

# **A COMMENTARY**

on

Department for Education

Draft Guidance:

***‘Gender Questioning Children’***

**Non-statutory guidance for schools  
and colleges in England**

Issued for consultation in December 2023

By

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## **Introduction**

The 'Gender Questioning Children' Guidance ('GQCG') was published on 19 December 2023 for consultation lasting until 12 March 2024.

Schools, Colleges, Parents, Children, Teaching Unions, Educational Institutions and those who support them have sought guidance on the lawfulness of the 2023 draft guidance and how to respond to it in the consultation.

There are significant difficulties with the GQCG, as this commentary will set out.

This commentary is split into two parts:

Part 1 makes general comments.

Part 2 works through the draft guidance section by section.

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## **Part 1**

### **Executive Summary**

- It is immensely disappointing that having waited so long for this guidance the present government have apparently allowed the party political desire to engage in a culture war to take precedence over giving useful guidance to schools on how to accommodate trans children.
- The draft GQCG is fundamentally flawed and should be torn up, thrown away, and a fresh start made.
- If followed, the GQCG would, in my opinion, be likely to lead to educational institutions acting unlawfully towards trans students in a number of respects and not in their best interests.
- Whether the act of issuing the GQCG in its present form is itself unlawful is a public law question. It seems likely that the relevant Ministers (Keegan and Badenoch) have issued guidance which they know, or have been advised, is likely to lead to schools acting unlawfully. At the very least, on a moral level that seems extraordinary and reprehensible.
- There are at least two much better sets of guidance available in the UK at the moment which could be used as the basis for a useful, practical, inclusive national guidance document for England rather than the draft GQCG, the purpose and/or effect of which is to exclude, isolate and humiliate trans students.

## **Language**

### **1. in the GQCG**

The 'guidance' goes wrong from the very start. The overwhelming majority of young people, like the population in general, never experience a difference between their gender and their assigned sex. Some who do reach a high degree of certainty quickly about how they regard themselves. Others take much longer. That is why the correct usage is to refer to:

'Trans and gender-questioning children.'

To leave out the 'trans' is to deny the life experience of those who have achieved a degree of certainty of their experience. That denial sets the tone for the whole GQCG document.

The GQCG also fails to mention students who define their identity as non-binary. That was, presumably, a deliberate omission. Non-binary identities have particular challenges and the lack of guidance for schools is notable by its absence.

### **2. Language in this commentary**

This commentary will use the word 'trans' as short-form for 'trans, non-binary and gender-questioning'.

'Student' will be used to include child, young person etc, and of any school age.

'School' will include college.

## Origins

Schools have been waiting a long time for this guidance. As long ago as 2019 the Equality and Human Rights Commission had produced a well worked up draft on which there had been consultation with relevant organisations but with the change of government that was set aside. This guidance has been repeatedly delayed while the present administration fought internecine battles with itself.

Battles have been played out in government between those who would restrict or eliminate the rights of trans people and those brave souls in the present administration, including the government law officers, who have pointed out incompatibility of 'guidance' with the rights of trans children under the Equality Act or the European Convention on Human Rights 'ECHR'. That argument has been seen in leaks to the media, particularly those parts supporting the more extreme elements of the current administration, apparently with the motivation of 'bouncing' parts of the current administration seen as 'wet' to accept extreme iterations of the GQCG when discussions were still ongoing.

Such a background – restraining the desire to eliminate the rights and protections for trans people being restrained by more sensible heads - is not fertile soil for useful, practical inclusive guidance but clearly explains what has been provided.

The absence of involvement of educationalists with experience of supporting trans children in the production of this draft is notable.

## Alternative Guidance

I have considered whether it was possible to produce an amended version of the draft GQCG which would NOT lead schools and colleges to act unlawfully but, regrettably, I have concluded that it is NOT. The present document is so shot through with anti-trans hatred and fundamental errors that it should just be thrown away and a fresh start made.

There are, however, two excellent sets of guidance in existence in the UK which are available to all.

The first is Scottish Governmental guidance: 'Supporting Transgender Pupils' produced in 2019.

The second is the 'Trans Inclusion Toolkit' produced by Brighton and Hove City Council, of which version 4 dates from 2023. This builds on previous good work in Cornwall and Oxfordshire.

Links to both appear in the 'Resources' section at the end of this commentary.

It is recommended that these be read as part of considering this commentary.

It is notable that the Scottish guidance is 81 pages long and Brighton & Hove's 71, against the GQCG which is only 20. It takes much longer to give useful, helpful guidance than it does to mandate exclusion.

Under a new UK national administration a team of suitable stakeholders could take the best from the two useful sets of guidance as the basis for a civilised set of guidance for England. That should not take more than a few months. Following a period of public consultation, such useful guidance could be in place in the first year of a new administration.

## Fundamental errors

There seem to me to be **five** fundamental errors in the GQCG.

The **FIRST**, and most egregious, is that there is no mention of the protected characteristic of gender reassignment, which virtually all trans students will have.

Paragraph 7(1) of the Equality Act 2021 provides:

“A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.

‘A person’ in s7(1) is not age restricted and so the protected characteristic of gender reassignment can apply to under-18’s. This was considered in the case of *AA(R, on the application of, and others)* in which Chamberlain J said, at paragraph 133:

“But there is no reason of principle why a child could not satisfy the definition in s.7, provided that they have taken a settled decision to adopt some aspect of the identity of the other gender...”

And earlier, at paragraph 129 he had considered the meaning of ‘or other attributes of sex’ in section 7. He said:

“The underlined words (‘or other’) make clear that the process will not necessarily be a medical one. It may involve changing non-physiological aspects of sex, such as one’s name and/or how one dresses or wear’s one’s hair, or speaks, or acts.”

Relevant Human Rights principles from the European Convention on Human Rights, ‘ECHR’ - read into UK law by the Human Rights Act 1998 - include the rights to privacy (article 8) and freedom from

discrimination (article 11). The statutory guidance, 'Keeping Children Safe in Education 2023' ('KCSIE23') has a useful section on this. Human rights are applicable from birth, not from adulthood, so it seems difficult to justify a lot of the GQCG's is in trouble on this basis alone.

The failure to make clear that the protected characteristic of gender reassignment is likely to apply to most, if not all so-called 'gender-questioning children' in a document which purports to give guidance on a school's responsibilities towards such children is astonishing. It is hard to decide what would be worse. Either the Ministers understand its relevance and have decided to exclude it as not fitting their narrative, or they just do not understand the relevant law. In either case, the effect on the usefulness of the guidance is the same. It renders it useless and legally dangerous to schools.

Consider, for a moment, how guidance on *disabled* students would appear if the relevant disability provisions of the Equality Act were not referred to, or guidance on *race* discrimination without reference to the race discrimination provisions.

**SECONDLY**, and by contrast, the GQCG uses, several times, the phrase 'gender-identity ideology'. This is a mantra, or 'dog-whistle' phrase used by those who oppose transgender inclusion in society and seeks to down-grade trans from its correct status as an Equality Act protected characteristic to a belief or an ideology. Given that gender-dysphoria / gender incongruence have long been recognised in the DSM and ICD international medical classifications, and those undergoing gender reassignment have been protected in UK law since 1999, this is a further astonishing position to be taken in a UK government publication. It is a clear indication of the anti-trans ideological position from which this document has been produced.

**THIRDLY**, there is no mention of the ‘best interest’ principle introduced by the United Nations Conventions on the Rights of the Child (‘UNCRC’) 1989. Article 3 states:

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests** of the child shall be a primary consideration’.

The UK ratified the UNCRC in 1991, and this principle is read into UK law by the Children Act 1989. No mention of the ‘**best interests**’ principle appears in the draft guidance.

**FOURTHLY**, the GQCG is shot through with suggestions and hints that trans pupils are in some way ‘**a danger**’ to others - in ways that the authors do not explain or justify. In doing this, the GQCG authors appear to ignore the relevant paragraph in KCSIE23. This is the **statutory** guidance on safeguarding in schools. Being statutory, is of significantly higher status than the GQSG and would be paid respect should any of these matters come to court – that is the effect of it being statutory. KCSIE23 provides, at paragraphs 203 and 204:

‘203. The fact that a child or a young person may be LGBT is not in itself an inherent risk factor for harm. However, children who are LGBT can be targeted by other children. In some cases a child who is perceived to be LGBT (whether they are or not) can be just as vulnerable as children who identify as LGBT.

204. Risks can be compounded where children who are LGBT lack a trusted adult with whom they can be open. It is therefore vital that staff endeavour to reduce the additional barriers faced and provide a safe space for them to speak out or share their concerns with members of staff.’

It is notable that, while KCSIE23 is mentioned in GQCG, nothing from it, and certainly no part of paragraphs 203 and 204, is referenced.

Characterising trans students as some form of inherent safety risk to be defended against, is an approach consistent with the vilification of trans people seen in the UK media and certain politicians.

No explanation is offered for either why trans students are so regarded or what danger or dangers they pose. I have never yet met a radioactive or explosive trans student.

The **FIFTH** fundamental error is that the GQCG focuses on exclusion and isolation. When its 'guidance' has been followed what position would the trans child be in? How would their needs be met? The GQCG provides no guidance.

It is hard to escape the conclusion that the GQCG has been drafted hoping that the trans students will not be there at all or be driven away.

## The Consultation

Should you or your organisation respond?

It seems certain that there will be a General Election in 2024 and highly likely that there will be a new administration thereafter. With the consultation due to close on 12 March 2024, that leaves little time for the assessment of responses by the time of an election likely to come at or before the start of the 24/25 school year.

The Labour Party, whilst working hard to stay out of the 'culture war' that the present administration would like to have, have pointedly welcomed the *consultation*, but not the *guidance*. It is to be hoped that more sensible heads will settle into the Equalities and Schools ministerial posts after a change of administration.

But...

9 months is a long time in politics, and even if the expectations of a new administration are correct, the new administration will have the benefit of the consultation. It is to be hoped that positive progress can then be made.

My advice is that any person or organisation with a relevant interest *should* engage with the guidance, putting forward two propositions:

1. The existing draft should be torn up and thrown away.
2. A fresh draft should be brought forward for consultation, pulling together and updating the best of the Scottish and Brighton materials.

Sensible, useful, legally compliant, guidance could be in place well within the first year of a new administration if this route is followed.

The consultation portal can be found here:

<https://consult.education.gov.uk/equalities-political-impartiality-anti-bullying-team/gender-questioning-children-proposed-guidance/>

If you are part of an education-related organisation, it is recommended that your organisation should form a view at the highest level and respond substantively to the draft.

### **Avoiding bad advice**

Schools often struggle to wade through the deluge of ‘advice’ or ‘guidance’ produced in this area, sometimes by organisations with agendas far away from doing the best for students.

The GQCG is SO extreme, that organisations or persons recommending it positively can easily be seen to be harmful to trans students (and so students generally) and such organisations should be avoided at all costs.

Regrettably, this category now includes, in my opinion, the present Secretary of State for Education and the Minister for Equalities.

## **Notes**

### **Note - 1**

Nothing in this commentary should be taken to be legal advice. Discrimination circumstances are notoriously fact-specific and schools, colleges, young persons and those who support them should seek specialist advice from suitably qualified and experienced advisors on individual situations.

### **Note – 2**

I made it plain that I would produce this commentary shortly after the GQCG was produced. I am humbled by the offers of assistance and support I have received. All students can feel assured of the support of relevant professionals and educationalists, if not the present administration.

Those who have assisted may or may not want to identify themselves. That is a matter for them. I am responsible for all and any errors in this document.

## Part 2

### Commentary - Section by Section

This Part works through the GQCG sequentially and so follows the structure of the document. Order of comment should not, therefore, be taken to imply order of *importance* of comment.

To avoid duplication, I have produced these comments assuming that the reader has the GQCG open as well as this commentary. Section headings and quotes from the GQCG are in *italics*.

#### *Foreword*

*'a significant increase in the number of'*

Who is to say that the increase in trans children is significant?

Past years have seen a rise in the visibility of LGBT children generally. That is a sign of increasing acceptance and maturity of society. The GQCG appears to be an attempt to roll that back.

*'linked to gender identity'*

Who has linked this to 'gender identity ideology'? Given that phraseology, used only by anti-trans individuals and organisations, this part of the foreword shows that the document is fundamentally about exclusion. One would have expected to see mention of the Equality Act protected characteristic of 'gender reassignment' here, and a positive statement supporting diversity. They are notably absent.

### *'clarity'*

The GQCG is said to produce 'clarity' for schools and colleges. Matters related to trans students reflect the complexity of society and the GQCG could be said to produce 'clarity' at the expense of treating trans students with dignity and respect.

What the GQCG does NOT do is provide any 'clarity' on how to support and include trans students.

Furthermore, rather than 'provide clarity for schools and colleges', the guidance undermines the progress that's been made, critically reinterprets the relationship between teacher and student, dangerously reinterprets well established understandings of safeguarding and confidentiality and encourages schools/ colleges to act in a way which is contrary to the law.

### *'reassurance for parents'*

The document refers to providing 'reassurance' for parents. A few moments on social media will show that it has produced fear and considerable anxiety for the parents of trans students.

### *'no general duty'*

Perhaps the most contentious statement is tucked away as point 5 of the '*general principles*':

*5. There is no general duty to allow a child to ‘socially transition’.*

For a child with the protected characteristic of gender reassignment (hereafter referred to as ‘trans’) this is wrong in law . There is a duty to respect their protected characteristics. And a school which restricted or disadvantaged a trans student would be open to a legal challenge and sanction for doing so on the basis of the protected characteristic.

*‘the Cass Review’*

This misrepresents the (interim report only so far) Cass Review (‘Independent Review of Gender Identity Services for Children and Young People’) in the way that many anti-trans groups have done. It is true that the interim report draws attention to the serious nature of social transition but as is often left unquoted by those unsupportive of trans people, it states, at paragraph 5.20 that ‘doing nothing is not a neutral act’. That is rather different from the way the GQCG references the interim report.

*‘safeguarding duties’*

Schools are well versed in safeguarding matters. From a safeguarding perspective there is nothing special about social transition, compared with, for example, a student ‘coming out’ as gay. Schools, and particularly their trained safeguarding officers, are well versed in making judgments about whether students have capacity to make such decisions for themselves and whether it is proper and if so how, to involve a student’s parents. A school treating a trans student differently from, say, a gay student, would risk breaching safeguarding principles and unlawfully discriminating on the grounds of gender reassignment.

Under safeguarding principles (KCSIE23), the best interests of the student are paramount. If the student expresses fear at their circumstances being revealed to their parents, that will be the school's primary concern. (See further comments on safeguarding on page 19 of this commentary.)

*'keeping children safe'*

The suggestion appears to be that trans students are in some way 'unsafe' or pose a risk to others. See previous comments about 'safety'.

## ***Section 2 – About this guidance***

*'non-statutory'*

The guidance neither creates nor places any legal duties on schools and can be safely ignored, especially in its many conflicts with the law and statutory guidance such as KCSIE23.

See comments in Part 1 about commenting on the draft guidance.

### ***3. Overarching principles.***

*'gender identity ideology', 'belief' 'contested belief' and 'Many people believe'.*

This whole paragraph focuses on the anti-trans formulation of 'gender identity ideology' – the beliefs of others - and completely ignores the relevant protected characteristic of gender reassignment.

It therefore sets a trap for schools and colleges of proceeding on a false basis. Whether ‘gender identity ideology’ is a contested belief or not, and how ‘many’ believe this concept is irrelevant to the duty schools have to respect Equality Act protected characteristics.

*‘names, uniforms and facilities’*

All such matters (remember the quote from the ‘AA’ case) are squarely within the ambit of a gender transition. To deny a request from a student in such areas is likely to be unlawful discrimination, probably direct discrimination (for which there is no ‘justification / defence’). If indirect discrimination, not accommodating the reasonable requests of a person with protected characteristics without strong justification would be unlikely to be justified and so would be unlawful.

*‘safeguarding principles’*

As before, schools are well versed in this area. As KCSIE23 makes plain, trans students are not inherently a risk. The – unspecified – risk to peers is, once again, deeply unpleasant fear mongering.

*‘Parents should not be excluded’*

The GQCG says:

*‘Where a student requests action from a school in relation to any degree of social transition, schools should engage parents as a matter of priority’.*

The real ‘matter of priority’ is, of course, the best interests of the student.

What is not clear from the guidance is why that would be the case. Indeed, this 'principle' is problematic for the following reasons:

- It infers that a move to socially transition is a safeguarding concern (and thus why confidentiality would be broken). No justification for this is given.
- It radically undermines the current application of confidentiality in schools. If a student tells a teacher they are gay, for example, and that they do not want their parents to be informed, this would be respected.
- There may be a good reason why a trans student does not want their parents to be informed. As the statutory guidance, KCSIE23 states: "All staff should be aware that children may not feel ready or know how to tell someone that they are being abused, exploited, or neglected, and/or they may not recognise their experiences as harmful. For example, children may feel embarrassed, humiliated, or are being threatened."
- It fundamentally reinterprets the relationship between teacher/ student and school/ home. Asking teachers/ schools to police students' gender identity, undermine their choices and report them to their parents exposes students, teachers and schools to many risks. The consequences of following this principle will be unknown and could be catastrophic.
- In the UK, Gillick Competency and Fraser Guidelines are widely used when trying to balance a child's safety with respect for their agency, yet they are not referenced in the GQCG. Gillick and Fraser refer to the same court case in the 1980s which examined whether doctors

should give contraception to under 16s without parental consent. This case decided that:

*“...whether or not a child is capable of giving the necessary consent will depend on the child’s maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent.”*

This precedent is applied to assess whether a child has the capacity to make decisions for themselves and thus confidentially access services like abortion, counselling, or support for drug addiction. Breaking the confidentiality of a trans student where they have capacity undermines the rights of the student.

- The GQCG states “If and where any change has been agreed, the school or college should communicate this to other pupils and staff where it is necessary and proportionate to do so.” However, as with any other medical information or data pertaining to a protected characteristic, an individual student’s gender identity is confidential. Given that the trans community is small, even referencing or confirming that there IS a trans student in the school community can be enough to ‘out’ the pupil, however unintentionally. This may expose the student to bullying and other safeguarding concerns, as highlighted by KCSIE23. The GQCG gives, paradoxically, no guidance on such risks.

*'No general duty'*

See comments above – this ignores the duty related to the protected characteristic.

#### ***4. Language and terminology***

This section is entirely deficient without reference to the protected characteristic of gender reassignment. Once again, the anti-trans *'contested belief'* of *'gender identity ideology'* appears and, as before, is irrelevant to a correct analysis of responsibilities.

#### ***5. Responding to Requests and Engaging Parents***

*'Allow for watchful waiting'*

This is a term for an approach advanced by clinicians unsupportive of trans people, especially trans children. No guidance is offered on how long a period of *'waiting'* should be or how many times a trans child has to ask before they are believed. In fact, a young person expressing a settled view that they wish to transition has the protected characteristic of gender reassignment and any enforced delay is likely to be unlawful discrimination.

*'Make parents aware'*

Much of this section would be a breach of normal safeguarding principles in which schools are well-versed. See comments above.

*'The seriousness and context of the request'*

The guidance given under this section would appear to suggest an intrusive and inappropriate interrogation of the young person which would, by itself, be highly likely to be unlawful discrimination.

*'Impact on the school community'*

Once again, the language of 'harm' and 'danger' is deployed with no suggestion of what that harm or danger might be.

Given that refusing a child's request to transition is likely to be unlawful discrimination, taking some (unspecified) effect on the school community into account would be unlikely to save a school from that being unlawful.

*'spaces designated for the other sex'*

Denying a person with the protected characteristic of gender reassignment facilities of their affirmed gender is highly likely to be unlawful gender reassignment discrimination. See later comments about toilets and changing rooms.

*'protected religious or other views'*

It is correct that such views should be respected. They are not justifications for misgendering or deadnaming a trans pupil – see later comments on the Mackereth case and pronouns.

*'6.1 Registration of Name and Sex'*

No consideration is given to the protection of a trans student's gender identity.

## *'6.2 Changing Names'*

The focus appears to be on outing the trans student to the school community. Only a limited number of people have any need to know about a name change. Disclosure to the 'school community' whatever that means appears likely to be both a breach of data protection legislation and unlawful discrimination.

Nowhere does the GQCG explain that 'deadnaming', that is, using a trans person's rejected or abandoned name is one of the most offensive things that can be done to a trans person, on a par with misgendering – using the honorific, pronoun or form of address specific to the gender a person has expressly rejected.

Plainly, around the time of transition especially, mistakes may be made by those getting used to a trans person's new identity but either misgendering or deadnaming of these things intentionally would be highly likely to amount to unlawful discrimination, for which a school would be liable if it had permitted this to occur or not taken appropriate steps to prevent or correct it.

Once again KCSIE23 is highly relevant, particularly its safeguarding and bullying provisions and once again, they are not referenced in the GQCG.

## *'6.3 Pronouns'*

This whole section is appallingly drafted.

- There is no reason that primary school students should be treated differently merely because they are primary school students.
- Declining a request to change pronouns would be highly likely to be unlawful discrimination.

- It is hard to think of an ‘impact on the community’ that would justify refusing a pronoun use request.
- Teachers and other pupils can perfectly lawfully be compelled to use preferred pronouns. To do otherwise would be very likely to leave the school open to a claim of unlawful discrimination. This issue was considered in the context of the employment of a Doctor providing services in the case of Mackereth, and the Employment Appeal tribunal in the Forstater case, whilst finding that Ms Forstater’s beliefs were protected, that did not give a licence to misgender and deadname others. Both cases are linked in the ‘Resources’ section at the end of this commentary. In Forstater, see especially paragraph 118 of the judgement.
- The suggestion of avoiding the use of pronouns is itself discriminatory. Imagine, for a moment, that *only one* student in a class, the trans student, is the *only one* whose pronouns are not used by a particular member of staff or other students.
- The suggestion of information about a student’s ‘biological sex’ being widely shared would be highly likely to breach data protection legislation, a trigger for bullying and be unlawful discrimination.

The statement that: *‘bullying of any child must not be tolerated’* rings very hollow when the whole drafting of this section appears to be designed to sanction and enable the bullying of trans children.

#### *‘6.4 Single-Sex Spaces’*

The drafting of this section is wholly deficient and likely to give rise to unlawful discrimination if applied as drafted. Excluding a trans person from facilities consistent with their affirmed gender is highly likely to be unlawful discrimination except in exceptional circumstances.

#### 6.41 Toilets

The provision of school toilets in England is governed by *The School Premises (England) Regulations 2012* (SI 1943/2012)

- These regulations are made under the authority provided by the Education Act 1996, ss 542(1) and 569(4).
- They deal with *provision* of facilities, not who can use them. This is consistent with other areas of life, such as workplaces, where *provision* is specified, but no duty of '*policing*' is imposed.
- The Regulations include no definition of 'boy' or 'girl'.
- As has recently been made clear in the case of *For Women Scotland*, such terms are context-specific and there is no good reason why 'boy' should not include 'trans boy' nor 'girl' include 'trans girl'.
- In fact, Regulation 2(2) provides that the facilities must be 'suitable' with regard to any special requirements a pupil may have. Making a trans boy use the girls' facilities would not be 'suitable'.
- In practical terms, there are no privacy issues involved in allowing trans individuals to use toilet facilities consistent with

their affirmed gender sufficient to justify the exclusion of trans students from facilities appropriate to their gender.

- Exclusion as suggested by the GQCG would be highly likely to be unlawful discrimination.

#### *'6.42 Changing rooms and showers'*

The option of providing changing facilities with additional privacy by the addition of a curtain or cubicle within the facilities of the trans child's affirmed gender appears to have been 'overlooked'.

#### *'6.43 Boarding and residential accommodation'*

It is not understood where the prohibition of a trans student using facilities consistent with their affirmed gender originates. It would seem to be difficult to justify without it being unlawful discrimination.

Other students who object to using shared accommodation where the school's policy is trans-inclusive could be offered the use of accommodation offering greater privacy. That is the least discriminatory option.

#### *'6.5 Uniform'*

Enforcing rules based on sex not gender for a student with the protected characteristic of gender reassignment is highly likely to be unlawful discrimination.

#### *'6.6 Physical Education and Sport'*

The drafted guidance on sport, just like the pages which have preceded it, is about exclusion, not inclusion and this needs to be completely re-written, preferably with input from those who have managed the inclusion of trans pupils in school sports.

It is lawful to exclude trans people from sport where that inclusion might threaten either (1) safety or (2) fair competition but there is no compulsion to.

Guidance should be about *inclusion* not *exclusion* and this, like all the rest, does not meet what educationalists, parents, schools and the like, need. This is absent from the GQCG.

### *'7. Legal Considerations'*

This section is pathetically inadequate.

The guidance ends with the same mystery it started. A page about 'legal considerations' entirely fails to mention the protected characteristic of gender reassignment or the best interest of the child.

How can that be?

A useful legal resource in the public domain is that obtained by the Good Law Project from Dan Squires QC (now KC). See the documents subsection of the 'Resources' section below.

## Resources

### 1. Documents

#### Gender Questioning Children ‘draft guidance’

[https://consult.education.gov.uk/equalities-political-impartiality-anti-bullying-team/gender-questioning-children-proposed-guidance/supporting\\_documents/Gender%20Questioning%20Children%20%20nonstatutory%20guidance.pdf](https://consult.education.gov.uk/equalities-political-impartiality-anti-bullying-team/gender-questioning-children-proposed-guidance/supporting_documents/Gender%20Questioning%20Children%20%20nonstatutory%20guidance.pdf)

#### Supporting Transgender Pupils – Scottish Guidance

[https://education.gov.scot/media/xpgo5atb/supporting-transgender-pupils-schools-guidance-scottish-schools\\_.pdf](https://education.gov.scot/media/xpgo5atb/supporting-transgender-pupils-schools-guidance-scottish-schools_.pdf)

#### Transinclusion Schools Toolkit V.4 2023 – Brighton and Hove

<https://www.brighton-hove.gov.uk/node/776/trans-inclusion-schools-toolkit-2021>

#### Cass Interim Report

<https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf>

#### Keeping Children Safe in education 2023

[https://assets.publishing.service.gov.uk/media/64f0a68ea78c5f000dc6f3b2/Keeping\\_children\\_safe\\_in\\_education\\_2023.pdf](https://assets.publishing.service.gov.uk/media/64f0a68ea78c5f000dc6f3b2/Keeping_children_safe_in_education_2023.pdf)

#### Advice ‘Trans Children in Schools’ by Dan Squires KC given to the Good Law Project

<https://drive.google.com/file/d/1YmoyjcNQtr0V2yPSZjbXQy1GcGYiAKbB/view>

## 2. Legal Cases

Gillick v West Norfolk and Wisbech AHA

<https://www.bailii.org/uk/cases/UKHL/1985/7.pdf>

Forstater v CGD (EAT)

<https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>

David Mackereth v DWP

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