

Guidance for Schools and Colleges: Gender Questioning Children – Government consultation

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing around 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders 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 children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, with our LGBT and women leaders' networks, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have highlighted towards the end of this response protected characteristics which we think may need more specific consideration in regard to this issue: namely religion and belief (including any particular considerations for schools with a religious character) and disability (including any particular considerations for children and young people with SEND).

B. Key points

4. School and college leaders have been asking for government guidance on this extremely sensitive and contentious issue for many years. ASCL has been representing those views to government with increasing urgency. We are therefore pleased that this draft guidance has finally been published.
5. Leaders need government guidance in this area for two main reasons:
 - a. To support schools and colleges in taking compassionate, evidence-informed decisions in relation to provision for gender-questioning children and young people, which keep both them and other pupils safe
 - b. To protect schools and colleges, and the people who work in them, from increasingly vitriolic and threatening challenges in relation to decisions they make regarding gender-questioning pupils – including legal challenges

6. Our response to this consultation is therefore guided by the extent to which the draft guidance answers these two needs. As a trade union and professional association representing school and college leaders, ASCL has no ideological position on this issue. We do not have any deep expertise in the clinical, psychological or sociological reasons why increasing numbers of children and young people are questioning their gender or identifying as transgender. We are not experts in the impact of different approaches to gender-questioning children and young people on their current or future health and wellbeing. We do not have extensive in-house legal expertise on this issue (our legal team are principally employment lawyers). We therefore leave views on those issues to other respondents with more relevant expertise.
7. Many of our members do, however, have significant experience in managing the questions and challenges raised when a pupil is questioning their gender and/or seeking to socially transition. In the absence of government guidance, they have had to develop their own approaches to meeting these challenges. Our expertise, therefore, lies in assessing the extent to which the proposals in this draft guidance will be workable 'on the ground', and the extent to which they will help leaders to take decisions which support and protect their pupils, their staff and themselves. We have therefore answered all questions from this perspective.
8. We would have welcomed the opportunity to bring this expertise to the drafting of the guidance at an earlier stage. We recognise that this is a contentious issue, but our view is that the draft guidance would have been strengthened – and perhaps some difficult discussions further down the line avoided – had organisations such as ours been consulted as it was being drafted.
9. Our overall view is that the draft guidance as it stands goes some way towards achieving the aims we have for it, but some aspects are problematic. Below we set out our summary of which aspects are helpful, and which raise questions or concerns. We give more detail on some of these views in our responses to individual consultation questions later.
10. In terms of **supporting schools and colleges in taking compassionate, evidence-informed decisions in relation to provision for gender-questioning children and young people, which keep both them and other pupils safe**, the following aspects of the guidance are helpful:
 - a. The explicitly stated principle that schools and colleges should be respectful and tolerant places where bullying is never tolerated, and that staff and children should treat each other with compassion and consideration, in accordance with the ethos of the school or college.
 - b. The presumption that parents should be involved in decisions around social transitioning, with some flexibility for circumstances in which doing so may constitute a significant risk of harm to the child (though see point 11b below for some concerns about the apparent assumptions behind this section of the guidance).
 - c. Links with the interim findings of the independent review of gender identity services for children and young people ('the Cass Review') (though note concerns in point 11a below about the way in which these interim findings are referenced in the draft guidance).

12. The following aspects of the guidance raise questions or concerns:

- a. Some of the language used in the guidance feels somewhat partisan, and some references to relevant research appear selective. Examples of language perceived as partisan include the term 'gender identity ideology'. Examples of the selective use of research include the statement that 'The Cass Review is clear that social transition is not a neutral act', without an accompanying statement that Dr Cass makes it clear that 'doing nothing' also cannot be considered a neutral act.
- b. Many ASCL members have commented that the section on 'Responding to requests and engaging parents' appears to start from the presumption that schools and colleges are regularly agreeing to a pupil's request to transition, against their parents' wishes. In the vast majority of cases, schools and colleges are in fact engaging with parents in exactly the ways set out here. Indeed, in some cases, schools are advising a more cautious approach than some parents would like. It's important that the final version of the guidance starts from a position of neutrality rather than assumption.
- c. Similarly, members feel there is an undertone to the guidance which equates safeguarding a child with preventing them from transitioning. Leaders have shared many cases where, in their view, allowing a child to socially transition at school was essential in keeping them safe, and that not permitting this could lead to significant harm.
- d. Many members have raised questions around the section on 'watchful waiting'. While leaders don't disagree that it is important to give a pupil time to consider a request to transition, and the school or college time to consider what the implications of this might be, it is unclear how long they should be waiting, or what they should be watching for, before making decisions and/or taking actions. This points to one of ASCL's key concerns on behalf of our members in relation to the draft guidance: that they are not clinical experts, and should not be expected to possess or exercise clinical expertise. This concern is exacerbated by the series of factors schools and colleges are asked by the guidance to consider before allowing a child to socially transition, including whether they have been influenced by peers or social media; whether they feel pressured to identify differently because they do not identify with stereotypes associated with their sex; whether their desire to transition may relate to SEND; what the long- and short-term impact may be on the child; and what the impact might be on other children. These are all important questions, and we agree that it is right that children wishing to socially transition should be asked to consider them. They are not, however, issues that school staff are qualified to properly assess. If it is the government's view that these questions should be asked and satisfactorily answered before a child is permitted to socially transition, it must ensure that this process is undertaken by services with appropriate clinical expertise. It is not reasonable or appropriate to expect schools and colleges to take on this role.
- e. There is some confusion and disquiet about how this guidance will apply to children and young people of different ages:
 - For primary pupils, the guidance suggests that requests to transition 'should be treated with greater caution' (implying that this could still be permitted), but it also says that 'Primary school aged children should not have different pronouns to their sex-based pronouns used about them' (implying that this key aspect of social transitioning should never be permitted). This requires further discussion and clarification in the final version of the guidance.

- For older students, members have raised three main questions. Firstly, NHS guidelines are clear that people aged 16 or over are entitled to consent to their own treatment – a right which can only be overruled in exceptional circumstances. Why would their desire to transition not be treated in the same way? Secondly, leaders are familiar with the concept of Gillick competency being used to help assess whether a child under the age of 16 has the maturity to make their own decisions, and to understand the implications of those decisions. Again, why does this approach appear not to apply here? And thirdly, members are confused by the section of the guidance relating to young people in post-16 institutions, where significant numbers are likely to be 18 or over. The guidance says that, in these institutions, ‘pupils and students under the age of 18 might share classes with those over the age of 18 (adults). The considerations for colleges will generally be the same for these individuals as they are for pupils and students under the age of 18’. This implies that schools and colleges should implement the same processes when considering whether or not someone in their setting who is legally an adult should be permitted to transition, as they would to under 18s. This appears to be at best unworkable, and at worst illegal.
- f. Members have also raised concerns about the extent to which this guidance aligns – or rather doesn’t align – with wider current societal expectations around transitioning. Schools and colleges don’t exist in a vacuum, and it can be extremely problematic if they are expected to uphold norms and rules which appear at odds with those outside their gates. Even leaders who are broadly or fully in agreement with the actions advised in the draft guidance have raised concerns about how difficult it may be to implement, when the broader experience of many children, young people and their families is that transitioning is accepted and – in some cases – even celebrated. In a context in which relationships between schools and some families are already becoming increasingly fraught, this is a serious concern.
 - g. Finally, and linked to the above, many members have raised questions about how they would be expected to implement the guidance in relation to children and young people in their schools and colleges who have *already* socially transitioned. Would they be expected to apply the decision-making process set out here retrospectively? They would be extremely concerned about the impact on those pupils (and on their relationship with them and their families) if that were the case. However, they have also expressed concerns about the opposite scenario, in which they are expected to take different decisions and actions depending on when pupils first expressed a desire to transition. This is a complex issue, and one which the final version of the guidance needs to consider.
13. In terms of **protecting schools and colleges, and the people who work in them, from increasingly vitriolic and threatening challenges from a wide range of sources in relation to decisions they make regarding gender-questioning pupils – including legal challenges** – the following aspects of the guidance are helpful:
- a. The very existence of the guidance is beneficial. Being able to demonstrate to pupils, parents, staff and others in their community that the decisions leaders take in this area are based on government guidance will help to increase their perceived legitimacy, and hopefully reduce the degree of challenge to them (though see point 13b below for concerns about the limitations of this assurance).

- b. It is helpful that the guidance includes reminders of existing legislation and duties pertinent to the issue, including specific legal duties which are framed by a child's biological sex.

14. The following aspects of the guidance raise questions or concerns:

- a. The non-statutory nature of the guidance is problematic. There is clearly a balance to strike between how prescriptive government guidance is and how much flexibility schools and colleges retain in implementing it. We also recognise that it may be challenging to find a legislative vehicle to put the guidance on a statutory footing at this point in the electoral cycle. However, the non-statutory nature of the guidance inevitably limits its usefulness both to the government in terms of achieving compliance and consistency, and to school and college leaders in terms of using it to guide and legitimise their actions. More generally, we are increasingly concerned about 'government by expectation': the extent to which, across a wide range of issues, the government now sets expectations for action by schools and colleges through non-statutory guidance, rather than clarifying and codifying the changes they wish to see in legislation. This is creating significant confusion, unhelpfully blurring the lines between what schools and colleges are legally required to do, and what the government of the day would simply like them to do. It also leads to uncertainty and anxiety about what the consequences for taking a different approach might be, and raises questions about whether compliance with this guidance may in future be included in inspection frameworks. More clarity on this is required.
- b. Members have raised questions about the extent to which the draft guidance aligns with equalities legislation. ASCL was concerned to read [reports](#) of leaked advice from the government's own lawyers on an earlier version of the draft guidance, suggesting that they had significant concerns that some parts of the guidance were 'misleading or inaccurate' and could misrepresent equality laws. According to these reports, government lawyers warned ministers that elements of the advice could potentially put both the government and schools at 'high risk of a legal challenge' – in some cases challenges which could, in their assessment, have more than a 70% chance of success. These reports suggest that the lawyers proposed changes to make the guidance more legally sound, but that many of these suggestions were not acted upon. These include the statement in the draft guidance that schools do not have a 'general duty' to allow pupils to change names, pronouns or uniform – a starting position from which much of the detailed guidance flows. This was apparently flagged by the government lawyers as misrepresenting the Equality Act.

15. As stated above, ASCL does not have in-house expertise in this complex area of legislation. Neither do our members. It is therefore imperative that schools and colleges are confident that, if they follow government advice (whether statutory or non-statutory), they will not leave themselves open to legal challenge as a result. If the government cannot provide this assurance (and we recognise that the lack of case law in this area may make this difficult), then it must commit that the government itself will take on any legal challenges against individual schools, colleges or trusts which are following government guidance.

16. In this section, we have set out our overarching views on the guidance, from the perspective of how effective it is in:

- a. supporting schools and colleges in taking compassionate, evidence-informed decisions in relation to provision for gender-questioning children and young people, which keep both them and other pupils safe, and

- b. protecting schools and colleges, and the people who work in them, from increasingly vitriolic and threatening challenges in relation to decisions they make regarding gender-questioning pupils – including legal challenges

17. In the next section, we provide some more specific answers to individual consultation questions.

C. Answers to specific questions

Structure and overall guidance

Question 11: Do you think the structure of the guidance is easy to follow?

18. Yes. The guidance is well-structured. It's helpful to have the overarching principles on which it's based set out at the beginning, and the glossary of language and terminology is useful for an audience with varied knowledge of, and exposure to, this complex issue. The seven areas included in the section on 'Handling different information and requests' cover most of the issues around which school and colleges leaders need to take decisions.

Question 12: If you answered no, how could the structure of the guidance change to make it easier to follow?

19. N/A.

Question 13: Does this guidance provide practical advice to support schools and colleges to meet their duties effectively?

20. Yes, to some extent – though see the questions and concerns raised by ASCL members on different aspects of the guidance in the 'Key points' section above.

Question 14: If you answered no, how could we improve deliverability placed on schools and colleges whilst still providing for schools to meet their duties?

21. By addressing the questions and concerns included above.

Responding to requests and engaging parents

Question 15: Does this section provide enough detail to help schools and colleges support children?

22. No.

Question 16: If you answered no, in which of the following areas do schools and colleges need further guidance to support a child? [tick all that apply]

- How schools and colleges should involve parents in decisions
- How schools and colleges should manage engagement with parents with different feelings or views to their child
- **When schools and colleges should seek specialist advice or support**
- **How schools should put in place a 'watchful waiting' period before acting on a child's request**

- **How schools and colleges can identify what issues may impact the wider school or college community**
- **How schools and colleges should handle decisions that impact on the wider school and college community**
- **The law**
- Something else

23. ASCL's view is that the guidance does not constitute sufficient support for schools and colleges to make decisions around the aspects in bold above.

24. We do not, however, believe that sufficient support in these areas can be provided through guidance alone, particularly non-statutory guidance.

25. In relation to the issue of 'watchful waiting', and the impact of decisions on both the child in question and the community, if the government's view is that schools and colleges should act as 'gatekeepers' to children's transitioning, then the decision-making of schools and colleges must be supported by input from clinical experts. School and college staff do not have the expertise to take on this role themselves, and should not be expected to do so.

26. In relation to the law, given the uncertainty around the extent to which this guidance aligns with equalities legislation, and the lack of existing case law in this area, it is our view that the government must commit to taking on itself any legal challenges against individual schools, colleges or trusts which are following this guidance.

Question 17: Think about the points outlined for schools and colleges to consider on pages 9-11 regarding making decisions about how to respond to requests for social transition. Are these points helpful?

27. Yes and no. Some of these are helpful, and within the knowledge and expertise of school and college staff to consider. These include the school or college's safeguarding obligations, the views of parents, and any relevant clinical information which is available. To some extent, schools and colleges will also be able to consider the impact on other pupils, such as whether the physical layout of the school or college will enable them to provide separate spaces for the child seeking to transition.

28. As set out in paragraphs 11d and 24 above, however, many of these factors rely on a level of expertise around this complex issue which school and college staff simply do not possess, nor should be expected to. This is why we believe that, if schools and colleges are being asked to make these assessments, they must be supported by clinicians to do so.

Question 18: If you answered no, what considerations would be more helpful for schools and colleges to consider? For example, when assessing whether to support a child wishing to socially transition, do you think different weight should be given to the views of parents, the age of the child, the long- and short-term impacts on the child, the impact on other children, and any relevant clinical or medical advice?

29. See above. It is important that all of these factors are taken into account, and it's right that the guidance highlights them, but we do not believe that school and college leaders are the right people to make these judgements.

Registration of name and sex

Question 19: Does this section on page 12 provide enough detail for schools and colleges to ensure each child is recorded correctly and according to the Education Act 1996, Pupil Registration (England) Regulations 2006, GDPR and the Data Protection Act?

30. Yes. This is clear, and reflects current practice in schools and colleges.

Question 20: If you answered no, what further information should be included to help schools and colleges?

31. N/A.

Changing names

Question 21: Does this section on page 12 provide enough detail for schools and colleges to respond to a child's requests to change their name?

32. Yes and no. This section is fairly clear, and reflects current practice in schools and colleges.

33. However, it would be helpful if the guidance was clearer about whether a pupil's request to change the name by which they are known because they are questioning their gender should be treated in exactly the same way as any other request to make this change. The guidance says that schools may allow pupils to change their informal ('known as') name 'if they believe it is in the best interests of the child to do so ... having fully consulted with the child's parents', but that 'due consideration still needs to be given by the school or college to all the relevant factors described above before making a decision'. If 'all the relevant factors described above' means the list of factors which may have influenced a child, as set out on page 10 of the guidance (peer or social media influence, the impact of sex stereotypes, the interaction with sexual orientation, etc.), we would reiterate our point that school and college staff do not have the clinical expertise to make such assessments.

Question 22: If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child's requests to change their name? [tick all that apply]

- **How schools and colleges should make a decision about a child's request to change their name**
- **When schools and colleges might refuse a request in relation to a child changing their name**
- How schools and colleges should involve parents in a decision about a child's request to change their name
- How schools and colleges should make relevant staff and other children aware of any agreed changes to name
- **What factors schools and colleges should take into account**
- How schools and colleges should respond to other children and staff who do not wish to use a different name
- The law
- Something else

34. See our response to the previous question.

Pronouns

Question 23: Does this section on page 13 provide enough detail for schools and colleges to respond to a child's requests to change their pronouns?

35. No. As mentioned in our answers to several other questions, this section of the guidance assumes that school and college staff have the expertise to consider and evaluate many complex reasons why a child or young person may wish to transition and change their pronouns, some of which they may not even be able to articulate themselves. Given this, it is not possible for school or college staff to be 'confident that the benefit [of a change of pronoun] to the individual child outweighs the impact on the school community'.
36. This section also states that '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'. If it is the government's expectation that this will only happen on 'rare occasions', it is even more important that the decisions schools and colleges make here are guided by the advice of clinical experts.
37. As highlighted in paragraph 11e above, ASCL members in primary settings have also pointed out an unhelpful disparity between this section, which states that 'Primary school aged children should not have different pronouns to their sex-based pronouns used about them' (implying that this key aspect of social transitioning should never be permitted), and the suggestion elsewhere that requests to transition from primary pupils 'should be treated with greater caution' (implying that this could still be permitted). If the government's view is that transition should not be permitted in primary schools under any circumstances, then it needs to say so directly. If it believes that there are some circumstances in which this might be appropriate, then it needs to be much clearer about what those circumstances might be (and, as above, ensure that decision is made by someone with relevant clinical expertise, not left to individual schools to navigate).

Question 24: If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a child's requests to change their pronouns? [tick all that apply]

- **When schools and colleges should refuse a request in relation to a child changing their pronouns**
- **What factors schools and colleges should take into account**
- **How schools and colleges should involve parents in a decision about a child's request to change their pronouns**
- **How schools and colleges should make relevant staff and other children aware of any agreed changes to pronouns**
- **How schools and colleges should respond to other children and staff who do not wish to use different pronouns**
- **The law**
- **Something else**

38. See our response to the previous question.

Single-sex spaces – toilets, changing rooms and showers and boarding and residential accommodation

Question 25: Does this section on pages 14 and 15 provide enough detail for schools and colleges to respond when a child who is questioning their gender makes

a request to use facilities (e.g. toilets, changing rooms, showers and boarding and residential accommodation) designated for the opposite sex?

39. Yes. It is helpful that the guidance clarifies the legal requirements on schools and colleges to provide single-sex spaces with regards to toilets, showers, changing rooms, and boarding and residential accommodation. The advice that alternative arrangements should be sought for pupils who would be distressed by using facilities designated for their biological sex, rather than permitting them to access spaces designed for the opposite sex, is also helpful. This aligns with the approach already taken by the vast majority of schools and colleges.

40. One aspect that schools and colleges would welcome more detailed guidance on is the question of how to ensure the advice on boarding and residential accommodation can be followed while respecting the privacy of gender-questioning pupils. What information about other pupils on a residential trip is it appropriate and legal to share with other pupils and parents, for example? There are undoubtedly examples of excellent practice in this area which the guidance could spotlight.

Question 26: If you answered no, in which of the following areas do schools and colleges need further guidance? [tick all that apply]

- How schools and colleges should make a decision about a child's request not to use facilities designated for their sex
- When schools and colleges have to refuse a request in relation to a child using facilities designated for the opposite sex
- How schools and colleges should involve parents in a decision about a child's request not to use facilities designated for their sex
- What factors should be considered when deciding whether to offer alternative facilities
- Toilets
- Changing rooms
- **Boarding and residential accommodation**
- **The law**
- Something else

41. N/A (though see suggestion above about additional support with regards to residential accommodation).

Question 27: Think about the circumstances provided in the guidance on pages 14 and 15, outlining the option for schools and colleges to find alternative facilities. Does the guidance provide enough support to help schools and colleges determine how to offer alternative facilities?

42. Yes.

Question 28: Does this section provide enough detail for schools and colleges to support children who do not wish to use accommodation that is designated for their sex in relation to boarding and overnight accommodation? Yes / No / Don't know

43. No (see paragraph 39 above).

Question 29: If you answered no, in which of the following areas do schools and colleges need further guidance? [tick all that apply]

- **How schools and colleges should make decisions about requests to access boarding and overnight accommodation designated for children of the opposite sex**

- **When schools and colleges should refuse a child's request to use different boarding and overnight accommodation while on a school or college trip**
- **How schools and colleges should involve parents in a child's request to use different boarding and overnight accommodation while on a school or college trip**
- **The law**
- **Something else**

44. See paragraph 39 above.

Uniform

Question 30: Does this section on page 16 provide enough detail for schools and colleges to respond to a gender-questioning child who makes a request in relation to uniform?

45. Yes. Many schools already implement, or are moving towards, a unisex / gender-neutral uniform policy, in which pupils of either sex can choose to wear any approved item on a single list.
46. Where that is not the case, this section of the guidance feels appropriate (with our repeated caveat that these decisions should be guided by advice from a clinical expert).

Question 31: If you answered no, in which of the following areas do schools and colleges need further guidance to respond to a gender-questioning child, who makes a request in relation to uniform? [tick all that apply]

- How schools and colleges should make a decision about a gender questioning child who makes a request in relation to uniform
- When schools and colleges might refuse a request in relation to a child wearing a different uniform
- How schools and colleges should involve parents in a decision about a gender questioning child who requests an exception to uniform requirements
- How a school or college might accommodate a request within their uniform policy
- How schools and colleges should make relevant staff and other children in the school or college aware of any changes agreed
- The law
- Something else

47. N/A.

Physical education and sport

Question 32: Does this section on page 17 provide enough information on what to do if a gender questioning child asks to participate in a certain sport or activity with the opposite sex?

48. Yes. This section is helpful and sensible.
49. Members have commented that they generally refer to the guidelines produced by various sports governing bodies when making decisions in this area, many of which have moved towards a similar position. For those sports where this is not the case, it would be helpful to include something in the guidance about whether schools should follow the government guidance or the guidance from the sports governing body.

Question 33: If you answered no, in which of the following areas do schools and colleges need further guidance to support children taking part in PE or sport? [tick all that apply]

- How schools and colleges should make a decision about whether a child can take part in a certain sport or activity
- When schools and colleges should refuse a request in relation to a child taking part in a certain sport or activity
- How schools and colleges should involve parents in a decision about a child's request to participate in a certain sport or activity
- How schools and colleges should make relevant staff and children aware of any changes agreed
- The law
- Something else

50. N/A.

Question 34: Think about the circumstances provided in the guidance on page 15, outlining the need for fairness and safety in PE or sport. Does the guidance provide enough support to help schools and colleges determine what is fair and safe?

51. Yes.

Question 35: If you answered no, what further support should be included to help schools and colleges determine what is fair and safe in PE or sport?

52. N/A.

Single-sex schools

Question 36: Does the guidance on the application of the Equality Act to admissions to single sex schools on page 18 provide enough information to support single sex schools in making decisions about the admission of children who are questioning their gender?

53. Yes. This section of the guidance is helpfully clear that a) a single-sex school *cannot* refuse to admit a child of the same biological sex on the basis that they are questioning their gender, and b) a single-sex school *can* refuse to admit a pupil of the other biological sex, regardless of whether the child is questioning their gender. Point a) is relatively well known and understood. Point b), on the contrary, is not, to our knowledge, currently made clear anywhere else, and is something on which our members running single-sex schools have been seeking clear guidance for many years.

54. As this is the first time we have seen point b) above set out in this clear way, and given our concerns articulated in paragraph 13b about whether the draft guidance fully aligns with equalities legislation, we would welcome an explicit statement in the final version of the guidance that single-sex schools which refuse to admit pupils of the other biological sex, even if they are questioning their gender or identify as the opposite sex, would remain fully compliant with the Equality Act. If it is not possible to make such a categorical statement, we reiterate our previous point that the government must provide assurances that it would, itself, defend any legal action brought against a school taking this action.

Question 37: If you answered no, in which of the following areas do schools and colleges need further guidance to support effective decisions on the admission of children who are questioning their gender [tick all that apply]

- The law
- Something else

55. See our response to the previous question.

Question 38: To individuals responding who work in, or represent single-sex schools: Has your single-sex school previously had to make a decision on the admission to your school of a child of the opposite sex (regardless of whether or not the school admitted the child)?

56. Yes. A number of ASCL members working in single-sex schools have contacted us for advice on this decision over the last few years.

Question 39: If yes, was that child questioning their gender?

57. In a number of cases, yes.

Public sector equality duty

Question 40: Do you have any comments regarding the potential impact of the guidance on those who share a protected characteristic under the Equality Act 2010, whether negative or positive? 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?

58. We welcome the government's attempt, in this guidance, to consider the rights of people with different protected characteristics, particularly those who may be covered by the characteristic of gender reassignment, and those covered by the protected characteristic of sex. In the vast majority of the many decisions and actions taken by schools and colleges on a daily basis, these two protected characteristics are not in conflict, and they can be confident that their actions support both groups. It is important to recognise, however, that there are occasions when the two characteristics may come into tension, and it is to the government's credit that they have not shied away from that uncomfortable fact in this guidance.

59. However, as mentioned several times above, we and our members are concerned by reports that the government's own lawyers advised that following some aspects of this guidance may misrepresent the Equality Act, and may put schools and colleges at high risk of legal challenge. We reiterate that schools and colleges need reassurance that this is not the case, and a commitment that the government itself will take on any legal challenges against individual schools, colleges or trusts which are following government guidance.

60. Finally, we would welcome mention, in the final version of the guidance, of people with other characteristics who may be affected by decisions and actions taken in regard to gender-questioning pupils. These include those with the characteristics of religion or belief (including any particular considerations for schools with a religious character) and disability (including any particular considerations for children and young people with SEND).

General

Question 41: Do you have any comments on the overall approach of the guidance?

61. No further comments.

Question 42: .Do you have any further comments you would like to share on the draft of the guidance that have not been captured above?

62. No further comments.

D. Conclusion

63. This is an important and necessary piece of work on a sensitive, complex and contentious issue. We welcome its publication.

64. While there is much in the draft guidance which is clear and helpful, we have also highlighted in our response a number of aspects of significant concern to our members. We look forward to working with the government to ensure those concerns are addressed in the final version of the guidance, and through the provision of the wider support we believe needs to be put in place.

65. I hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

Julie McCulloch
Director of Policy
Association of School and College Leaders
11 March 2024