# The need for a joined-up approach to children with gender dysphoria

## A response to NHS England's interim service specification

**Sex Matters** is a human rights organisation campaigning for clarity about sex in law, policy and language

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# Introduction

The Cass Review has recommended a shift to regional services providing holistic mental-health care for gender-distressed children.[1] NHS England has therefore published a new interim service specification to replace the Tavistock GIDS.[2]

Sex Matters is a human-rights organisation that campaigns for clarity on sex in law and policy, in order to protect everyone's rights. We welcome this new direction and are pleased that the new service will take a clinical management approach which is open to exploring all developmentally appropriate options for children and young people who are experiencing gender incongruence, and will be mindful that this may be a transient phase.

However, we are concerned that it continues to recommend "social transition" while not defining what this means or considering the impacts of different elements on other children (particularly in school).

Our response to the specification focuses particularly on the questions on social transition and on the Equality and Health Impact Assessment. This document includes our response to these two questions as well as a supplementary background note with further analysis and references, which we consider to be an integral part of our response to the consultation.

We recognise that this is an interim specification which will only be operational for a limited time and will be revised again following the final report from Dr Cass.

We recommend that the specification as it develops should move away from making broad recommendations for "social transition" but should consider **changes to a child's social and institutional environment in response to gender dysphoria**.

We encourage NHS England to commission a full review of the implications of proposed approaches to **social accommodation**, either as part of the Cass Review or separately. This should consider the duty of care of schools towards all children with regard to safeguarding, consent and human rights.

We call on NHS England, the Department of Education, Ofsted and the Equality and Human Rights Commission to work together to develop a shared conception of what are reasonable requests for social accommodation, and what are not, based on a common understanding of the Equality Act and safeguarding.

These expectations should be communicated consistently to parents, children, teachers and other people working with children and families.

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[1] The Cass Review (2022). *Independent review of gender identity services for children and young people: interim report*.

[2] NHS England (2022). *Specialist service for children and young people with gender dysphoria (phase 1 providers)*.

## The approach to social transition

The interim Cass Review report has advised that "social transition" should not be viewed as a neutral act but as an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning. However, it does not define social transition or consider its effects on others. The interim specification reflects this lack of clarity about what "social transition" may entail.

### Extracts from the interim service specification

**Pre-pubertal children**

In cases where a pre-pubertal child has effected, or is effecting, a social transition (or expresses a wish to effect a social transition) the clinical approach has to be mindful of the risks of an inappropriate gender transition and the difficulties that the child may experience in returning to the original gender role upon entering puberty if the gender incongruence does not persist into adolescence.

However, some children state that they want to make a social transition to their preferred gender role long before puberty, which means that increasing numbers of children may have made a partial or full social transition prior to the first attendance with The Service.

In summary, for pre-pubertal children the clinical approach and advice applied by The Service will be supportive and non-judgemental, balancing on a case-by-case basis a watchful approach overall with a more individualised approach in cases where the child's level of global functioning may be maintained or improved through a carefully observed process of exploration of social transition. Medical interventions will not be considered at least until puberty has been reached

**Adolescents**

Not all adolescents will want or benefit from social transition. The provision of approaches to support social transition may be considered in cases where:

- Gender dysphoria **has been diagnosed, is consistent and persistent**; AND
- Associated **needs and risks have been considered** and are being addressed or supported; AND
- The young person expresses a **clear wish to affirm** their gender transition and fully understands the implications of affirming a social transition (informed consent); AND

- The proposed clinical approach is **necessary** for the alleviation, or prevention of, clinically significant distress or impairment in social functioning in the individual.

In these cases the clinical approach will involve a focus on exploring or supporting (as appropriate to the individual) social transition through psychological support and interventions, family work/therapy and guidance for the local professional network. Young people and their families will be supported in making difficult decisions regarding the **expression of a gender role** that is consistent with their gender identity, including the timing of changes to gender role and possible social transition.

## Response to consultation questions

### Question 4:
### To what extent do you agree that the interim service specification provides sufficient clarity about approaches towards social transition?

**DISAGREE**

- **The Interim Service Specification does not define what is meant by "social transition".** It uses ambiguous terms such as "gender expression", "changes to gender role" and "affirming social transition" rather than stating what is being proposed specifically, particularly in relation to accommodations expected in institutional environments such as school. This leaves scope for too much ambiguity and negotiation.
- **Individual doctors and multi-disciplinary teams are thus being asked to make decisions about something for which they have no framework,** and which they do not have the expertise to assess, as they are focused only on the psychological impacts on their patient.
- **The service specification notes that in most cases pre-pubertal gender incongruence does not persist into adolescence, but says little on the risks of social transition for adolescents.** Teenagers who become gender-questioning are a new group, on which there is little research. The recent rise in teenage cases may reflect social contagion.
- **If a child undertakes a social transition while at school (or between primary and secondary school) this has an impact on other children.** They may be lied to, confused, misled or told to lie and keep secrets about the sex of one of their peers. It may also override their boundaries by assuming that they consent to sharing single-sex toilets, changing rooms, showers and sleeping accommodation with a member of the opposite sex. If "social transition" is made part of the institutional framework it becomes an attractor and goal for other children, exacerbating social contagion of gender dysphoria. The specification does not consider other children's welfare or rights.

- **Organisations that will be asked to accommodate changes to the social and institutional environment for children need clarity on what is proposed in order to be able to respond effectively to this consultation.** In the absence of such clarity, it will be impossible to gather a meaningful response in some important areas, in particular from headteachers' associations and education regulators.
- **The experience of the previous GIDS service is that areas of ambiguity, and split responsibility between different institutions, become the locus for intense pressure on professionals and parents**, using arguments that capitalise on exaggerated fear of self-harm and suicide, misunderstanding of equality law and a fear of being labelled "transphobic". This will undermine the shifts recommended by Dr Cass.

## What is meant by "social transition"?

Typically, studies describe "social transition" as changes to hairstyle, clothing, name and pronouns. But this leaves unsaid the more important conceptual and practical expectation – for a child to be treated as if they are the opposite sex, for example by adults misrepresenting a child's sex to other adults and children; the child being granted permission to use opposite-sex facilities and play in opposite-sex sports; and mis-stating the child's sex on documentation and records. Other aspects include breast-binding and wearing genital prosthetics. This will have safeguarding implications for the child and for others, and impacts on other people's human rights (such as privacy and freedom of expression).

Those who support the affirmation model will argue in response to this consultation that "social transition" is a matter of the autonomy of a child and their parents (for example, see the model response to the consultation written by Stonewall, Mermaids and Gendered Intelligence[3]). This is true insofar as it is described in terms of personal choices such as hairstyles and clothing. But at the same time these organisations are encouraging children and parents, and pressuring schools, to treat children as if they actually *are* members of the opposite sex, and suggesting that this is medically indicated.

The full range of actions and institutional reactions that may be proposed as part of "social transition" should be mapped out. Each must be considered in terms of which are autonomous actions taken by children and families (such as haircuts) and which are accommodations expected of the social and institutional environment (such as use of alternative names, pronouns, permission to use opposite-sex facilities and being referred to as a girl or boy). They should then be considered in terms of:

- child development and psychological impact, including reversibility

[3] Stonewall, Mermaids, Gendered Intelligence and Trans Learning Partnership (2022). *Guidance for consultation responses.*

- safeguarding concerns for that child
- impact on other people's rights.

We have set out a demonstration of this approach in a background note to our response.

## Schools cannot accommodate children as if they were the opposite sex

In promoting any approach of childhood "social transition" it must be considered what social and institutional changes to a child's environment are being proposed, and whether these are safe, practical and justified, taking into account the school's duty of care to all children. Schools, school leaders and education regulators are already considering this.

### Guidance and legal opinion on "social transitioning" in school

- Dan Squires KC. Trans Children in Schools: Advice (February 2022)
- Sex Matters and Transgender Trend. Sex and gender identity: keep your pupils safe and comply with the law – guidance for schools in England (April 2022)
- Attorney General. Speech at Policy Exchange (10th August 2022)
- Association of School and College Leaders, Chartered College of Teaching, Confederation of School Trusts (CST), Institute of School Business Leadership, National Association of Head Teachers and National Governance Association. Guidance for maintained schools and academies in England on provision for transgender pupils (November 2022)

Several elements of "social transition" must be ruled out for any child in school on the basis of the rights of others. While schools must protect gender-non-conforming children from bullying and should take reasonable steps to accommodate a child experiencing gender distress (for example by providing access to gender-neutral facilities), they cannot facilitate a child being treated as if they were the opposite sex while fulfilling their duty of care to other pupils. Toilets, showers and changing rooms which are provided separately for boys and girls are not appropriate for children of the opposite sex. Schools have a duty of care to all children and it is unethical and unsafe for a school to pretend that a male child is female or vice versa.

## Conclusions

- **The NHS should not make any recommendations for changes to the social and institutional environment without clarity about what is being proposed and full consideration of the**

**implications.** Decisions about what are reasonable expectations for schools cannot be left to individual doctors and clinical multi-disciplinary teams.

- **The interim specification should establish a "do no harm" principle that recognises safeguarding concerns and implications for other people's rights,** particularly those of other children in school. A do-no-harm approach is for schools to avoid promoting sex stereotypes and at the same time be clear about where they have sex-based rules.
- **The NHS should commission a full review of "social transition" and consider the implications of potential changes to the social and institutional environment** either as part of the Cass Review or separately, and involve the Department for Education in this. It should include consideration of safeguarding and of other children's human rights.
- **The NHS should make clear to children and parents that they cannot expect the school system to facilitate any child being treated as if they were the opposite sex.** There should be no pressure brought to bear on schools to accommodate exceptional "social transition" based on medical diagnosis, although they may need to make reasonable accommodation on the basis of gender dysphoria as a disability (for example, providing a gender-neutral alternative to same-sex facilities).

### Suggested replacement wording

**Prepubescent children**

In cases where a child expresses a wish to effect a social transition, the clinical approach has to be mindful of the **rights of other children, the risks to a child of being represented as being the opposite sex, and the difficulties that the child will experience upon entering puberty having been presented as if they were the opposite sex**.

Together with the DfE, the Service will **provide general guidance** to schools, children and families that it is not a reasonable expectation for a child to be treated as the opposite sex at school.

For pre-pubertal children, the clinical approach and advice applied by the Service will be supportive and non-judgemental, balancing on a case-by-case basis a watchful approach overall with a more individualised approach in cases where the child's level of global functioning may be maintained or improved through **steps in their social environment to relieve gender dysphoria**. Medical interventions will not be considered, at least until puberty has been reached.

**Adolescents**

Some adolescents may seek to effect a social transition to being treated as the opposite sex. However, this is not appropriate at school, or in other institutions that have a duty of care to children.

The provision of **changes to their social environment** to relieve dysphoria may be supported where they are necessary for the alleviation, or prevention of, clinically significant distress or impairment in social functioning in the individual. Measures that might be recommended for the alleviation of, or prevention of, clinically significant distress might involve access to “gender neutral” alternative facilities but not use of opposite-sex facilities.

**The NHS will not recommend that schools and other institutions treat children as other than their natal sex**. Any recommendations made in relation to a patient cannot rely on other organisations ignoring their duty of care for all children or the protection of other people’s human rights.

**Children and their families are strongly discouraged from pressuring schools and other organisations to treat the child as if they are actually the opposite sex**, for example by allowing them to use opposite-sex facilities, telling other children and staff that they are the opposite sex, or seeking to conceal their true sex from peers or teachers and other adults responsible for their welfare. This will be made clear in psycho-educational materials, and in individual and general guidance to schools.

In cases where such steps have already been taken (including children who are in “stealth” to their peers), the Service will make the child or young person, their family and the school and other organisations aware that this is not good practice, and will advise the school and other organisations involved **to assess whether local safeguarding protocols and duty of care have been breached**.

Where such social transition has not taken place, the Service will advise the child and their family that it is not a reasonable expectation.

## Question 7:
## To what extent do you agree that the Equality and Health Inequalities Impact Assessment reflects the potential impact on health inequalities which might arise as a result of the proposed changes?

**DISAGREE**

NHS England is subject to legal duties to give due regard or regard to addressing health inequalities and advancing equality of opportunity. These separate duties are the Public Sector Equality Duty (PSED), section 149 (1) of the Equality Act 2010 and the health inequalities duties set out as section 13G of the National Health Service Act 2006 as amended.

The PSED in section 149 (1) of the Equality Act 2010 states that:

> "A public authority must, in the exercise of its functions, have due regard to the need to –
>
> - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
> - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
> - foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

## Deficiencies

The Equality and Health Inequalities Impact Assessment is seriously deficient in two respects:

- the impacts on other people (particularly children in school with the patient) are not considered
- the definition and scope of the protected characteristic of gender reassignment in the Equality Act is misunderstood as only applying to children with a diagnosis.

It must be recognised that if "social transition" is anticipated to include provisions such as schools treating a child as if they are the opposite sex, allowing use of opposite-sex facilities or enforcing "no misgendering rules", then other children are being forced into the role of non-consenting participants in delivering a course of treatment to their peer, as a condition of their own education.

The impact of this on their development, their ability to trust their own senses and judgement, their acquisition of a coherent, developmentally appropriate understanding of the two sexes, and their ability to develop and maintain personal boundaries and an understanding of consent has not been considered.

It is concerning that the EHIA for this Service Specification is so deficient, as it is likely to impose discrimination and harassment on other pupils, undermine equality of opportunity (for example, for girls in sport), and undermine good relations. It may also encourage social contagion detrimentally for all children, by enabling the goal of social transition while at school.

This misunderstanding of the Equality Act – where the NHS thinks that gender reassignment is a limited characteristic which is circumscribed by medical diagnosis, but school administrators recognise it as self-identified, combined with an approach where no-one treats the rights of other children as engaged – will result in the rights of other children being destroyed rather than protected. It will also lead to Dr Cass's recommendation of a cautious approach being undermined.

### *Impacts on child's peers not considered*

The EHIA identifies certain cohorts of individuals that may be affected by the proposals. These include children and young people currently under the care of GIDS and their families, those on the waiting list and those who have been previously under the care of GIDS.

To the extent that the Service is expected to make any individualised or generalised recommendations for "social transition" that go beyond autonomous actions that children and families can take themselves in their private lives (such as choices about haircuts, clothing and words used about a child within their family), the EHIA must consider the other people affected.

Any recommendations for "social transition" at school, and in other settings such as Scouts, Guides, sports clubs or in relation to children in care, will impose expectations on others, and will require institutions to waive sex-based rules and policies that are designed to protect everyone. Children will be given the impression that they can break-sex based rules, and other children (and adults) that they cannot expect to uphold them.

Allowing a male pupil to socially transition to the extent that they play sport "as female", and change in the girls' locker room, creates unmanageable safety hazards (sports injury risk), discrimination risk (reducing opportunities for female pupils to participate and excel in sport) and sexual harassment risk (forcing female pupils to change with a male pupil). It may well constitute unlawful indirect discrimination against female pupils. These impacts are not considered within the framework of the four criteria proposed by the NHS specification.

The proposed criteria for "social transition" include the young person being "able to fully comprehend the implications of affirming a social transition". However, no similar qualification is (or can be) applied concerning the other children in the young person's school.

To the extent that the EHIA currently does not consider these children, the policy should be explicit that doctors and multi-disciplinary teams CANNOT MAKE RECOMMENDATIONS that

schools waive or violate any sex-based rules because a child has a diagnosis or is under the care of or on the waiting list for the Service.

If the Service Specification continues to include provision for recommendations for "social transition", it must specify what recommendations for social and institutional changes are open for the Service to make and include them in the EHIA, along with justification of any negative impact on other children.

It should make these specific and open for consultation. The DfE in particular should respond as to whether the NHS can or cannot make particular recommendations for social transition – such as for male children with gender dysphoria to be allowed to play in girls' sports, undress and use the toilet with girls and vice versa, and whether schools can mislead staff, pupils and parents about a child's sex, within the KCSIE Safeguarding framework.

In considering the impact of policies or recommendations for "social transition" in schools, the following protected characteristics are likely to come into play:

- **Sex** – wherever boys who identify as girls are allowed to use facilities for girls or play in female sports categories, female children will be disadvantaged.
- **Disability** – children who are not neuro-typical may have particular difficulty in complying with pronoun rules or in understanding why they are being told to treat a child of one sex as if they are the opposite sex. They are also likely to be put at increased risk by any relaxation of sex-based rules developed for safeguarding and to protect bodily privacy.
- **Belief** – the child under the care of the Service and their family may believe that gender identity is more important than sex or that a child can be "born in the wrong body", but many other people, including children, parents and teachers, do not share this belief, and have the right to say so.
- **Age** – schools are required to convey to children an age-appropriate understanding of the nature of the two sexes, and respect for children's privacy and agency (including consideration of Gillick competence). Encouraging schools to mislead students and parents about whether situations are single-sex or mixed-sex, or to introduce ideas of sex/gender which they unlikely to be able to understand does not respect these children's privacy, or need for safeguarding. As a cohort of children reaches puberty, its members' concern for privacy naturally increases. The impact of "socially transitioning" a prepubertal child on peers as the cohort gets older must also be considered. Allowing a seven-year-old boy who identifies as a girl to share the girls' toilets and considering this a "social transition" will inevitably put pressure on those girls to continue to share toilets and showers with the child, whom they have been told they must treat as a girl, at age 13 and beyond.

## *The protected characteristic of gender reassignment is misunderstood*

The EHIA states that not all children and young people who will be affected by the proposals are likely to share this protected characteristic. It states that children on the waiting list without a diagnosis of gender dysphoria do not share the protected characteristic of "gender reassignment". They cannot be treated as "proposing to undergo" a process (or part of a process) for the "purpose of reassigning" their sex "by changing physiological or other attributes of sex".

> "To apply such a definition to these individuals is to make assumptions upon the aims and intentions of those referred, certainty of those desires and their outward manifestation, and upon the appropriate treatment that may be offered and accepted in due course."

This is a fundamental misunderstanding of the protected characteristic of gender reassignment as set out in S.7 of the Equality Act.

As was debated in Parliament and explicitly stated in the notes to the Equality Act, the definition of "gender reassignment" was changed in the transfer between the Sex Discrimination Act 1975 and the Equality Act 2010. The definition no longer requires a person to be under medical supervision to come within it.

**Extract from the EHRC's statutory guidance on the Equality Act:**[4]

2.19
Under the Act 'gender reassignment' is a personal process (that is, moving away from one's birth sex to the preferred gender), rather than a medical process.

2.20
The reassignment of a person's sex may be proposed but never gone through; the person may be in the process of reassigning their sex; or the process may have happened previously. It may include undergoing the medical gender reassignment treatments, but it does not require someone to undergo medical treatment in order to be protected.

> Example: A person who was born physically female decides to spend the rest of his life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully passes as a man without the need for any

[4] Equality and Human Rights Commission (2011). *Services, public functions and associations: Statutory Code of Practice.*

> medical intervention. He would be protected as someone who has the protected characteristic of gender reassignment.
>
> 2.21
> This broad, non-medical definition is particularly important for gender-variant children: although some children do reassign their gender while at school, there are others who are too young to make such a decision. Nevertheless they may have begun a personal process of changing their gender identity and be moving away from their birth sex. Manifestations of that personal process, such as mode of dress, indicate that a process is in place and they will be protected by the Act.
>
> 2.22
> The Act requires that a person should have at least proposed to undergo gender reassignment. It does not require such a proposal to be irrevocable. People who start the gender reassignment process but then decide to stop still have the protected characteristic of gender reassignment.
>
> > Example: A person born physically male tells her friends she intends to reassign her sex. She attends counselling sessions to start the process. However, she decides to go no further. She is protected under the law because she has undergone part of the process of reassigning her sex.

It is crucial to understand that the protected characteristic of gender reassignment is widely drawn, and that its purpose is to protect people from unlawful discrimination. It means that a child should not be excluded from school, or ring-fenced outside of normal safeguarding protections, because they have said that they are considering transitioning or because they self-identify as trans (or indeed are perceived as being trans). This protection also includes those who have desisted or detransitioned. They should not be discriminated against at work, in education or as service-users.

None of this means that any child or adult is being unlawfully discriminated against by being required to follow reasonable sex-based rules, or to stay out of opposite-sex spaces where these are provided, for example, for the bodily privacy and safety of others.

## The danger of misunderstanding the Equality Act

The proposal in the current service specification that “social transition” will be recommended social transition only in cases of significant distress sounds superficially like a cautious response to the concerns raised in the Cass report.

However unless it is specified clearly that this does not include recommending to schools or other institutions that they waive sex-based rules for some children (such as those barring boys from girls' toilets), it will almost inevitably lead to those rules being waived for individual children on the understanding that this is "what the doctor ordered".

It will then be argued by other children and families in that school or local authority area that they too should be able to access the same special provision since they are covered by the same protected characteristic. The school or local education authority will be unable (or unwilling) to argue that maintaining single-sex toilets, changing rooms, showers, sports, dormitories and other facilities is a "proportionate means to a legitimate aim", since they have already allowed in a child of the opposite sex.

This interaction between the Equality Act and the doctors' "exceptional" recommendations will create a promise and a goal for other children, fuelling social contagion at school.

Similarly, the condition that recommendations for social transition are made only where "the young person is able to fully comprehend the implications of affirming a social transition" will be overridden, since the protected characteristic of gender reassignment does not require medical assessment, and schools are unable to make this clinical judgement.

The consideration of equality impacts should not be undertaken as an administrative tick-box exercise, but with a clear understanding of both the law and the risk of creating environments which enable social contagion and which undermine the rights of others.

# Background note to our response

Dr Hilary Cass has recommended that social transition be viewed as an "active intervention" because it may have significant effects on the child or young person in terms of their psychological functioning. However, the interim report of the Cass Review gives little further description of what is meant by "social transition". Further detailed description and analysis of social transition are needed. We hope these will be provided in the final report of the Cass Review, but in the meantime the Interim Service Specification will need to consider and specify what is meant by "social transition".

## What is meant by social transition?

Social transition is typically described in fairly bland terms in studies, with reference to change of name, pronouns and appearance:

- "Clothing, hairstyle, change of name, and use of pronouns." Steensma and Cohen-Kettenis (2011).[5]
- "A process that typically involves changing a child's pronouns, first name, hairstyle, and clothing." Olson et al (2022)[6]
- "Change in name, change in pronoun usage, and change in other phenotypic social attributes, such as hair-style and clothing-style that mark one's gender to significant others." Zucker (2019).[7]
- "Social transition (ST): Allowing a child to choose play, clothes or roles, or a name and pronoun, that they feel congruent with their affirmed gender, either in the domestic environment or also outside (in school for example)." Giordano (2019)[8]
- "[Social transition] is used to refer to a decision by a family to allow a child to begin to present, in all aspects of the child's life, with a gender presentation that aligns with the child's own sense of gender identity and that is the 'opposite' of the gender assumed at the child's birth. Social transitions involve changes in the child's appearance (e.g. hair, clothing), the pronoun used to refer to the child, and typically also a change in the child's name." Olson et al. (2016).[9]

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[5] Thomas D. Steensma & Peggy T. Cohen-Kettenis (2011). 'Gender Transitioning before Puberty?'. *Archives of Sexual Behavior* 40 (4): 649-50

[6] Kristina R. Olson, Lily Durwood, Rachel Horton, Natalie M. Gallagher & Aaron Devor. 'Gender Identity 5 Years After Social Transition'. Pediatrics August 2022; 150 (2).

[7] Kenneth Zucker (2019). 'Debate: Different strokes for different folks'. *Child and Adolescent Mental Health* 25 (1).

[8] Simona Giordano (2019). 'The importance of being persistent. Should transgender children be allowed to transition socially?'. *Journal of Medical Ethics*, 45(10), 654-661.

[9] Kristina R. Olson, Lily Durwood, Madeleine DeMeules & Katie McLaughlin (2016). 'Mental health of transgender children who are supported in their identities'. *Pediatrics*, 137(3).

- "This reversible non-medical step towards a life in the identified gender may include changing one's name or pronoun, being introduced as the experienced gender in public, as well as gender typical appearance in terms of e.g., hair length and clothing."[10] Sievert (2021).

Stonewall, Mermaids and Gendered Intelligence argue in their model response to this consultation that "social transition (e.g., changing one's name, pronouns and/or gender presentation) is not a medical intervention, and should not and cannot be restricted by medical professionals". They say that such restriction would run counter to the autonomy of young people and their families.[11]

To an extent, they are right. The aspects of "social transition" that they emphasise to this audience are personal choices that are part of the everyday autonomy of children and families. For example, a boy growing his hair long or a girl wearing trousers and shirts from the "boy" section are not unusual: they are making the sorts of choices that children make all the time.

But when addressing children, parents and schools, the same lobby groups suggest that children have the right to use opposite-sex facilities, play opposite-sex sports and be treated in all respects as if they are the opposite sex, or at least sexless.[12] This is the point at which "social transition" goes beyond a matter of a child or family's autonomy, and starts to affect their own and other children's human rights, and safeguarding.

## Ascribing meaning to gender non-conformity in children

A full consideration of "social transition" concerns the meaning ascribed to behaviours, and the consequent actions expected of others (including those constrained by rules set by other institutions, particularly schools).

The NHS service specification cannot dictate whether a child has a haircut or what form of words they use about themselves. But if the NHS has a conception of paediatric "social transition" this has a wider role in establishing how children's wishes are interpreted by others, including parents and schools.

For example, a child dressing or acting in gender-atypical fashion and adopting an alternative name or asking to be referred to by an alternative pronoun may be interpreted in a range of ways:

[10] Elisabeth DC Sievert, Katinka Schweizer, Claus Barkmann, Saskia Fahrenkrug and Inga Becker-Hebly. (2021). 'Not social transition status, but peer relations and family functioning predict psychological functioning in a German clinical sample of children with Gender Dysphoria'. *Clinical Child Psychology and Psychiatry*, 26(1), 79-95.

[11] Mermaids (with Gendered Intelligence, Stonewall and Trans Learning Partnership) (2022). *Guidance for consultation responses.*

[12] Many examples are cited in Transgender Trend (2020). *Stonewall schools guidance: a critical review*.

- the child feels more comfortable adopting gender-nonconforming styles and pastimes
- the child is experimenting, exploring aspects of their gender
- the child is involved in extended role-playing
- a girl is a "tomboy" (this comes with a degree of acceptance)
- a boy is a "sissy" (this tends to be pejorative)
- the child might grow up to be transsexual
- the child might be going through a phase
- this is a "trans child"
- the child has a gender identity which does not align with the sex they were assigned at birth
- the child *is* the opposite sex/gender
- anyone who does not accept that the child is the opposite sex/gender is a transphobe
- people who do not accept the child's gender identity mean them harm.

The question of how other people respond is the "social" part of social transition.

By creating and enabling a category of "socially transitioned" children, adults are encouraging children to adopt interpretations of their feelings towards the bottom of this list.

## Pronouns and beyond

While "hair, clothing, name and pronouns" are often bundled together as "social transition", much is left unsaid in this description.

A child has autonomy to ask to be called by a different name or different pronouns, or to be referred to as a boy or a girl. But it is a feature of childhood that children often do not get what they ask for. Rather parents, caregivers and other adults consider what is in the best interests of the child, and other children.

It is a change of pronouns that is taken up by others (either voluntarily or through compliance) which marks the boundary between gender non-conformity and social transition. This is recognised, for example, by Horton (2022), citing other recent literature:[13]

> "A 'social transition' is considered the point at which family and or community respect and affirm a trans child's identity, commonly accompanied by a shift in pronoun (Ashley, 2019c; Ehrensaft, 2020)."

[13] Cal Horton (2022). '"I Was Losing That Sense of Her Being Happy" – Trans Children and Delaying Social Transition'. *LGBTQ+ Family: An Interdisciplinary Journal* 18:2, 187–203.

Similarly, GIDS states on its website:

> "Over the past few years, we have seen increasing numbers of younger children making a full social transition – from living in the social role associated with their birth-assigned sex (male or female) to living, across all contexts, in the social role with which they identify."[14]

"Living in the social role" does not simply mean adopting a gender non-conforming appearance or pastimes, but being called a "boy" or a "girl", a "son" or a "daughter". What comes along with this is a demand and expectation that the child should be treated as if they are the opposite sex by the child's peers and by their school and other institutions, for example by being allowed to use opposite-sex washing, changing and toilet facilities and to play in opposite-sex sports. Not treating the child as if they are really the opposite sex – or have no sex, for those who identify as non-binary – is considered by those promoting gender affirmation to be bullying.

At the most extreme, a child and their parents may seek for them to live as the opposite sex "in stealth", for example transferring from primary to secondary school as if they were the opposite sex and insisting that teachers and other children are lied to about their child's sex.

Transition may also involve aspects of sexual orientation, for example heterosexual girls identifying as "gay boys" or same-sex attracted children identifying out of homosexuality. Children and adolescents may represent themselves as the opposite sex in romantic or erotic talk, or encounters online or in real-life, putting themselves and others in danger. This raises safeguarding concerns, as do other aspects of "social transition" such as breast-binding and agreements by adults to keep secrets with children.

## Break it down

The table below breaks down potential steps considered to be part of "social transition" and categorises those steps in terms of the locus of decision-making and autonomy. Are they actions that children may take independently, actions that parents may decide with them or actions that involve the school and other institutions? Which of these behaviours are specifically associated with transition rather than broader gender non-conformity? Which are likely to be safeguarding concerns? And which engage with other people's rights, such as the right to freedom of belief and expression, and to bodily autonomy and privacy?

[14] GIDS, 'Parents and carers'.

*Table 1: Aspects of social transition*

| Type | Aspect of "social transition" | Decision-making | | | Considerations | | |
|---|---|---|---|---|---|---|---|
| | | Child | Parent | School and others | Transition? | Safeguarding concern? | Other people's rights |
| Hair | A girl has a short haircut | X | X | | | | |
| | A boy grows his hair long | X | X | | | | |
| Clothing | A girl wears trousers and shirts | X | | | | | |
| | A boy wears girls' clothing | X | X | | Perhaps | | |
| | Child is given special permission at school in relation to uniform rules that normally apply to girls and boys | X | X | X | Yes | | |
| Play | A child plays mainly with children of the opposite sex | X | | | | | |
| | A girl engages in rough-and-tumble play, construction toys, computer games etc. associated with boys | X | | | | | |
| | A boy engages in domestic role-play and creative play associated with girls | X | | | | | |
| Name | A child adopts a gender-neutral or cross-sex name | X | | | | | |
| | A child's family refers to them by the name | X | X | | Perhaps | | |
| | A child's family refers to them by the name as part of what they recognise as transition | X | X | | Yes | | |
| | A child's school refers to them by the name (as part of a general rule of accepting alternative "known as" names) | X | X | X | | | |

| Type | Aspect of "social transition" | Decision-making | | | Considerations | | |
|---|---|---|---|---|---|---|---|
| | | Child | Parent | School and others | Transition? | Safeguarding concern? | Other people's rights |
| | A child's school refers to them by the name as part of a recognised transition without telling parents | X | | X | Yes | ⚑ | |
| | A child's school refers to them by the name as part of a recognised transition with consent of parents | X | X | X | Yes | | |
| | A child's name is changed legally | X | X | | Yes | | |
| Pronouns | A child asks to be known by opposite-sex pronouns | X | | | Perhaps | | |
| | A child's parents agree to refer to them with opposite-sex pronouns | X | X | | Yes | | |
| | A child asks to be referred to by opposite-sex pronouns at school | X | | | Yes | | |
| | Parents ask for the child to be referred to by opposite-sex pronouns at school as part of a recognised transition | X | X | X | Yes | | |
| | The school imposes a requirement on teachers and other students to comply with use of opposite-sex pronouns as part of a recognised transition without telling parents | X | | X | Yes | ⚑ | X |
| | The school imposes a requirement on teachers and other students to comply with use of opposite-sex pronouns as part of a recognised transition with parents' consent/agreement | X | X | X | Yes | | X |
| | A child engages in online communities that encourage them to identify as trans | X | | | Yes | ⚑ | |

| Type | Aspect of "social transition" | Decision-making | | | Considerations | | |
|---|---|---|---|---|---|---|---|
| | | Child | Parent | School and others | Transition? | Safeguarding concern? | Other people's rights |
| Public identification | A child presents themselves as the opposite sex online | X | | | Yes | ⚑ | |
| | A child asks to be referred to as if they were the opposite sex by friends and family (e.g. a boy to be called a girl) | X | | | Yes | | |
| | A child's parents refer to them as the opposite sex (e.g. calling a boy their daughter) | X | X | | Yes | | |
| | A child asks to be referred to as if they were the opposite sex at school | X | | | Yes | | |
| | The school requires teachers and other students to refer to the child as the opposite sex ("X is a now a girl") | X | X | X | Yes | ⚑ | X |
| | The school records the child as being the opposite sex ("gender") in its records | X | X | X | Yes | ⚑ | X |
| | Other formal groups (e.g. Scouts, church, youth group, clubs) refer to the child as if they were the opposite sex | X | X | X | Yes | ⚑ | X |
| Facilities | A child avoids using same-sex facilities (e.g. showers, changing room, toilets) and uses gender-neutral/unisex options | X | | | Perhaps | | |
| | A child uses opposite-sex facilities unnoticed or without permission (e.g. in a shopping centre or park) | X | | | Perhaps | ⚑ | X |

| Type | Aspect of "social transition" | Decision-making | | | Considerations | | |
|---|---|---|---|---|---|---|---|
| | | Child | Parent | School and others | Transition? | Safeguarding concern? | Other people's rights |
| | A child's parents encourage and support them to use opposite-sex facilities | X | X | | Yes | ⚑ | X |
| | A child is given special provision at school for gender-neutral/ unisex facilities | X | X | X | Yes | | |
| | A child is given special permission at school to use opposite-sex facilities | X | X | X | Yes | ⚑ | X |
| Sport | A child chooses to play in mixed-sex sport where possible | X | | | | | |
| | A school makes special provision of mixed-sex sport to accommodate the child | X | | X | Yes | | |
| | A school allows a child to play in opposite-sex sporting activities or teams | X | | X | Yes | ⚑ | X |
| | A formal sporting group allows a child to compete as the opposite sex | X | X | X | Yes | ⚑ | X |
| Stealth | A child adopts a persona as the opposite sex online | X | | | Perhaps | ⚑ | |
| | A child seeks to be mistaken for being the opposite sex | X | | | Perhaps | | |
| | A child attends single-sex groups (e.g. a boy attends Brownies as a girl) | X | X | X | Yes | ⚑ | X |
| | A child is presented as the opposite sex at school | X | X | X | Yes | ⚑ | X |
| | A child transfers from primary to secondary school as the opposite | X | X | X | Yes | ⚑ | X |

| Type | Aspect of "social transition" | Decision-making | | | Considerations | | |
|---|---|---|---|---|---|---|---|
| | | Child | Parent | School and others | Transition? | Safeguarding concern? | Other people's rights |
| | sex and this is kept secret from some teachers and pupils | | | | | | |
| Sexual characteris-tics | A girl binds her breasts in secret | X | | | Perhaps | 🚩 | |
| | A girl binds her breasts with permission from her parents | X | X | | Yes | 🚩 | |
| | A girl binds her breasts at school with permission/ special accommodation | X | | X | Yes | 🚩 | |
| | A girl wears a "packer" | X | X | X | Yes | 🚩 | |
| | A boy wears false breasts or a padded bra | X | X | X | Yes | 🚩 | |
| | A boy tapes his penis or wears tucking underwear | X | X | X | Yes | 🚩 | |
| Sex and sexual orientation | A child experiences same-sex attraction | X | | | | | |
| | A child identifies out of homosexual orientation in the way they describe themselves (i.e. a same-sex attracted girl identifies as a straight boy or a same-sex attracted boy identifies as a straight girl) | X | | | Yes | 🚩 | |
| | A child seeks to mislead others about their sex in the context of online romantic or erotic discussion | X | | | Yes | 🚩 | X |
| | A child seeks to mislead others about their sex in the context of romantic meeting, dating | X | | | Yes | 🚩 | X |

*Note that red flags are indicative of potential concerns and are not comprehensive.*

Thus we can divide aspects of "social transition" into several categories, based on:

- whether they are actions which might be considered part "full social transition" or may be reflections of more general gender non-conformity
- who has the autonomy to decide
- whether those steps raise safeguarding or human-rights concerns.

This forms a risk map of actions that are in the domain of harmless autonomy and those that engage safeguarding concerns and other children's rights.

*Table 2: Social transition risk map*

<table>
<tr><th colspan="2" rowspan="2"></th><th colspan="3">Autonomy / decision-making</th><th colspan="2">Concerns engaged</th></tr>
<tr><th>Child</th><th>Child and parents</th><th>School and institutions</th><th>Safeguarding</th><th>Other children's rights</th></tr>
<tr><td rowspan="4">Meaning ascribed<br>↕<br>Gender nonconformity<br><br>Social transition</td><td colspan="5">Haircut<br>Clothing<br>Play choices<br>Chooses own nickname</td></tr>
<tr><td>Requests opposite-sex pronouns</td><td>Parents adopts opposite-sex name for child</td><td colspan="3">School uses alternative name within rules<br><br>Provides gender-neutral facilities</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">Parents adopt opposite sex pronouns<br><br>Legally changes child's name</td><td rowspan="2">Relaxes school uniform rules</td><td>Breast-binding, packers, taping</td><td>School imposes "misgendering" rules on others.<br>Boy allowed to play in girls' sports</td></tr>
<tr><td colspan="2">Child treated as opposite sex in school<br>Child using opposite-sex facilities<br>Online connections + sexual deception</td></tr>
</table>



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