Protect and Teach CIC

23 November 2026

To: Georgia Gould OBE MP, Minister of State (Minister for School Standards), Department for Education

Copy to: The Rt Hon Bridget Phillipson MP, Minister for Women and Equalities

Subject: Request for review of DfE Equality Act schools advice (2014) following the Supreme Court judgment and KCSIE 2026

Dear Minister,

We write on behalf of Protect and Teach CIC to request clarification concerning the continued publication and use of the Department's document *The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities*, dated May 2014.

Our concern is that this advice remains available on GOV.UK, without an explicit warning on its publication page identifying the implications of the Supreme Court's judgment in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16, delivered on 16 April 2025.

The GOV.UK publication record states that the advice was revised in May 2014 and that the last webpage update, on 28 June 2018, added a link to the Department's guidance on gender separation in mixed schools. The document itself states that it 'will next be reviewed before April 2016'.

We recognise that the Equality Act 2010 remains the applicable legislation, as amended, and that non-statutory departmental advice cannot supersede its authoritative interpretation by the courts.

We also recognise that protections against discrimination because of gender reassignment remain in force, alongside the protection afforded by the protected characteristic of sex.

Our concern is not that the Equality Act itself must be amended for the Supreme Court's judgment to apply. Rather, it is whether the Department is providing schools with sufficiently clear, accessible and up-to-date advice to enable them to apply the law correctly.

1. A specific passage requiring clarification

Paragraph 3.19 of the May 2014 advice, under the heading 'Single sex classes', concludes: 'Pupils undergoing gender reassignment should be allowed to attend the single sex class that accords with the gender role in which they identify.'

We note that Keeping children safe in education 2026 (KCSIE), statutory guidance in force from 1 September 2026, states at paragraph 278 that supporting social transition 'will not include allowing children to join PE classes designated for the opposite sex where there are safety reasons for single-sex PE'. Paragraph 276 also

states that schools 'must not allow pupils into toilets, changing rooms, or boarding or residential accommodation designated for the opposite sex, with no exceptions'. The May 2014 advice, which remains published, predates these provisions and does not explain how paragraph 3.19 should be read alongside them.

Following the Supreme Court's interpretation of sex under the Equality Act 2010 and the publication of KCSIE 2026, we ask the Department to clarify how paragraph 3.19 should now be understood.

We recognise that single-sex classroom teaching, PE, sport, toilets, changing facilities and residential accommodation may be subject to different statutory requirements. Our concern is that the 2014 advice does not explain these distinctions in light of the Supreme Court judgment and subsequent guidance.

Does the Department consider paragraph 3.19 to remain accurate without qualification? If so, on what legal basis? If not, which aspects have been superseded, and what current guidance should schools follow?

In our view, schools should not be left to determine whether an older departmental example remains appropriate without clear and accessible direction.

2. Continued publication of the 2014 document

We would be grateful for responses to the following questions.

Q1. Has the Department conducted a formal legal and policy review of the May 2014 advice following the Supreme Court judgment of 16 April 2025?

If so, when was that review undertaken, which sections were examined, and what conclusions were reached?

For the avoidance of doubt, we also request, under the Freedom of Information Act 2000, copies of any recorded reviews, legal or policy assessments, internal briefings, decision records or correspondence held by the Department concerning the continued accuracy or revision of the May 2014 advice following the Supreme Court judgment of 16 April 2025.

This request is separate from our questions seeking the Department's current policy position. If any information is withheld under an exemption, please identify the exemption relied upon and provide any information that can lawfully be disclosed.

Please ensure that the Freedom of Information element of this correspondence is separately registered and acknowledged under the Freedom of Information Act 2000, including confirmation of its reference number.

Q2. Does the Department currently regard the May 2014 advice as accurate and suitable for use by school leaders, governors, staff and local authorities in its entirety?

If not, which paragraphs require qualification or revision?

Q3. Why does the GOV.UK publication page not contain a prominent notice explaining that the advice predates the Supreme Court judgment and should be

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read in light of subsequent case law and applicable updated guidance, including KCSIE 2026?

Q4. Does the Department intend to amend, replace, formally withdraw or annotate the May 2014 document? If so, what is the anticipated timetable?

3. Practical guidance for schools

We are also concerned about the implications for schools seeking to fulfil their legal responsibilities without discriminating against pupils.

Schools must protect pupils from unlawful discrimination, harassment and victimisation while also complying with legal requirements concerning sex, privacy, dignity, safeguarding, reasonable adjustments and access to education.

We therefore request clarification on the following matters.

Q5. Beyond paragraphs 254 to 284 of KCSIE 2026, what interim advice has the Department issued to schools, academy trusts, governing bodies and local authorities on applying the Supreme Court judgment pending any final revision of equality guidance?

Please identify the relevant publications, communications and dates.

Q6. How should schools reconcile potentially outdated passages in the May 2014 advice with the current statutory RSHE guidance in force from 1 September 2026, the statutory safeguarding guidance in KCSIE 2026, the Supreme Court judgment and applicable EHRC guidance?

Q7. What steps is the Department taking to ensure that school policies, staff training and externally supplied guidance distinguish biological sex, the protected characteristic of gender reassignment and beliefs, concepts or policy positions which are not themselves protected characteristics under the Equality Act 2010?

Q8. How is the Department coordinating with the Equality and Human Rights Commission, including in relation to its 2026 consultation on technical guidance for schools, which closed on 30 September 2026, to ensure that schools receive consistent and legally accurate advice?

In particular, how is the Department distinguishing the Equality Act obligations applying specifically to schools under Part 6 from the wider framework addressed by the EHRC's 2026 Code of Practice for services, public functions and associations?

4. Accountability and legal certainty

Protect and Teach believes that schools should be able to identify the current legal requirements without having to reconcile multiple official documents, issued many years apart, without explanation.

This is particularly important where decisions may affect pupils' privacy, access to facilities, educational participation, freedom from discrimination and safeguarding arrangements.

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We do not suggest that every school relying on the May 2014 advice is necessarily acting unlawfully. Nor do we suggest that references to that advice, in themselves, establish a breach of the Equality Act.

Our concern is that continued publication without clear contextual information risks avoidable uncertainty and inconsistent interpretation.

We therefore request that the Department:

1. Confirm the status and current accuracy of the May 2014 advice.
2. Identify any passages requiring qualification in light of the Supreme Court judgment and KCSIE 2026.
3. Publish a prominent interim clarification on GOV.UK where necessary.
4. Provide a timetable for reviewing or replacing the document.
5. Explain what practical guidance schools should rely upon in the meantime.

We would appreciate a substantive written response addressing the numbered questions.

Protect and Teach intends to publish this correspondence in the interests of transparency and to assist school leaders, governors, parents and safeguarding professionals in understanding the current position.

Yours sincerely,

Jennifer Thetford-Kay

Jennifer Thetford-Kay
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(Trustee-designate)

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Protect and Teach CIC
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