


# Silence persists on gender questioning guidance for schools

06 November 2024  Hayley O'Sullivan

## Will it be next week, next year or is it on hold indefinitely?

We still don't know when the [Department for Education's \(DfE\) highly anticipated non-statutory gender questioning guidance](#) will be published to help schools address difficult gender-related issues.

It's clearly important for the guidance to be consistent with other areas of law, whether that be the Equality Act, the Data Protection Act, the Human Rights Act or safeguarding requirements – but the delay in publication is frustrating.

Schools have already been waiting years for support and regularly approach us for advice on how best to navigate gender-related issues in a minefield of strongly-held views, particularly when parents, school and the child's wishes are not aligned. These are all issues we explore as part of our [CPD course for school leaders](#) on the Equality Act, which is due to run early in 2025.

## “The change of direction is stark”

Challenges to curriculum content are not uncommon, with parents expressing concern over how gender-related issues are taught. Current [Relationships, Sex and Health Education \(RSHE\) statutory guidance](#) states that pupils should be taught the facts and the law around gender identity in an age-appropriate and inclusive way, but the [draft RSHE statutory guidance](#) states that “*the contested topic of gender identity should not be taught*”.

Although still in draft format, the change of direction is stark. We can also see this in the department's [2024/25 school census return](#). In previous years, a pupil's gender could be self-declared. This year, only biological sex is required, a small but significant shift.

## Legal challenge

The government has perhaps always been mindful that there is likely to be some legal challenge over the contents of its guidance - whether from gender identity advocates or critics. It's a topic that can be extremely toxic with several cases in the employment law context exploring the tension between the protected characteristic of gender-critical beliefs on one hand and gender reassignment on the other.

Historically, many local authorities chose to withdraw their own guidance and toolkits for schools on gender issues following applications for judicial review to challenge their contents.

## “A step in the right direction”

Although the DfE's draft guidance was broadly welcomed as a step in the right direction, covering issues such as safeguarding, use of pronouns, social transition, toilets, sports, uniform and the importance of parental primacy, consultees raised concerns and recommendations for improvement.

For example, the Equality and Human Rights Commission pointed out in its [response](#) that there should be better explanation of the relevant provisions in the Equality Act, acknowledgment that children can have the protected characteristic of gender reassignment, more detailed consideration of bullying and reference to other general legal concepts including Gillick competence.

# Safeguarding issues

Other issues centre around safeguarding. The draft guidance states that schools should tell parents if their child asks to socially transition other than in the exceptionally rare circumstances where involving parents would constitute a significant risk of harm to the child.

But what about where disclosure represents 'some' but not a 'significant' risk of harm? Would disclosure still be compatible with the school's safeguarding duties? and how does Gillick competence and data protection affect decisions?

## The Cass review

The Cass review's findings published in April 2024 received cross-party political support and set out clinical evidence upon which the school guidance, was (and should), be based. As Dr Cass says within her review *"The importance of what happens in school cannot be underestimated; this applies to all aspects of children's health and wellbeing. Schools have been grappling with how they should respond when a pupil says that they want to socially transition in the school setting. For this reason, it is important that school guidance is able to utilise some of the principles and evidence from the Review"*.

The main takeaway from the Cass Review was that schools should take a cautious approach when supporting a child who is experiencing gender distress: *"There are different views on the benefits versus the harms of early social transition. Some consider that it may improve mental health and social and educational participation for children experiencing gender-related distress. Others consider that a child who might have desisted at puberty is more likely to have an altered trajectory, culminating in medical intervention which will have life-long implications"*. Simply put, if a child who is experiencing gender-related distress wants to socially transition, and the school is unsure what decisions would be in their best interests, clinical advice should be sought and acted on.

The wait for school guidance continues. If you need support in the meantime, we have extensive experience in advising schools on these issues and there are currently places available on our CPD programme for school leaders on Equality issues in 2025.

[Register for your place\(s\) here](#) →

## Key contact



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