

Vale of Glamorgan Trans Inclusion Toolkit

Merched Cymru consultation response 16-03-23

Our summary

The Vale of Glamorgan's guidance will exacerbate rather than ameliorate the problems faced by gender-distressed and gender-confused young people, and undermine the rights of other pupils, especially female pupils and those with the protected characteristic of sexual orientation and religion or belief.

We strongly recommend that the guidance is rewritten from a safeguarding perspective, and with an understanding of the rights of all children to safety, dignity, privacy and respect.

Section 1. How important do you think having this guidance document and toolkit is to ensure trans and gender exploring children and young people feel safe to learn?

We believe it is vitally important that clear, evidence-based guidance on this topic is provided for schools. We also welcome the revisions made to the VoG guidance, particularly in relation to factual terminology (e.g. 'sex observed at birth' rather than 'sex assigned at birth') and the acknowledgement of the Council's legal duty under the Equality Act 2010.

However, serious problems remain.

- 1. Safeguarding.** The stated goal of ensuring that 'trans and gender-exploring' pupils 'feel safe to learn' misses the point. The essential priority is safeguarding – ensuring that pupils actually are safe, rather than simply that they feel safe. The difference is significant.
- 2. Ideology vs objectivity.** The guidance is based on an ideological approach which assumes, for example, that a child can be trans i.e. 'born in the wrong body' or non-binary i.e. neither male nor female. These assumptions are neither objective nor evidence-based and should not be used as the starting point for school policy.
- 3. Legal duty.** Under the Equality Act 2010, schools have a legal duty not to discriminate against individuals possessing any of the protected characteristics. By prioritising/affirming the rights of 'trans and gender-exploring' pupils, schools are likely to inadvertently undermine the rights of others, particularly female pupils, pupils of faith, and, ironically, lesbian, gay and bisexual pupils.
- 4. Equity & fairness.** Similarly, school policies must be equitable, both in content and implementation. Estyn's 2021 report in to peer-on-peer harassment revealed shocking levels of harassment and bullying in Welsh secondary schools, particularly targeted at female and gender non-conforming pupils, and those with a disability. A whole-school approach is recommended in response. There is a serious risk that the narrow focus of this guidance, coupled with the extensive list of recommended affirmative actions, could increase inequality and undermine the sense of community within a school.

We also note that the updated guidance is based on the Brighton & Hove Toolkit which was heavily influenced by Allsorts Youth Project. You might not be aware that the Allsorts Toolkit has been heavily criticised, particularly for its misrepresentation of the Equality Act 2010 where the protected

characteristic of 'sex' is ignored in favour of children protected under 'gender reassignment'. This has significant negative impacts on female pupils' rights to single-sex spaces and opportunities, and is discriminatory under both the Equality Act 2010 and the UNCRC (e.g. Article 2). Equally worryingly, the 'affirmation only' approach endorsed by Allsorts which underpins the VoG guidance, does not take in to account the fact that around 80% of trans-identified children will reconcile themselves to their birth sex during adolescence – most discovering that they are lesbian, gay or bisexual. Transgender Trend have undertaken an in-depth children's rights impact assessment of the Allsorts Trans Inclusion Schools Toolkit. This reveals the potentially harmful impact of their guidance and of the advice on which the VoG toolkit is based.

<https://www.transgendertrend.com/product/childrens-rights-impact-assessment-allsorts-trans-inclusion-schools-toolkit/>.

Finally, we would challenge many of the statistics used in the guidance. We are concerned by the lack of robust clinical evidence and a tendency to accept at face-value assertions from transgender lobby groups such as Allsorts and Stonewall. For example, on page 6 you state: 'Some studies find trans young people to be at an increased risk of self-harm and suicide'. In fact the Tavistock's GIDS' website states that completed suicides are 'extremely rare' and notes that 'the percentages for associated difficulties and self-harm appear to be in line with young people from the LGB population and, increasingly with the general population.' ('Evidence Base' GIDS website)

A recent paper published by the British Medical Journal 'Caring for young people with gender dysphoria' provides a detailed overview of an evidence base which is 'preliminary or inconclusive' and advocates 'against overdiagnosis and overtreatment – even when the state of the science disagrees with individual preferences.' (<https://www.bmj.com/content/380/bmj.p553>)

Section 2 - Developing understanding of trans, non-binary and gender exploring children and young people

As noted above, we welcome changes to the language and definitions used in the guidance, In particular:

- clarification of the difference between sex and gender
- acknowledgement that 'not everyone regards themselves as having a distinct gender identity' and that exploring ones identity 'does not necessarily mean they are trans'
- acknowledgement that children with 'differences in sex-development' are not included under the 'trans umbrella'.

We also particularly welcome the statement about social transitioning as 'an active intervention' (Cass Interim Review) but are disappointed that the ramifications of this statement are not further explored. Given the affirmative approach endorsed throughout the guidance, this is a worrying omission and one which absolutely must be put right.

We have a number of serious concerns in relation to this section.

Some of the cited sources for the glossary are unreliable. In particular, and given the salience of the Equality Act 2010 in this debate, it would be appropriate to rely on the EHRC's advice that: 'Under the Equality Act 2010, 'sex' is understood as binary, being a man or a woman. For the purposes of

the Act, a person's legal sex is their biological sex as recorded on their birth certificate.' A man is defined as 'a male of any age'; and a woman as 'a female of any age'.

Several of the definitions contradict other elements within the guidance. For example, your introduction uses the phrase 'sex observed at birth' whereas the glossary uses the phrase 'assigned at birth'. The former is factual, the latter is not.

Other definitions are internally contradictory, e.g. the 'gender stereotypes' section states that 'The wellbeing of boys and girls can be harmed by stereotyping. All education settings will want to prevent and challenge gender stereotypes and give the message that there are many ways to be a girl or a boy.' This position (with which we strongly agree) runs directly counter to the trans narrative which insists that a girl who isn't feminine or who likes playing football is probably a transboy, and a boy who enjoys drama, make-up and spending time with girls, is a transgirl.

Section 3 - Legal Context and ESTYN Framework

We very much welcome the acknowledgement that the rights of all pupils must be respected and the recognition of the need to: 'eliminate discrimination, harassment, etc; advance equality of opportunity; and foster good relations between those who do and do not share protected characteristics. We are also pleased to note the advice regarding single-sex spaces (as laid out in the Equality Act 2010), on direct and indirect discrimination, and on the right of pupils to not 'affirm' another pupil's gender identity.

However, this clear and unequivocal guidance is either directly undermined by what follows, or is simply ignored in the key sections of the guidance. In this regard the document reads as if written by two people with very different views of what is important - safeguarding or affirmation of gender identity - and of whose rights should take priority.

For example, the guidance correctly states that single-sex provision is allowed by the Equality Act 2010 if it 'is proportionate and achieves a legitimate aim'. The safety and dignity of female pupils is clearly an entirely legitimate aim, one that should ensure the permanent and uncontentious provision of single-sex toilets and changing rooms in all schools. Yet the guidance quotes at length from Estyn's guide (October 2020) which advises staff to 'work with [trans-identifying pupils] to adapt provision and ensure that they can access the most appropriate facilities given their needs [...]. Effective leaders recognise that there are no standard or simple solutions to these challenges.' This 'case-by-case' advice prioritises the individual 'needs' of trans-identified pupils over the rights of all female pupils, and those with the protected characteristic of religion or belief. It also goes against the Public Sector Equality Duty (PSED) quoted on page 14.

Similarly, the Estyn guide requires that 'staff and learners respect the name and pronouns' chosen by trans-identified pupils. This runs counter to the VoG statement regarding the right of pupils to not affirm another pupil's gender identity.

It is simply not possible to square these various circles. As it stands, the VoG guidance is very likely to put schools and individual teachers at risk of legal action, to undermine safeguarding, and to discriminate against pupils with protected characteristics other than that of gender reassignment. In that regard, the minimal 'Safeguarding' section is particularly worrying as is the assumption that 'being trans is not itself a safeguarding issue'. Children and young people who exhibit gender confusion or distress have a significantly high rate of co-morbidities including anorexia, self-harming, depression and anxiety. A large number are neuro-diverse. Many have a history of trauma or sexual abuse, internalised homophobia, or misogyny. (Littman 2020). For this, predominantly female and highly vulnerable group, transition can appear to be the solution. Affirmation serves to (temporarily) bury the underlying issues, masking safeguarding concerns and increasing the risk of harm.

On a more pragmatic level, binders are used by girls who identify as trans or non-binary. These cause potentially serious health issues and impede lung function, making exercise or participation in sports problematic. Clearly this is a safeguarding issue. Similarly, many young people who identify as trans are sourcing puberty-blockers via the web. These experimental drugs have serious side-effects and no proven benefits in relation to gender-dysphoria. The Society for Evidence-based Gender Medicine have called for 'extreme caution' in administering puberty-blockers, due to the 'long term risks to bone health [and] fertility'.

https://segm.org/NICE_gender_medicine_systematic_review_finds_poor_quality_evidence

The Cass Interim Report states: 'From the point of entry to GIDS there appears to be predominantly an affirmative, non-exploratory approach, often driven by child and parent expectations and the extent of social transition that has developed due to the delay in service provision.' To 'child and parent expectations' we would also add 'schools and peers'.

3.5 Confidentiality

The suggestion that a child should be assisted to socially transition without their parents' knowledge is unconscionable. Such a course of action could also open schools up to potential legal action. As Safe Schools Alliance explain: 'Schools do not have parental responsibility and are not medical professionals; they should not be making autonomous decisions about the treatment of a child experiencing any kind of distress. To do so would contravene the Children Act 1989 and the Education Act (applicable in England and Wales).'

Serious safeguarding issues are also raised by the instruction that 'information about a child or young person's trans status, or sex registered at birth should not be shared without permission'. The rights of the trans-identifying male pupil, for example, must not be allowed to override the rights of female pupils, or those with the protected characteristic of religion or belief. The impact of such a policy on their safety, dignity and right to privacy – e.g. on the sports field, in changing rooms, on residential trips – would be catastrophic.

Section 4 - A whole school approach to being inclusive

As previously mentioned, the focus on supporting, affirming and celebrating trans-identified pupils could be seen to discriminate against pupils with other protected characteristics. The guidance consistently prioritises the rights of this small group of pupils over the rights of others, particularly

female pupils and, arguably, lesbian, gay and bisexual pupils. It is neither fair nor equitable to do so. The conflation of 'sexist, homophobic, biphobic and transphobic' bullying serves to obscure the tsunami of sexual harassment and homophobic bullying that these pupils are facing on a daily basis. There is a serious risk that the narrow focus of this guidance, coupled with the extensive list of recommended affirmative actions, will increase inequality and undermine support for trans-identifying pupils, in direct contradiction to the schools' Public Sector Equality Duty.

The contradictions that run through the VoG guidance reappear in this section with the suggestion that governors should ask 'what is being done to challenge gender stereotypes'. The ideology on which the guidance is based starts with a premise that a child who is gender non-conforming is likely to be trans, thus reasserting gender stereotypes and, in the process, increasing the likelihood of internalised homophobia. Similarly, the Staff Training section proposes that training should include 'the appropriate use of pronouns' in spite of a previous commitment to freedom of belief.

In its conflation of sex and gender, the section on Language is entirely at odds with the clear explanation provided in the introductory section. In relation to the use of gender-neutral language, section 4.7 of the guidance states: 'The purpose [...] is not to deny sex and gender as important parts of identity, in fact we need to use binary language to talk about sexism, sexual harassment and sex specific life experiences.' This reasonable clarification is then ignored in the following section which proposes: 'When labelling the genitals consider stating that most, rather than all, boys have a penis and testicles and most, rather than all, girls have a vulva and vagina.'

This statement is false. Apart from encouraging teachers to lie to their pupils, the inability to correctly name body-parts or to understand that male and female bodies are different (and that girls menstruate and can become pregnant), creates confusion at best, and undermines safeguarding.

Moreover, Welsh Government require that 'In all schools and settings, RSE must be objective, critical, and pluralistic as to its content and manner of teaching ... By pluralistic we mean that that where questions of values are concerned, schools and settings must provide a range of views on a given subject, commonly held within society.' This requirement for objective, critical and pluralistic content and teaching should mean that beliefs about 'gender identity' are presented as beliefs or philosophies, rather than as material facts. The affirmative and celebratory approach embedded in this guidance appears to flout that requirement entirely.

The resources mentioned in the guidance are similarly problematic. Stonewall is a lobby group. They advocate for a highly contested and evidence-free ideological position which prioritises gender identity over sex i.e. unverifiable and often transient feelings over biological reality. They have publicly committed to ending the sex-based rights laid out in the Equality Act 2010. Their CEO has stated that lesbians who do not want to date trans people are akin to those who 'don't want to date people of colour, fat people or disabled people'; a growing number of LGB people – including long-term LGB activists - have withdrawn their support for Stonewall, feeling that the organisation discriminates against them.

A truly pluralistic, inclusive and non-discriminatory approach should also signpost schools to materials that take a sex-based and evidence-based approach such as Transgender Trend or Sex Matters, and to resources that prioritise safeguarding – for all pupils – such as those produced by

Safe Schools Alliance or Genspect. The excellent Bayswater Support have just published 'a brilliant, crystal-clear summary of safeguarding for trans-identified children in schools' which we strongly recommend. Safeguarding issues dealt with include: neurodevelopmental conditions, depression & anxiety, eating disorders, self-harm, trauma & sexual abuse, homophobic bullying, online safety & grooming, and illegal drugs. The safeguarding section of this guidance should be rewritten to provide similar advice in relation to these very real concerns and comorbidities.

<https://www.bayswatersupport.org.uk/wp-content/uploads/2023/01/Safeguarding-trans-identified-children-and-adolescents-V1.1-master-1-1.pdf>

Section 5 - Supporting trans, non-binary or gender exploring children or young people

We welcome the acknowledgement 'that some children and young people will go through a period of exploring their gender identity. Over time some of this group may realise they are comfortable with their registered sex' and the clarification that 'social transition is not a neutral act'. We also welcome the reference to the Royal College of Psychiatrists' 'watchful waiting' recommendation.

However, once again, this evidence-based advice is ignored in the guidance that follows which appears to assume that a child who identifies as trans will be supported to socially transition by the school.

Schools, individual teachers, and their trans-identifying or gender non-conforming pupils, are being put at risk by this incoherence and lack of clarity. There is clear evidence that a majority of pupils who exhibit signs of gender confusion will desist if not socially transitioned or encouraged on to a medical pathway: <https://statsforgender.org/wp-content/uploads/2021/10/Gender-related-distress-will-alleviate-for-around-80-of-pre-teen-children-once-they-become-teenagers.pdf>

Many, possibly a majority, will grow up to be gay, lesbian or bi-sexual adults.

As Cass asserts, social transitioning is not a neutral act. Schools should not be encouraged to 'affirm' or 'celebrate' transition given the very real possibility of harm.

Similarly, parents, carers and siblings should not be encouraged to affirm a child's 'trans' identity. Your suggestion that a parent who 'seeks to prevent their child from making any steps towards a transition' is 'unsupportive', is both irresponsible and potentially dangerous.

It is also worrying that the information in the section on medical transitioning is so sparse. We agree wholeheartedly that medical transition is 'outside the remit of schools' but, given that social transition is acknowledged as an 'active intervention' (Cass) which increases the likelihood that a trans-identifying child will go on to medically transition, it is important that information about the risks of transition is made available to schools. Yet the only risk mentioned in the guidance is the risk of a child being 'distressed' by the onset of puberty. In fact the medical risks of 'puberty blockers' are permanent and life-changing. They include reduced growth in height and bone density, possible impact on brain development, and, if the child progresses on to cross-sex hormones (as happens in the vast majority of cases), sterility, loss of sexual functioning, vaginal atrophy, increased risk of

strokes, blood clots, and heart attacks.

<https://www.sciencedaily.com/releases/2019/02/190218093959.htm>

There is also no evidence that the use of puberty blockers helps with ‘psychological function, thoughts of self-harm, or body image’. <https://www.bmj.com/content/372/bmj.n356>

As before, we would point out that Allsorts, like Stonewall, is a trans lobbying group. Their advice is neither objective nor evidence-based. Nor does it adhere to basic safeguarding requirements – either for the gender-distressed child, or in relation to safeguarding other pupils in the school.

Bayswater’s new guidance (<https://www.bayswatersupport.org.uk/safeguarding-our-new-guide/>) provides excellent advice in this regard:

‘All too often, when a child announces a trans-identity, parents find that their children are removed from normal safeguarding procedures and put at unnecessary risk for fear of violating their equality rights. Many groups who provide training and guidance to schools reinforce this minority rights perspective. Whilst we uphold the rights of all to live their lives free from discrimination and bullying, a safeguarding framework allows schools to develop a robust approach which keeps all children, adolescents and young people safe – a central role and statutory requirement for schools.’

Section 6 - Supporting trans, non-binary and gender exploring children and young people with concerns

All of the concerns raised above apply to this section. Schools should not be facilitating transition for gender-distressed or gender-confused pupils. This course of action is inappropriate (at best); likely to discriminate against pupils with the protected characteristics of sex, religion or belief, and sexual orientation; and runs counter to the school’s PSED. The affirmation approach set out in the guidance seriously flouts the UN rights of the child, especially Article 2: non-discrimination; Article 3: best interests of the child; Article 4: the protection of rights; Article 5: parental guidance; Article 12: respect for the views of the child.

We would strongly recommend that the authors of this guidance, and council members who will be responsible for signing it off, carefully consider Transgender Trend’s Allsorts Toolkit impact assessment before endorsing this document. As it stands the guidance is not fit for purpose.

<https://www.transgendertrend.com/product/childrens-rights-impact-assessment-allsorts-trans-inclusion-schools-toolkit/>.

The Toolkit Overall

We welcome the inclusion of a number of objective, factual, legal, clinical and evidence-based elements in to this guidance.

However, the overall approach remains ideological and, in its determination to affirm and support ‘trans’ and ‘non-binary’ pupils (as self-defined), directly undermines the rights of other pupils.

Nor is this 'child-led' approach helpful for gender-distressed or gender-confused children. It risks locking them in to a transition pathway which will have serious, long-term effects on their health and wellbeing. It also risks 'diagnostic overshadowing' where an assumption is made (by the pupil, parents, and/or school) that 'transition' is the solution to all the child's problems, and comorbidities are ignored – to the serious, even catastrophic, detriment of the young person concerned.

Schools have a vitally important role to play in childrens' social, cultural, intellectual and psychological development. They are also responsible for keeping them safe, for being the 'adults in the room'. We suggest that this responsibility is being sidestepped in the case of 'trans' pupils – no doubt with the best of intentions. Bayswater's 'Safeguarding trans-identified children and adolescents' guidance explains: 'For many of our children, the trans identity began - and was solidified - in school. We have come to understand that when a child says they are trans, standard safeguarding procedures can be overlooked or overridden - *because* of the trans identity.'

They go on to list 'key risk factors for trans-identified children:

Overlooking and failing to address other issues: e.g. ASD, ADHD, mental health issues, eating disorders, sexual abuse/other trauma, severe bullying, confusion over sexual orientation (e.g. internalised homophobia).

Likelihood that a student may take harmful physical steps to change their body in line with their attested gender identity, e.g. binding, tucking, hormonal interventions, including circumventing NHS protocols by procuring items online.

Exposure to inappropriate/inaccurate online information and/or adult influence (including explicit sexual content).

Parental alienation due to a culture where children are encouraged to keep secrets from anyone they suspect may ask questions about their desire to socially/medically transition.

We agree with Bayswater that 'All children deserve protection from harm, and trans-identified children and young people should not be the exception.' The Vale of Glamorgan's guidance is inadequate to this task.

In addition, the incoherent and contradictory nature of the guidance is likely to put schools at risk of legal action from parents.

This is not hyperbolic. The following exemplar scenarios include incidents that are known to have occurred in schools, and those that have the potential to occur.

Child A is female, but starts secondary school as a boy, and is granted access to the boy' toilets and changing rooms based on a 'case by case' judgement. Initially there are no problems. Three years later, A complains of being sexually harassed in the changing rooms; some of the boys have started to stare and watch her change. The boys deny harassment, claiming it's embarrassing having A there and they don't know where to look. A's parents threaten to go to the police if the school doesn't discipline the boys, who they say are predatory. The boys' parents sue the school for failing to protect their children's privacy and dignity.

Child B, is female and has identified as a boy since early childhood, playing football and touch rugby with the boys. C expects to be allowed to play contact rugby with the boys. The school allows this. At

first this is OK - C is relatively tall and strong - but then C is seriously injured by a tackle during a match with another school and is paralysed from the neck down. C and her parents sue the school for enabling this to happen.

Child D, who is male and has a history of behavioural and mental health problems, starts attending the school's Pride club. After three other children in the same year group identify as trans, and are given lots of attention and support, D announces a trans identity at the school's Pride club. Everyone makes a big fuss of D. The teacher who leads the club advises D to take some time telling their parents because they might not be supportive of the new identity. D is hospitalised following an incident of self-harm. The parents make a formal complaint that their child has been coached by the Pride club and sue the school for failing to inform them of important information relating to their child's wellbeing and mental state.

The wishes of the self-identified 'trans' or 'non-binary' pupil are consistently prioritised over the rights, safety, dignity and privacy of other pupils, and of teachers. This is discriminatory. For example:

Discrimination on the basis of religion or belief

A school has allowed male children who identify as trans to sleep in girls' dormitories on school trips. A group of Muslim and Jewish parents sue the school for indirect discrimination, as they don't feel able to send their children on school trips where sleeping accommodation, toilets and bathrooms may be mixed sex.

Child E announces a non-binary identity, with ze/zem pronouns, and subsequently a trans identity with he/him/they pronouns. Teacher L does not believe that people have a gender identity separate to their sex, so avoids using pronouns at all, and consistently refers to E using E's name. E and parents makes a formal complaint of transphobia and L is told that she must use E's chosen pronouns. L refuses, and is threatened with dismissal. L takes out a tribunal case against the school for discrimination on the basis of belief, and violation of her rights to free speech under Article 10 of the European Convention on Human Rights.

Disability discrimination

Child F has learning difficulties and has a dedicated learning support assistant. The LSA, Mr P comes out as trans and tells M that M must now use ze/zim pronouns and call him Mx P. Child F is confused and distressed and unable to consistently comply, starts refusing to go to school and is unable to take part in lessons as he did before. The teacher suggests that perhaps P could just let it go in the circumstances. P makes a complaint of transphobia to the school. F's parents sue the school for disability discrimination, and for failing in their duty to provide appropriate support to allow child F to access education.

Discrimination on the basis of sex

A school allows male children who identify as trans to join the girls' sports clubs. Girls who complain

are told that they have to be inclusive. Girls stop going, demotivated/alarmed by being forced to compete with males, and many of the clubs close. Parents complain that the school is discriminating against girls by failing to provide equal access to sports.

The school changes all the toilets to gender neutral individual cubicles. Several girls stop using the toilets in school due to discomfort sharing the space with males. One of them is hospitalised following a serious kidney infection. Her parents sue the school.

Child G is male, 14, identifies as a girl and is allowed to use the girls' facilities. The school has a swimming pool and normally offers single-sex swimming sessions. G is permitted to join the girls' session, but agrees to change separately. G joins the girls in the pool wearing a girls' swimsuit, which does not adequately cover his genitalia. Some of the girls get out of the pool and refuse to take part in the lesson while G is there. G makes a complaint of transphobia. The girls make a complaint of sexual harassment and indecent exposure.

We suggest that none of these scenarios would be either avoided, mitigated, or solved by adherence to this guidance. On the contrary, these and similar scenarios would be made more likely if this guidance is published as it stands.

In summary:

The Vale of Glamorgan's guidance will exacerbate rather than ameliorate the problems faced by gender-distressed and gender-confused young people, and undermine the rights of other pupils, especially female pupils and those with the protected characteristic of sexual orientation and religion or belief.

We strongly recommend that the guidance is rewritten from a safeguarding perspective, and with an understanding of the rights of all children to safety, dignity, privacy and respect.