

**This document is a copy of The Proud Trust's staff response to the Department for Education's *Guidance for Schools and Colleges: Gender Questioning Children*. It has been compiled from a survey to all staff working at The Proud Trust.**

**Separate to this, we have also worked with our young people to help them submit their own individual responses, which have been submitted confidentially as they may include personal information and stories from their own lives.**

### **About you**

This section is all about you / your organisation and where you are from.

1. Are you responding to this consultation as an:

Organisation, for example, a charity, school/college or think tank (tick box) Or

Individual (tick box)

2. If you are responding as part of an organisation, would you prefer your response was kept confidential?

Yes (tick box)

No (tick box)

N/A (tick box)

3. If you are responding as an individual, are you responding as (please select all that apply):

A parent or carer

A teacher

A student

A school or college leader

A school or college governor

A designated safeguarding lead

A student support or pastoral care team member

A medical professional

N/A

Other, please specify

4. If you are responding to this consultation as an organisation, are you responding as:

A school

A college

An academy trust

A local authority

A union

A charity

N/A

Other, please specify

5. Are you responding to the consultation with an interest in:

Please tick all that apply

- Primary schools
- Secondary schools
- Faith schools
- Alternative provision/special schools
- School sixth forms
- FE college
- Sixth form college
- Designated institutions

6. If you want all, or any part, of your response to be treated confidentially in response to a freedom of information request, please explain why you consider it to be confidential. Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.

N/A

### **Introductory Questions**

This section is all about you.

#### 7. Age

If you are responding as an individual, are you:

- Over 18
- Under 18

#### 8. What is your sex?

- Female
- Male

#### 9. Is the gender you identify with the same as your sex registered at birth?

- Yes
- No
- Prefer not to say

#### 10. Where are you based?

- England
- Wales
- Scotland
- Northern Ireland
- Other (please specify)

### **Structure and overall guidance**

This section covers overall structure of the guidance and asks about what your views are and possible implementation issues for schools and colleges.

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

Yes

No

Don't know

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.

The guidance needs to include a better introduction to schools' responsibilities, based in the established law, especially the Equality Act. This must include information on: how refusal of requests may harm trans and non-binary people, how treating trans and cis pupils differently may be unfair and discriminatory, schools' responsibility to "foster good relations" between trans and cis students, or the safeguarding risks of disclosing confidential information to parents.

The overarching principles need to be revised, to remove any reference to the "contested belief of gender ideology", and instead make it clear that gender reassignment status is a protected characteristic under the Equality Act.

The definitions given in the guidance are at best out of date and at worst extremely harmful. The decision not to use the word "trans" within this guidance is wholly misguided and based in a rather strange misinterpretation of the law.

The guidance is difficult to follow and to use. It should be clearly sectioned into key areas of focus - Changing rooms, bathroom spaces, uniform etc. so that it is clear what elements are for what. The language used throughout is not clear and not easy to understand.

The structure of the guidance should include practical recommendations for how to include and support trans and non-binary young people.

It is vital that the government engages directly with trans and non-binary young people, as it is clear from this document that they have not been involved at any stage of its creation.

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

Yes

No

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.

The recommendations given in this draft are not practical. If they were implemented in schools and colleges, they would cause innumerable problems for staff and young people alike.

The guidance will likely put schools in a position where they are not meeting safeguarding requirements, Public Sector Equality Duty, nor Equality Act 2010 requirements. Much of the advice given is directly contrary to the Equality Act 2010 in particular; allowing no room for appropriate adjustments or recordings to be made in relation to a trans young person. There is no advice given for schools to “have due regard” to “the need to eliminate discrimination”(Equality Act), through measures such as positive education. Even a “neutral” policy (e.g. “no name changes allowed” could put the school at risk of legal action if it disproportionately affects trans students negatively.

The foundational principles of the guidance must be addressed; the statement that nobody under the age of 18 can be trans is fundamentally flawed and leads to almost all of the biggest errors in this document. Schools and colleges know that many of their students are trans and non-binary; they have told us they are desperate for helpful guidance to support these young people, but this draft document fails from page one.

To improve the document, the authors should engage directly with trans and non-binary young people to better understand the reality of their lives, and then return to the draft with the aim to support them in the best ways possible.

### **Responding to Requests and Engaging parents**

This section covers parents and carers involvement and asks for your views.

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

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

In an ideal world, parents would always be a supportive part of all young people's lives, but unfortunately we know that this is not the case. Although many parents are incredibly supportive, others react negatively to their child coming out as trans and it may put a young person at risk of harm if the school were to inform their parents. This is something that should be handled in line with existing safeguarding policies, as with any other potentially confidential disclosure that a young person may make to school staff.

No supportive recommendations whatsoever are given in this guidance. The aim of the guidance seems to be to prevent young people from transitioning, rather than helping them find the right support.

No provisions are given in the document regarding trans young people (i.e. those that are no longer "gender questioning"), those who have already socially transitioned by the time they have reached school, and non-binary young people.

Multiple references in this document are given to the impact on the wider school community but no detail is given as to what this might be. All students benefit from an inclusive and supportive school/college environment, so measures to support trans and non-binary young people (such as inclusivity training for teachers, a gender-neutral uniform policy, the ability to choose which physical activity to participate in regardless of gender) will almost always benefit the whole school/college community.

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?

Yes

No

Don't know

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? Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.

This list only explores reasons why the young person may be wrong - it would be useful to also include examples of signs that the young person's account is to be trusted. For example, are they happier around friends who use a new name/pronouns? Is their academic work affected?

Consider the risk to the young person of automatic disclosure to parents; risks may include emerging, or worsened, mental health difficulty; homelessness; abuse; neglect, etc.

Fear of upsetting other students should not be a deciding factor as to whether to accommodate a trans or questioning young person. Any concerns relating to other young people should be handled with those young people on a case-by-case basis. Schools should proactively teach trans inclusion in order to help other students understand and support their peers.

the positive impact on the school/college community of actively and visibly showing support for young people with a protected characteristic should be considered; doing so will help other staff and students feel confident in the inclusivity of the school/college.

Safeguarding risks should be handled on a case-by-case basis, in line with existing policies; trans and questioning young people should not be treated as an inherent risk to other young people.

The phrase "without implying contested views around gender identity are fact" must be removed from this guidance. Gender reassignment is a protected characteristic under the Equality Act. The fact that trans people exist is not up for debate.

### **Registration of Name and Sex**

This section covers how schools record the name and sex of pupils and asks for your views related to how schools record the name and sex of a gender questioning pupil.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

There are circumstances in which a young person and their parents may not wish for their birth sex to be disclosed publicly. Schools systems should be developed to support young people, not changing young people to meet the system requirements.

This guidance assumes that the request for a change will always fall during a pupil's time at a school; it may be that a young person has already transitioned before they start a new school or college.

This section must also pay due regard to guidance from the Information Commissioner's Office on the handling of children's data. The ICO states that children's data should be private by default, with individual risk assessments carried out before any disclosure is made.

### **Changing Names**

This section covers names and asks for your views related to a gender questioning child's request to change their name.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

Change of name is a common practice in schools and colleges. Many young people wish to be known by a name other than that on their birth certificate, this is currently a question which is asked at the point of registering a child with an educational setting. A clear and simple process should be in place for all students to be able to change their preferred name. Making this process more arduous for trans and non-binary students than for others would be a clear case of direct discrimination.

Schools would also benefit from advice around deed polls. Young people under 16 can legally change their name with parents' permission, and from the age of 16 do not need permission. The current draft does not acknowledge this.

## **Pronouns**

This section covers pronouns and asks for your views related to a child who is questioning their gender and makes a request to change their pronouns.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

The statement on pronouns is unacceptable in whole, because it goes against the Equality Act. However, this section is particularly notable for subjecting young people to what would likely constitute harassment were this to happen to staff. Whilst an exception exists specifically to the harassment clause of the Equality Act 2010 in relation to for the category of "Gender Reassignment", the exception does not apply to other sections of the Act such as direct and indirect discrimination. Regardless, this should almost certainly be considered part of "any other detriment" given the negative mental health impact such action is likely to have.

The document states that changing pronouns is a significant decision - why? Is there evidence that using the young person's chosen pronouns could have any negative impact on their education? What is the possible negative impact on the school community mentioned here?



The framing here has the effect of strongly discouraging teachers from changing the pronouns they use for a young person, but does not give any reason why.

We agree that bullying should not be tolerated - but why is the only example given here that of a young person being bullied for accidentally using the wrong pronouns, not the much more common instance of young people being bullied for being trans? Deliberately and repeatedly using the wrong pronouns for someone when you know that this causes distress would be a clear example of bullying, no matter their gender identity of the target.

### **Single-Sex Spaces - Toilets, Changing Rooms and Showers and Boarding and Residential Accommodation**

This section covers toilets, changing rooms and showers and asks about its clarity.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

It is important within this section to acknowledge the risks to trans young people of being forced to use facilities which do not align with their gender - as well as the benefits of inclusion, such as increased participation in physical education.

It should also be noted that neither safeguarding nor equality law requires a threshold of distress to be demonstrated.

In all instances, the school/college should consider what risks are already present - it is likely that any perceived risk already exists with or without a trans student. For example, if there is a risk of bullying targeted at body differences in a shared changing space, that risk exists already and should be addressed by the school.

**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?**

Yes

No

Don't know

**If you answered no, what more information would you need?**

**Please try to limit your response to under 250 words.**

A simple and practical solution to these provisions - and one which would benefit the comfort and safety of all young people as well as complying with the law - would be to provide the option of unisex facilities with cubicles with floor-to-ceiling walls and doors which lock from the inside for those who request it. Though this may not be practical in all settings immediately, it can be delivered for a relatively low cost and should be something that all schools and colleges strive towards.

**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

**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

**Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.**

## Uniform

This section covers uniforms in schools and colleges and asks you about your views on uniforms in relation to children questioning their gender.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words. Please do not add any details which may easily identify you or your organisation.

This could be an opportunity for schools to review their uniform policies and consider making a unisex policy or introducing unisex options. It would make teachers' and young people's lives easier and the guidance could be more helpful to schools in this area. Making exceptions for individual pupils is likely to lead to confusion and may seem unfair.

It would be useful and constructive to give advice on how schools can develop uniform policies that are inclusive by default, eliminating the need for complications regarding a change in uniform (e.g. not specifying genders when mentioning skirts, not splitting uniforms by "boys" and "girls", etc.)

As the guidance rightly points out, many young people may not wish to conform to expectations of their gender - for example, girls may not feel comfortable in skirts for many reasons, or boys may wish to wear their hair long. If uniform policies include unisex options, all of these young people will benefit - not just trans young people.

“A child who is gender questioning should, in general, be held to the same uniform standards as other children of their sex at their school and schools may set clear rules to this effect”. This seems clearly discriminatory under the Equality Act. For example, if a trans boy was punished for wearing trousers when a cis boy would not be, this would be discriminatory.

### **Physical Education and Sport**

This section covers your views on how the guidance will support teachers in relation to children who are questioning their gender and PE and sport in schools and colleges.

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?

Yes

No

Don't know

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

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

The risk of injury when playing on mixed teams is only applicable to contact sports, and in these cases there is also risk of injury within the sexes. Teachers are very well aware for example that at the age of 14, the size and strength of boys in one class may be hugely varied, and they are well accustomed to taking the appropriate precautions to mitigate for this.

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?

Yes

No

Don't know

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?

Please try to limit your response to under 250 words Please do not add any details which may easily identify you or your organisation.

The guidance does not align with the policies and guidance of many sporting bodies, particularly in relation to physical activity for young people. There should be emphasis on fully inclusive sports within all educational settings, rather than exclusion or binary separation.

### **Single-sex schools**

This section asks about your views on how the guidance covers admissions to singlesex schools.

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?

Yes

No

Don't know

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

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)?

Yes

No

Don't know

39. If yes, was that child questioning their gender?

Yes

No

Don't know

Please do not add any details which may easily identify you or your organisation.

### **Public Sector Equality Duty [PSED]**

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? Please give reasons for your answer and try to limit your response to under 250 words

This draft document as a whole completely fails to meet the duty required not only of schools and colleges but also of the Department of Education itself to comply with the Equality Act. "Gender Reassignment" status is a protected characteristic under the Act and therefore all public bodies have a legal duty to actively prevent discrimination against people with this protected characteristic. There is no lower age limit to this protection, and the government's own guidance explicitly states that "You can be at any stage in the transition process, from proposing to reassign your sex, undergoing a process of reassignment, or having completed it. It does not matter whether or not you have applied for or obtained a Gender Recognition Certificate."

Active prevention of discrimination should include positive education, to give staff and students the language and understanding they need to support all students, especially those with a protected characteristic.

Although the offence of harassment as defined in the Act applies only to harassment because of disability, race, sex or pregnancy and maternity, and not to religion or belief, sexual orientation or gender reassignment, Government guidance (The Equality Act 2010 and schools, May 2014) states "it is very important to recognise that this does not mean that schools are free to bully or harass pupils on these other grounds - to do so would still be unlawful as well as unacceptable. Any case against the school would be on grounds of direct discrimination rather than harassment."

## **General**

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

Yes

No

If yes, please detail below and try to limit your response to under 250 words.

The foreword is extremely telling of the approach taken throughout the remainder of the document, referring to "gender identity ideology", rather than acknowledging that trans identities are recognised internationally, with research repeatedly demonstrating that social transition is effective in promoting wellbeing, and reducing the risk of serious mental health difficulties.

The framing of "gender identity ideology" as simply a "belief" and not acknowledging the reality of trans people's lives is in direct contradiction to UK law. This goes to the heart of the draft guidance and must be addressed in order for the guidance to be useful to schools, teachers and young people.

This authors quote the Cass Review out of context, using the quote “social transition is not a neutral act”, with the implication that social transition is risky - ignoring the fact that in the Cass Review itself, this is then followed up with the sentence “It should also be recognised that ‘doing nothing’ cannot be considered a neutral act.” The research reference given at this point in the Cass Review states “Newer research suggests that socially transitioned prepubertal children are often well adjusted, a finding consistent with clinical practice observations. Analysis of both emerging research and clinical reports reveal evidence of a stable transgender identity surfacing in early childhood.”

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

Yes

No

**If yes, please detail below and try to limit your response to under 250 words. The Department will review and update related guidance in line with this guidance when it is published such as the Equality Act guidance.**

This guidance does not place the young person at the centre of any decisions made for or about them, instead deferring to the views of parents, many of whom lack an understanding of or are even hostile towards the reality of trans people’s existence. It seems to have been written with the aim of showing schools and colleges what they can get away with to exclude and isolate trans pupils, rather than constructively supporting and including them.

Much of the guidance provided is out of step with the legislative frameworks and duties relating to schools, and may be actively harmful to young people.

This guidance does not make any reference to young people previously established to be trans, and in doing so, appears to be guidance that is far less about supporting the referenced "Gender Questioning Children" and more about what the Department for Education believes schools can (or should) be able to withhold from young people without fear of reprisal.

The draft document also does not make any reference to non-binary young people, who also need to be considered throughout. The fact that this very form doesn’t allow an option for non-binary people to select their correct gender is extremely telling.

Schools and colleges are crying out for useful and constructive guidance to help them support their trans and non-binary students, and this guidance fails on every measure to provide that.