one student in my Diversity club who wishes to socially transition when they leave my setting for sixth form, but not before, because they do not want to be bullied. I have had several children in the last 6 years who prefer to use they/them pronouns, that's all."*

*"Biologically male student who transitioned to identifying as female for a couple years, then concluded they want to identify as male again."*

*"Consideration must be given to allowing gender-confused pupils to revert to using the gender they were born as without any stigma."*

*“Students frequently moving between genders and names. Difficulties in communication with all staff regarding name changes and whether it is appropriate to use with the parents/carers.”*

*“That we have to keep it a secret from parents. Keeping secrets from parents invites vulnerability and opens the door to children not being kept safe.”*

But this does not have to be viewed as a problem if it is properly handled.

*“We have had a very small number of students who were questioning their gender. Our school handled this in a balanced and considered manner. Parents were involved and agreed the school’s approach and the students wishes. Gender neutral toilets and changing rooms (originally provided for disabled people) were used effectively. Students were supported and I believe other students and staff were kind and understanding. I am not aware of any problems.”*

*“Allow students to declare themselves as 'gender questioning' whilst they work through their feelings, without any expectation that they have to declare themselves as anything specific. Or maybe assume *\*all\** students are 'gender questioning' during adolescence, until they declare something.”*

As noted previously, all nurseries, schools, colleges and universities must operate within the Keeping Children Safe in Education (KCSIE) legislation, furthermore issues concerning gender and sexuality are explicitly protected under the Equality Act 2010. These two documents should be the steering on how schools – indeed any education provider – operates on so many issues. Both these documents are hundreds of pages long with detailed examples and case studies included to bring clarity to situations. Therefore, to discover that, including introductory pages, glossaries and the foreword, the entire non-statutory guidance is just 18 pages long simply means it does not provide the detail necessary to navigate the multiplicity of issues being faced by the sector.

Finally under the Human Rights Act 1998, it is unlawful for schools and colleges to act in a way that is incompatible with Convention rights for example discrimination on the grounds of sexuality or gender, religion or belief.

What schools and colleges, their staff, children and their parents needed from this guidance was something definitive, something reliable and something that provided a framework to support a clear decision-making process and a, *“clear statement on who is competent to make those decisions.”* This was not provided.

Despite calls from the sector, our members concluded *“The guidance is pointless and doesn’t safeguard young people at all.”*