

We are submitting this piece for your call for evidence regarding the GRA consultation and specifically your questions ***‘Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?’*** And also the question ***‘Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?’***

We are Safe Schools Alliance UK (SSAUK): we represent parents, grandparents, teachers, governors, health professionals, education professionals, and carers from more than 30 local education authority areas in the UK. We have a wide range of backgrounds and have no religious or political affiliation. Many of our members and supporters are lesbian, gay or bisexual and/or parents, carers or grandparents of LGB or trans-identifying young people. This motivates us to ensure that schools keep every child safe and are inclusive of all.

We are a group that formed after many of us realised that our children’s schools, or our workplaces (schools) or councils had policies which did not take into account all the protected characteristics of the Equality Act 2010 (EA2010) and the provisions contained within it and did not meet the safeguarding needs of all students.

In our submission we will:

1. Show examples from school or council/local education authority (LEA) trans-inclusive policies which incorrectly assert that it would be discrimination, and by implication illegal, to enforce single sex spaces such as toilets, changing rooms, and overnight accommodation.
2. Discuss the impact of the policies on safeguarding and on children’s rights to bodily privacy, safety and dignity.
3. Discuss the action we undertook with one council to highlight the issues, which culminated in SSAUK-supported legal action by a teenage girl wanting to protect her rights to single-sex spaces, followed by the withdrawal of the trans-inclusion toolkit by the council and the subsequent withdrawal of similar policies by many councils around the country.
4. Argue that this demonstrates that the provision in the EA2010 for the provision of single sex spaces do not appear to be clear to many organisations, including those entrusted with the safeguarding of children. We will also argue that therefore clear, usable and legally-compliant guidance should be issued which protects all children.
5. Make some suggestions about what the guidance could include to help schools to approach the issues.
6. Briefly explain why lowering the age limit that a person can receive a GRC and therefore altered birth certificate to below 18 will make it more difficult for schools and other organisations such as youth groups to adequately safeguard children.

1. Examples from trans-inclusive school policies which misstate the EA2010:

1.1 In 2017, twelve local authorities collaborated on a [‘Trans Inclusion Toolkit for Schools’](#) which purported to give their schools guidance on how to support trans-identified students. This toolkit advised schools that “The general approach should be to ‘use the toilet you want to use’.” that “Changing rooms can be communal rooms in keeping with their gender identity”, and that “Pupils should be able to sleep where they feel most comfortable. This is especially important when sleeping arrangements are made on the basis of gender.” It suggested that “If there are complaints to school from peers or parents/carers about non-discriminatory changing arrangements, use the Equality Act 2010 as a base from which to explain the equality ethos around school”.

The Toolkit contained no explanation about the EA2010 single sex provisions and schools were not informed that they are able to maintain facilities as single sex for any legitimate and proportionate reason, for example that Year 10 girls (age 14 and 15) might reasonably object, for reasons of bodily privacy and dignity to a similarly aged child who is male changing with them. Schools were not advised to risk-assess male and female teenagers sharing a room overnight during residential trips, which may result in consensual or abusive sexual contact and the serious consequences of that including physical and mental harm and pregnancy.

This toolkit was challenged by a group of 50 parents in Oxfordshire in 2018. They raised concerns in a number of emails over the course of almost a year including concerns relating to the legality of failing to provide single-sex spaces, saying “you fail to mention that Sex is a protected characteristic under the EA and organisations are able to provide Single Sex services if there is a legitimate reason”.

In 2019 Oxfordshire County Council (OCC) brought out [a revised version](#) of the Toolkit, in partnership with eight other local authorities. This did not address any of the concerns previously raised, stating that “children and young people are supported through the Equality Act 2010 to access the toilet that corresponds to their gender identity; so trans girls because they are girls can use the girls’ toilets and trans boys the boys’ toilets”. For changing rooms the toolkit advised that “in all cases, trans children should have access to the changing room that corresponds to their gender identity” and that “As far as possible, trans children and young people should be able to sleep in dorms appropriate to their gender identity”.

It can therefore be seen that despite the clearly articulated objections of parents, the nine participating local authorities were still of the belief that the EA2010 did not allow for single sex spaces. This was finally challenged by a Judicial Review (see section 3 below)

1.2 Another [Trans Inclusion Schools Toolkit](#) produced for Brighton and Hove City Council asserts that “In all cases, trans pupils or students should have access to the changing room that corresponds to their gender identity”, and that a trans-identified male pupil “is a girl and as such has the right under the Equality Act to change with the girls”. The toolkit does not

contain an Equality Impact Assessment, nor are schools advised to carry one out to assess the impact of introducing its guidance on all the other protected characteristics.

Schools are advised to deal with pupils who do not wish to change with a trans-identified member of the opposite sex by offering them an alternative time or place to change. In practice this means that all girls or boys who are uncomfortable with this must now declare it to school staff (which for some children will be very difficult or feel impossible) and then be excluded from their own space. There is no reference to the single-sex exceptions contained within the EA2010.

The Toolkit states that if a child identifies as transgender then this must be kept confidential if requested. This means that other children may be unknowingly placed in a situation of changing in front of, or sharing a room with, someone of the opposite sex; something which they might have reasonably objected to had they known, and which they might feel upset or distressed about if later discovered.

This Toolkit also states that there are “no provisions in child protection and safeguarding legislation specific to trans children and young people aside from what is in place to keep all pupils and students safe” and they therefore conclude that “There is nothing to prohibit trans children and young people using the changing rooms or toilets which reflect their gender identity.” This is a one-sided and irresponsible interpretation of the school’s safeguarding responsibilities.

This toolkit states that Ofsted will be inspecting schools’ compliance with the EA2010 and their Public Sector Equality Duty: they advise that schools develop an Equality Policy and that “This should be in line with the Equality Act 2010 and reference gender reassignment as a protected group. This policy could reference this Trans Inclusion Schools Toolkit.”

1.3 Other LEA toolkits or guidance containing very similar or the same advice as we have detailed above include [East Sussex](#), which says that “In most cases, trans pupils or students should have access to the changing room that corresponds to their gender identity. This approach is underpinned by the Equality Act 2010, whereby refusing a child or young person access to the changing room of their gender identity would constitute an act of discrimination.”

1.4 We note that both versions of the Trans Toolkit used by OCC (1.1) credit the charities Allsorts and Gendered Intelligence with having provided material or advice. Allsorts also collaborated with Brighton and Hove (1.2)

Allsorts’ mission statement is “To support children and young people who are lesbian, gay, bi, trans or unsure (LGBTU+), and challenge exclusion, prejudice and discrimination in all areas of LGBTU+ children and young people’s lives.” Gendered Intelligence calls itself a “trans-led charity working across the UK”.

1.5 The hugely influential LGBT charity Stonewall have also produced a [Guide for Schools](#) which misstates the EA2010 and fails to mention single-sex provisions. For example p.21

states “Toilets and changing rooms: A trans young person may wish to use the toilets and changing rooms of their self-identified gender rather than of their assigned sex. Schools should make sure that a trans student is supported to do so and be aware that this is a legal requirement under the Equality Act. Schools should also support trans young people to use gender neutral facilities or a private space if that is what they prefer. The most important thing is to talk to the young person rather than make assumptions about the facilities they would like to use.”

We feel that in an understandable desire to support vulnerable trans-identified children, local authorities have failed to take account of the conflicting needs and rights of girls, and have been presented with a one-sided version of the law and of their legal obligations by these charities.

2. Impact on children’s safeguarding and bodily privacy and dignity

A [2017 study](#) by the National Education Union and UK Feminista revealed that over a third (37%) of female students at mixed-sex schools have personally experienced some form of sexual harassment at school. The report noted that the majority of sexual harassment involves boys targeting girls.

A [2018 report](#) by Plan International found that 48% of girls were embarrassed by their period. The report summarised that “A large proportion of the worry and embarrassment around menstruating in the school environment stemmed from the anticipation of adverse reactions from boys”. Access to toilets during lessons was a particular issue, and in one of the surveyed schools the report specifically notes that “There were also concerns in this school about unisex toilets and boys having to see menstrual waste”.

With this in mind, any school which seeks to open up single sex areas to both sexes needs a clear risk assessment and Equality Impact Assessment in place, evaluating the change from the point of view of girls. The cases we have seen suggest that this does not happen: there have been several incidences reported in the news recently (for example [here](#), [here](#) and [here](#)) about schools changing their toilet provision to mixed sex, causing distress and anxiety among pupils and sometimes having the effect that girls avoid using the toilets while at school. SSAUK have been approached for advice directly by many parents whose schools have done this, without apparently taking account of either the provision for single sex spaces under the EA2010, nor the Schools Premises Regulations 2012 which require separate toilet facilities for boys and girls aged 8 years or over. An example is [this plan](#) for a school in Leeds, where toilets on both floors were designed as mixed-sex; in this case plans were changed after parental intervention. Unfortunately, other schools have not consulted parents and when challenged, the parents often tell us that they cite ‘equality’ as a reason for having dismantled single sex spaces.

3. Legal Action (now concluded) taken by a teenage girl in conjunction with SSAUK.

Having reviewed the revised 2019 Trans Toolkit described in section 1.1 above, the group of Oxfordshire parents and their children felt that their only recourse was to seek a Judicial Review (JR). They were supported in this by SSAUK.

The 13 year old girl who became the main claimant made the following comments as part of her witness statement:

“They have not asked girls or boys what they think, it’s like our feelings don’t matter, I know girls and boys behave differently in these spaces and I would dislike to be in a boys changing room because they are gross. Girls don’t take other girl’s clothes and throw them in the loo, we don’t look or watch each other, we just chat and take a long time. Letting a boy who thinks he’s a girl choose to be in with girls would make me feel uncomfortable. I’m pretty self conscious when getting changed even in front of girls, I’m the fastest changer in my group because I don’t want my changing body to be on show for anyone even though I don’t feel like I’m stared at. My mum jokes when she goes for some appointments that she leaves her dignity at the door and picks it up like a jacket when she leaves. So I asked what dignity is, and it’s about respect for others. This idea that allowing non girls in my changing rooms and I’m supposed to not mind is not being respectful to my feelings And I feel the same about girls toilets and if I had to share with a non girl on a residential, I would ask to go home. Now my body is changing I am really self-conscious and it’s awkward even in front of girls. I love sport but if boys came in and expected to be treated the same as girls I wouldn’t get changed until they had gone.”

An Oxfordshire parent began crowdfunding for the JR in December 2019 and raised over £22,000 from 879 concerned citizens. The application for the JR was filed in February 2020, and in April it was accepted on the basis that a High Court judge found that it was arguable that the Toolkit was unlawful. The following month OCC took the decision to withdraw from the JR.

Following on from this decision, we are aware of 14 other local authorities who have withdrawn their trans guidance. Unfortunately, in the absence of clear government guidance, this leaves schools and parents none the wiser as to how to correctly apply the law.

4. Is further guidance required?

The vast majority of schools and teachers are doing their utmost to safeguard the children in their care and to comply with laws and regulations to ensure the equal treatment of their pupils and prevent unlawful discrimination. However, it is apparent that due to the widespread misinformation that has been given to many schools and local authorities, there is now a need for clear guidance from central government about the single sex provisions contained within the EA2010. This guidance should make it clear to staff that they are still

expected to prioritise safeguarding of all children above any other consideration, and will have the effect of preventing harm to pupils, and of avoiding legal action, or the threat of legal action, against individual schools or councils.

5. What the guidance should contain

As a result of the widespread misinformation we believe schools need to be reminded that not only *can* they use the single sex provisions but that they *should* use them when they are needed to uphold the safeguarding of all children and ensure that all children are treated equally and not subject to unlawful discrimination.

Schools should be reassured that using the single sex provisions is both compliant with all of their existing safeguarding frameworks, as well as equality law including their Public Sector Equality Duty. Schools should be advised to carry out a full and thorough Equality Impact Assessment (EIA), taking into account all the relevant needs and rights of those with each protected characteristic, when proposing and enacting policy changes.

Schools should be advised that the EIA could either be published or that it might be good to have a copy available on request. Guidance provided by the government could highlight some of the areas that may need taking into account when assessing for each of the Protected Characteristics, although each school will know the make-up of the pupils in their school better than anyone else.

Schools should also be reminded that the Schools Premises Regulations 2012 are still in effect and that therefore many styles of mixed sex toilet are not lawful and adjustments to ensure compliance will be required.

6. Impact on safeguarding of lowering the age limit to obtain a GRC:

Single-sex provision in some circumstances is an established and essential part of safeguarding. For example, children aged over 8 must legally be provided with single-sex toilets at school, for reasons of privacy, safety and dignity. School residential trips have single-sex sleeping facilities, not just for privacy and dignity but to prevent consensual or abusive sexual contact between teenagers.

Although in theory the single-sex exceptions in the EA2010 can also apply to holders of a GRC, in practice, as it is illegal to ask to see the GRC, this makes it more difficult to enforce them. Without clear legal guidance it is even more likely that schools, when faced with children whose legal sex is opposite to their actual sex, will be confused about what is and isn't allowed. This means that schools may not be able to safeguard all children appropriately, including the children that are trans-identified.

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