

Consultation on the Independent School Regulatory System

Response of the Association of School and College Leaders

- 1 The Association of School and College Leaders (ASCL) represents over 19,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. The fact that a significant number of our members work in leadership roles in the independent sector puts ASCL in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges.
- 2 ASCL welcomes the more detailed guidance and its generally helpful and explicit approach. However, there are concerns that at times it is so directional and specifically linked to inspection and DfE registration requirements that there is a significant risk of it becoming perceived as regulation rather than 'advice'. There is a fine balance to be struck between the laudable aim of ensuing high standards in all in schools and not removing the independence of non-maintained schools.

Responses to some of your specific questions

- 3 *Do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?*
Yes
- 4 *What general comments do you have on the draft advice document?*
We welcome this full and generally clear document, with certain reservations.
 - a) While it is commendable to give strong direction to the minority of schools where it is needed, there is a realistic danger of limiting the legitimate independence of the majority of independent schools.
 - b) There are a number of places where the 'advice' on non-statutory elements is so directive that it will almost inevitably lead to this becoming the only possible route and likely to become an inspector's expectation. Phrases like 'DfE expectations', 'inspectors will take this guidance into account' and 'the department would also take it into account, when taking decisions about regulatory or enforcement action on individual schools' can in effect change 'advice' into 'regulations'.
 - c) It would therefore be helpful to move the definition of 'have regard to' from paragraph 87 to the preamble, especially as this is far from the first use of this phrase.
 - d) The statement that 'advice' does not have to be followed appears in paragraphs 92 and 94, but, coming selectively and so late in the document, this could imply that the rest of the advice must be followed.
 - e) Please consider when 'should' could be 'may'.
- 5 Parts 3 and 4 in particular tend to be rather narrative in style, could be more concise and tend towards subjective opinion. Although, or maybe because, this is clearly based on specific experiences, it can detract from the intended general and interpretative advice.

- 6 The inclusion in most cases of the sub-section being referred to is very helpful and we would like to see this carried on uniformly throughout the document, even though sometimes these inclusions may be lengthy (as, for example, before paragraph 48, which shows it can be done).
- 7 It would be extremely helpful to have hyperlinks (or at least footnotes on the relevant page) to the many cross references. It often says that they are to be found in a document referenced at the end of the advice. However, these are only links to the whole document and not the specific section and can be up to 45 pages away from the original cross reference.
- 8 *If you have comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document, make them here.*
This is well covered in a number of places, though there is a tendency to concentrate on gender.
- 9 *If you have comments on the advice in relation to the Quality of Education standard (Part 1), please make them here.*
It is very important to our members in independent schools that curriculum content is not too strictly defined and therefore our members will appreciate the broad but well described approach in paragraphs 7 and 8 and the clear advice in most of this section.
- 10 We agree with the overall sentiments in paragraph 9 but would make 2 comments:
- a) It might be worth a reminder that the importance of not ‘promoting non-democratic political systems’ does not preclude ‘teaching about’ them.
 - b) We query why ‘and’ is underlined on paragraph 9c. (‘...that all religions are wrong and that therefore those who follow them are not worthy of respect.’). It seems to imply that a school can teach one or the other part and it is only wrong to teach both.
 - c) By stating ‘ensure...each specified area is covered, for each stage of study....of compulsory school age’, paragraph 10 appears to suggest that no specialisation can take place for GCSE. It is barely possible to cover all eight aspects mentioned within any one pupil’s GCSE programme and certainly most do not study all these. For all other age groups, this is a well-balanced paragraph.
 - d) ASCL wholeheartedly supports the tolerance to all set out in paragraphs 18 -22 and hopes that the document will ensure that paragraph 17 (‘the school’s approach to PSHE should reflect its aims and ethos’) is written in a way that provides schools with enough independence to function well but at the same time does not contradict or undermine this approach.
 - e) In paragraph 22, the supposed clarification of the word in previous documents - ‘secondary’ - to mean that it applies to all pupils ‘aged 11 and upwards’ is not helpful, as most pupils turn 11 during Year 6. The fact that many prep schools have pupils up to the age of 13 is an added complication, though we consider the rest of the paragraph broad enough to encompass most of their ‘careers education’, provided ‘similar initiatives’ remains in the phrase ‘work experience and similar initiatives’.
 - f) The overall sentiment of ‘expanding horizons’ and aiming high is appreciated in paragraph 22.
 - g) We applaud the sentiments in paragraphs 24 -26.
 - h) We understand the reason for paragraph 27, which covers the practice of separating pupils and/or staff on the basis of gender and note its generalised nature. We hope that this means that there is no intention to include ‘diamond model’ schools within the Equalities Act definition. Since it is legal to operate a single sex school, it would seem illogical to make illegal what might be considered an ‘improvement’ (in the eyes of the co-ed advocates) or the best of both worlds – two single sex schools being

running as part of the same overall institution and, through some or all of joint clubs, performing arts activities, lunchtimes, mixed Sixth Form etc., facilitating what paragraph 27 advocates: 'that children are being prepared for engagement in communities where gender mixing is common.'

i) Paragraph 28: while agreeing with the sentiment, and noting that it is stated that independent schools are not required to employ teachers with QTS, please amend the wording to take into account that 'independent schools are not required to use the Standards, but may do so if they wish', according to the Teachers' Standards document you refer to. ASCL accepts that the usual reason for employing a non QTS teacher is not that they have no qualifications but that they may have a more specialised one e.g. a businessperson to teach business studies or an IT specialist in the IT department – see paragraph 33.

j) Paragraph 31: only the non-association inspectorate is mentioned in the footnote, so this is incomplete. Please include ISI and Ofsted.

k) In paragraph 40, the words 'if necessary', or something similar, are needed to clarify that not all pupils with a disability need 'reasonable adjustments'.

l) Once these comments are taken into account, ASCL appreciates the advice and guidance given in the remaining curriculum paragraphs and considers them clear and informative.

11 *If you have comments on the advice relating to the SMSC standard (Part 2), make them here.*

With the exceptions outlined below, ASCL agrees with the advice given in this section and thinks much of it is well explained and balanced.

a) It is good to have it clearly stated that promoting British values 'does not mean that schools should avoid debate on the issues' (paragraph 44).

b) Not all of paragraph 45 is appropriate for all ages of children and so some qualification would be useful, even as generalised as 'as appropriate to their age'. However, realising that this opens the door to unwarranted postponement, it may be necessary to include some ages or Key Stages.

c) Paragraph 55 is very important but includes so many aspects that it might benefit from being subdivided e.g. at 'Teaching should aim to prepare pupils to interact positively.....'

d) Paragraph 56: Maybe children in England should be able to put 'particular emphasis' not on 'England' but on the UK and is it not necessary to learn about cultures inside as well as 'outside Europe'?

e) Paragraph 59: under 'protected characteristics', only gender is mentioned.

f) While understanding the desire to promote British values, paragraph 61 refers to the aim of preventing political indoctrination, yet paragraph 60 is very close indeed to doing exactly that, especially in 'understand why law-making on the basis of representation in Parliament is better than the alternatives.'

g) Paragraph 67 is a very good 'common-sense approach to securing balance.'

h) It is helpful to have listed and qualified key aspects of British values to focus teaching and learning in schemes of work.

12 *If you have comments on the advice relating to the welfare, health and safety of pupils standards (Part 3), make them here.*

This section comprehensively covers welfare and can be applauded for this. However, it is very wordy and we feel it strays into being commentary based, it would seem, on individual cases rather than focusing on general principles. It would be helpful if the style could be tightened up.

a) Paragraph 83: Further clarification could be necessary, to state that ALL corporal punishment is illegal. The statement 'Depending on the seriousness of the injury, corporal punishment may be deemed as common assault' could be interpreted to mean that if there is no serious injury, it is not common assault.

- b) As stated in the preamble, paragraph 87 contains a useful definition of 'have regard to' but comes too late in the document.
- c) Paragraph 88: 'needs to be taken into account for the purposes of compliance' is strong wording. In effect, this is likely to be considered a regulation by school leaders. Is this what is intended?
- d) In paragraphs 92 and 94, it states that this advice need not be followed. Does the school leader then have to take by implication that all the other advice does need to be followed? Once again, this is a matter which would be better suited to the preamble (as per paragraph 87 above)
- e) Paragraph 94, in our opinion, goes both too far and not far enough. 'Among other types of bullying', or similar wording, is needed before the list which includes cyber-bullying and 3 others. The rest of the paragraph deals so specifically with these four and what is unacceptable within the standard that it goes beyond the original regulation into opinion ('In the department's view') and is in effect in danger of setting up a new requirement by the back door.
- f) Paragraph 100: surely risk assessments cover more than 'serious jeopardy'.
- g) ASCL approves of the sentiment in paragraph 102: 'The aim is not to make schools totally risk-averse'. Maybe 'totally' could be moderated to 'unduly' to fit the sentiment even better.
- 13 *If you have comments on the advice relating to the suitability of staff, supply staff and proprietors standards (Part 4), make them here.*
Paragraphs 105 and 106 are very unwieldy and as consequence valuable information could easily be overlooked. Paragraph 106: checks are mandatory, not just 'good practice' (sentence 3)
- 14 *If you have comments on the advice relating to the premises of and accommodation at schools standards (Part 5), insert them here.*
This seems clear and informative. Paragraph 112d: it is indicative of the relative weight placed on premises adaptations, as opposed to other accommodations to disabled pupils' needs that 'matters other than premises' are mentioned in the last sentence, without elaboration.
- 15 *If you have comments on the advice relating to the provision of information standards (Part 6), make them here.*
With regard to paragraph 118
- a) There is no mention of guardian or carer.
- b) The wording of 'one parent cannot opt out for the other' is not altogether clear.
- c) It is good that it says reports 'should', not 'must' go to both parents. This is not always easy to achieve e.g. a parent who has absented themselves without contact information; or did not want independent education and refuses to engage at all with the school; or court orders restricting all contact.
- d) It would be useful to clarify the legal position of a student aged over 16 who refuses to allow his or her data to be shared with the second parent. It is our belief that they have a right to do this but a clear statement of the legal position in this document would be beneficial.
- e) Paragraph 120: It could usefully be made more explicit that the 'early years grant' is, as we assume, the 15 or 30 hours free nursery childcare.
- 16 *If you have comments on the advice relating to the manner in which complaints are handled standard (Part 7), make them here.*
This section is clear and useful.

- 17 *If you have comments relating to the advice on the Quality of leadership in and management of schools standard (Part 8), make them here.*
This is a helpful section, though a bit overly wordy. Paragraph 129 is very apposite.
- 18 *Do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?*
Yes
- 19 *Do you agree with the change in policy highlighted at paragraph 10 of the draft statement?*
Yes. ASCL is in agreement with the intention to ensure that pupils are not disadvantaged for long periods if a school is considered inadequate or unsuitable. It is, however, important to ensure that the judgement is objective and based on fair and sufficient evidence and not hearsay or potentially disgruntled people's complaints.
- 20 *If you have comments on the policy statement in relation to regulatory action, make them here.*
ASCL welcomes all initiatives to strengthen and simplify guidance to schools in employing staff.
- 21 *Do you agree that the government should revise the current regulations as shown in the draft regulations?*
ASCL agrees that, after appropriate adjustments based on our comments on the draft regulations, revised regulation should be published.
- 22 *Are there any changes in the revised regulations which you believe should not be made? If so, please comment here.*
We would hope that the comments we have made throughout this response will be taken into account in producing the final version of the revised regulations.
- 23 I hope that this is of value to your consultation, ASCL is willing to be further consulted and to assist in any way that it can.

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