

Maya Forstater

Sex Matters

By email only

From: Marcial Boo, Chief Executive

Our ref: 2094Forstater

Wednesday 13 September 2023

Dear Ms Forstater,

Thank you for your email of 8 August in which you raise concerns about the EHRC's technical guidance for schools on the Equality Act, and the lack of guidance for schools on dealing with gender questioning pupils.

You raise important and complex areas of equality law. For example, as you suggest, it may not be directly discriminatory for a school not to refer to a child by their preferred gender (where it differs from their legal sex). However, schools must carefully consider how they justify and consistently apply their policies on this matter to avoid any risk of indirect discrimination.

As you know, our technical guidance for schools, which covers a broad range of Equality Act issues schools need to consider, was published in 2014. We recognise that since that time, several areas of policy and law, including in particular considerations around sex and gender such as those you raise, have evolved. We are currently undertaking a rapid review of this guidance, and intend to publish a revised version, correcting the inaccuracies which have been highlighted to us, within the coming weeks.

However, I would like to clarify that we will not be publishing our own guidance for schools specifically on issues of sex and gender in addition to the guidance

being prepared by the Department for Education, on which we are feeding in our advice on equality and human rights law. Duplication of this work risks creating confusion for schools, who we know are calling for clear information on these matters. We have been urging DfE to expedite their new guidance and expect them to consult on it shortly.

Yours sincerely,

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Marcial Boo

Chief Executive

Equality and Human Rights Commission |