

Letter on behalf of Sex Matters and Transgender Trend

Kishwer Falkner
Chair, Equality and Human Rights Commission
50 Victoria Street
London
SW1H 0TL

cc: Kemi Badenoch, Laura Farris, Rachel de Souza, Nicola Killean

17th November 2023

Dear Kishwer Falkner

We are very concerned about the first recommendation in the EHRC Equality and Human Rights Monitor¹ report published this week:

Recommendations

1. The Office for National Statistics, Department for Education and Scottish and Welsh Governments should conduct research and collect data on the experience of bullying in schools and education for children under 18, broken down by protected characteristics including sexual orientation and gender reassignment.

This recommendation is incompatible with safeguarding. It should be urgently reviewed and withdrawn.

The recommendation tells public bodies to tell schools to survey children about feelings of sexual attraction (to people of the same sex, the opposite sex or both) and also whether they feel themselves to have a gender identity that is the same as or different from their body.

These are adult concepts, and introducing them to children as identities they are expected to have and inviting them to declare them in response to adult questioning has clear child welfare implications.

It is also inappropriate framing of bullying, not based on understanding of child development or

¹ <https://www.equalityhumanrights.com/our-work/equality-and-human-rights-monitor>

Sex Matters is a human-rights organisation campaigning for clarity about sex in law, policy and language | sex-matters.org | info@sex-matters.org

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embedded in existing legal and policy frameworks about bullying in school. Bullying is not because of a feature of a child, but is a behaviour by the bully.² The Department for Education and devolved governments already set requirements for schools around safety and behaviour some of which expressly cover bullying, including record keeping.³ For example the DfE says:

“Staff should develop a consistent approach to monitoring bullying incidents in their school and evaluating whether their approach is effective. For some schools, that will mean recording incidents so that they can monitor incident numbers and identify where bullying is recurring between the same pupils. Others do not want to keep written records. We want schools to exercise their own judgment as to what will work best for their pupils.”

Schools have a statutory responsibility to have measures in place to prevent all forms of bullying, and must not discriminate based on protected characteristics, but this does not mean that they should formulate anti-bullying initiatives in terms of rights and protected characteristics rather than understanding of child development and behaviour.

Schools and those advising, inspecting and regulating them should have a nuanced understanding of patterns of bullying, pressures on children and their vulnerabilities. This cannot be done by a simple breakdown of protected characteristics. It is particularly concerning that the EHRC only highlights the two protected characteristics which are often combined into “LGBT”. We have heard from parents, children and teachers about a culture of fear and intolerance developed around celebration of “LGBT” identities at school.⁴ Clinicians seeing children presenting at gender clinics have raised concerns that homophobia, both inside and outside the family, combined with celebration of trans identities is a factor driving the recent rapid rise in presentations of childhood gender dysphoria.⁵

The recommendation to address bullying by collecting data on these sensitive adult questions appears to have been made without any consideration of safeguarding and child-welfare implications, or understanding of child development.

Before making such a recommendation the EHRC should, at the very least, have considered questions including: At what age might it be appropriate for children to be asked these questions at school (if at all)? Who should ask the question? How could the concepts be explained to children? Would parental consent be obtained? Has the potential for promoting gender dysphoria and premature sexualisation of children by asking inappropriate questions been considered? Has the potential for enabling sexual exploitation by normalising inappropriate behaviour and disregard of appropriate boundaries and age appropriateness by adults been considered?

The conclusion that we come to after considering these questions is that there can be no safe way for teachers or school administrators to routinely ask pupils about feelings of sexual attraction, or to encourage them to consider and declare a transsexual or transgender (or so-called cisgender) identification.

² <https://www.nationalbullyinghelpline.co.uk/kids.html>

³ See for example DfE. Preventing and tackling bullying.

https://assets.publishing.service.gov.uk/media/625ee64cd3bf7f6004339db8/Preventing_and_tackling_bullying_advice.pdf

⁴ <https://www.transgendertrend.com/gender-identity-activism-social-transition-schools/>

⁵ Barnes, H. 2023. Time to Think

We recognise that the protected characteristics of both gender reassignment and sexual orientation in the Equality Act can apply to children under 18. This means that children can bring claims based on these characteristics where Equality Act protections apply. But this does not justify the routine classification of children by these adult concepts in school, or their use to frame broad anti-bullying measures.

It is unacceptable for the EHRC to make the recommendation to collect this data and then pass the responsibility for considering whether it is compatible with safeguarding to the other bodies. An initial assessment should have been undertaken.

We think that if safeguarding and child development had been considered, the recommendation would not have been published in this form. When the Scottish Government introduced questions about sexual activity to the school census for children over 14, Scotland's then Children's Commissioner Bruce Adamson stepped in raising child-protection concerns.⁶

The recommendation for schools to collect data on children's declared gender identity and sexual orientation also ignores the fact that the ONS has not shown that it can collect meaningful data on transgender identity, even among adults. This data remains under review by the Office for Statistics Regulation and we have written to Ed Humpherson and published an analysis of the problems with the data.⁷

The EHRC report notes that the government previously provided funding for projects in England aimed at "tackling bullying of lesbian, gay, bisexual and trans pupils", and that the Crown Prosecution Service withdrew its guidance on LGBT+ bullying and hate crime following a legal challenge by Safe Schools Alliance.

As research by the think tank Policy Exchange illustrates, serious concerns have been raised about activities undertaken in schools by organisations as part of these programmes. Policy Exchange concludes that these organisations have "perhaps unwittingly, encouraged schools to compromise safeguarding principles and the rights of other pupils under the guise of noble aims such as equality, anti-bullying, and LGBT inclusion". It identifies a safeguarding blind spot when it comes to the issue of sex and gender, and concludes that schools "are neglecting their safeguarding responsibilities and principles in favour of a set of contested beliefs, in ways that risk jeopardising child wellbeing and safety. In doing so, schools are compromising both the law and statutory safeguarding guidance".⁸

The Policy Exchange report in particular criticises Stonewall for advising teachers not to involve safeguarding leads or parents if a child discloses gender issues, and for viewing parents who do not affirm a child's declared gender identity as "unsupportive". In 2020 the then Minister for Women and Equalities removed government endorsement from Equaliteach materials produced under the anti-bullying funding programme.⁹ Mermaids remains under investigation by the Charity Commission. The CPS guidance developed with Stonewall and Gendered Intelligence was withdrawn after a legal challenge brought on the basis that it undermined safeguarding and

⁶ <https://www.bbc.co.uk/news/uk-scotland-59601836>

⁷ Sex Matters. 2023. Letter to Ed Humpherson, head of the Office for Statistics Regulation <https://sex-matters.org/OSR>

⁸ Policy Exchange. 2023. Asleep at the wheel <https://policyexchange.org.uk/wp-content/uploads/Asleep-at-the-Wheel.pdf>

⁹ <https://equaliteach.co.uk/equaliteach-statement-on-geo-and-free-to-be/>

encouraged schools to tell girls to ignore their discomfort and not object to males entering single-sex spaces such as toilets and changing-rooms.¹⁰

In short, the approach promoted by these organisations in the name of anti-bullying and anti-discrimination may not be benign, well-designed or in line with safeguarding or the Equality Act. The response to the programme ending should not be to replace it recklessly with a programme of widespread data collection inviting children (of any age) to declare themselves heterosexual, homosexual, bisexual or transexual.

We call on the EHRC to

1. make a statement to say this recommendation is under review
2. investigate and publish details of how the recommendation was developed and which organisations and experts recommended it or were consulted
3. publish any safeguarding assessment undertaken, and revisit it
4. if there was no safeguarding assessment, or it is judged to be inadequate, recall the recommendation.

More broadly, it is a critical gap that the EHRC's governance manual does not mention safeguarding or include a process for due diligence over recommendations and guidance in this regard. The EHRC should have a published safeguarding policy, and a process for assessing the safeguarding implications of guidance and recommendations it produces.

The EHRC together with the relevant education regulators could issue guidance to prevent misunderstandings about the Equality Act and inclusion being promoted into policies that undermine safeguarding. This could be produced as a sex and gender identity supplement to the statutory safeguarding frameworks KCSIE and GIRFEC, and then incorporated into the following year's update.

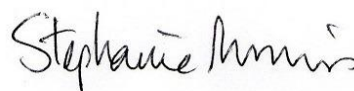
Yours sincerely



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¹⁰ <https://a-question-of-consent.net/2020/04/30/cps-guidance-undermining-consent-withdrawn/>