

Response from: Royal College of Paediatrics and Child Health

To: Department for Education Consultation 'Guidance for Schools and Colleges: Gender Questioning Children'

Due: 12th March 2024



About the RCPCH

The **Royal College of Paediatrics and Child Health (RCPCH)** is responsible for training and examining paediatricians, setting professional standards and informing research and policy. RCPCH ('the College') has over 22,000 members in the UK and internationally. We work to transform child health through knowledge, research and expertise, to improve the health and wellbeing of infants, children and young people across the world.

This document sets out RCPCH's response to the Department for Education's ('the Department') Consultation on proposed [Guidance for Schools and Colleges: Gender Questioning Children](#) ('the guidance'). The consultation sets out specific questions, however the RCPCH does not feel that it has the relevant expertise to answer a number of these. This response intends to answer questions 41 and 42 in relation to general comments.

We are deeply concerned that the proposed guidance poses a risk to children and young people in that, if enacted, many of the measures set out are likely to cause distress for those who may be gender questioning or with gender incongruence, and their peers, and foster a negative school environment where children are not supported to be themselves. We urge the Department to consider the responses to this consultation- particularly those received from children and young people- in the context of their duty as outlined in the Children Act 1989 to ensure that the welfare of the child is the paramount consideration in all matters concerning them. We ask that the Department addresses how they meet this requirement specifically in their response to this consultation.

Safeguarding

It is imperative that the Department places the safeguarding of children at the centre of their guidance in this space. We are concerned to see that the guidance states that parents should be involved other than in the 'exceptionally rare circumstances where involving parents would constitute a significant risk of harm

to the child' (pg. 6), without citing evidence to demonstrate that this risk is, in fact, exceptionally rare.

The RCPCH recommends that the Department commissions a full literature search in order to fully and wholly explore the potential consequences of informing parents that a child is gender questioning without their consent.

Education practitioners must be supported and adequately trained to correctly identify when there is risk of harm to a child, and fully supported to make decisions which are in the best interests of the individual child in their education setting. As currently worded, we believe it is more likely than not that education practitioners will be dissuaded from acting in a child's best interests – particularly if, for example, those best interests might include creating a management plan for that child to remain safely in school, without the need to involve those with parental responsibility.

In healthcare, parental involvement is encouraged where appropriate and the RCPCH recognises the benefits of family involvement in some matters concerning children and young people. However, as children get older, they may choose not to involve their parents in all aspects of their personal life. To assess whether a child is capable of making decisions without their parents, we follow the principles of [Gillick Competency and the Fraser Guidelines](#). The Department may find it helpful to look to these principles as precedent for providing autonomy to children and young people.

We would additionally invite the Department to consider whether 'significant risk of harm' is the appropriate threshold for making decisions about excluding parents from such decisions. There is no statutory definition of 'significant', and in child protection practices local authorities such as children's services, police, education, and health agencies work with family members to assess the child and the individual circumstances which have led a concern to have arisen. A decision is then made based on their professional judgement using the gathered evidence to determine whether significant harm is, or is at risk of, occurring. It must be ensured that schools can give the due multi-disciplinary consideration to whether involving parents presents whatever level of risk is subsequently decided upon in the statutory guidance, and that adequate training is in place for all staff involved in this decision.

Children's rights

The UK Government has committed to complying with both the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). It is not acceptable that several parts of this guidance does not uphold the requirements of these charters, both of which have – in their individual ways – been ratified by the Government. In particular, we are

concerned that article 12, article 16 and article 28 of the UNCRC may be trespassed upon and transgressed by this guidance as currently written.

We think that it is essential that the Department must, prior to any issuing of guidance in this area, seek independent, objective advice on whether this guidance would be lawful under the Equality Act 2010, and whether it complies with all required Human Rights Conventions. If there is any doubt about that, however small that doubt may be, then the text must be amended to uphold the rights of all children and young people in schools- particularly those who are vulnerable to inequalities. To do otherwise unacceptably transgresses the rights to which children are entitled as either a matter of policy, statutory guidance, domestic legislation, or international law.

The Scottish Government recently published [guidance on taking a children's human rights approach](#) to support public authorities and other organisations in upholding children's rights in policymaking. We believe that this guidance should be used as a framework to underpin revisions to this Guidance that is currently subject to consultation.

Younger children

We are particularly concerned by the provisions set out for primary school age children. Studies show that most people who experience gender dysphoria first experience this between the ages of 3 and 7 years¹. The guidance's suggestion that 'primary school aged children should not have different pronouns to their sex-based pronouns used about them' removes an opportunity for primary schools to manage distress in young children who are gender questioning or with gender incongruence. [LGBTQ+ children have told RCPCH that the use of pronouns and gender identifiers are important to them](#), and schools should be empowered to make decisions about individual children in their care with regard to pronouns, so that they can assess the best interests of that child.

Listening to gender questioning children and their peers

It is imperative that the Department upholds its duty to listen to the voice of the child in this guidance, given that its impact will be felt most sharply by pupils and students at schools and colleges. We consider it is essential, and we therefore recommend, that the Department commissions extensive engagement with children and young people- both those who are gender questioning and those who are not- to really understand what children want and need to happen in their learning environments. It is important that this engagement is conducted in safe environments for all pupils and students, and we suggest that the Department

¹ Michael Zalitznyak, Nance Yuan, Catherine Bresee, Andrew Freedman, Maurice M. Garcia, How Early in Life do Transgender Adults Begin to Experience Gender Dysphoria? Why This Matters for Patients, Providers, and for Our Healthcare System, Sexual Medicine, Volume 9, Issue 6, December 2021, Page 100448

works with established support networks for transgender children and young people to complete their engagement with this group in order to ensure that they can be adequately emotionally supported throughout. It is axiomatic to say that this engagement must be inclusive and ensure that the needs of children who have specific requirements are accommodated, including those whose first language is not English, those who may have a neurodiverse condition, and those who may have other additional and/or complex needs.

Our members have shared with us their concerns about the mental wellbeing of transgender children as a result of the volume of changing policy across the education and healthcare sector at this time. We do not believe that this changing landscape, either at all or at the current rate of change, is in the best interests of the overall wellbeing of individual children, of groups of children, and of children who may have additional needs.

The RCPCH asks that the Department considers the impact of the language they use and consults with trans voice organisations in order to understand how they can better protect the psychological safety of children and young people when outlining proposed changes. RCPCH would be happy to meet with the Department to further discuss the inclusion of children and young people's voices in this work, in order to ensure that children's rights are unfalteringly upheld in this space.

With kind regards,

A handwritten signature in black ink, consisting of the letters 'A', 'R', and 'R' in a stylized, cursive font. A long horizontal line is drawn underneath the letters, extending to the left and right.

Professor Andrew Rowland

Officer for Child Protection

Royal College of Paediatrics and Child Health