

57075

What was the guidance that was sent to Head Teachers as per Recommendation 1.3 of the report? Can you provide the text?

The guidance that you are requesting forms part of confidential communications between solicitors and the council officers that have requested the advice and is protected in terms of legal professional privilege

Which sections specifically of the 'Supporting transgender young people in schools: guidance for Scottish schools' guidance has the Council asked schools to disregard (as per 4.7 of the report)?

Schools have been advised as follows:

The paragraph which states *"There is no law in Scotland which states that only people assigned male at birth can use men's toilets and changing rooms, or that only people assigned female can use women's toilets and changing rooms. This is instead done by social convention."* (pg.26) should be disregarded.

The recommendation which states *"if PE classes are organised by sex, a transgender young person should be allowed to take part within the group which matches their gender identity. For a non- binary young person, ask them which group they would feel most comfortable being with"* (pg.30) should be disregarded.

The point which states *"If a transgender young person wants to share a room with other young people who share their gender identity, they should be able to do so, as long as the rights of all those involved are considered and respected."* (pg.32) should be disregarded.

Specifically, what does Edinburgh Council recommend schools do in relation to trans pupils and use of toilet and changing facilities, physical education and residential trips? It would appear, according to the news article, that the Council has instructed schools to force trans pupils to use toilets that do not match their gender. Is this correct?

Schools have been advised that single sex toilets and changing facilities are accessible only to those with the corresponding biological sex. Therefore trans girls cannot use the girls' toilets or changing facilities and trans boys cannot use the boys' toilets or changing facilities. Appropriate gender neutral toilet and changing facilities are available for use by trans and non-binary pupils.

In relation to physical education and residential trips, the Council is currently dealing with equalities issues on in these areas a case by case basis.

Is the guidance the Council issued to schools in keeping with the two motions that were passed at the May 2025 Council meeting? I provide some excerpts from these motions below:

'forcing trans people to use facilities contrary to their gender puts many of them at risk of harassment due to their gender which is contrary to the spirit of both the equality act and Supreme Court's ruling.' (from Amendment 6 of Motion 15, which was passed with 39 votes in favour)

'request a report to the Education, Children and Families Committee: (...) b) Investigating whether it is possible to delay any changes to the current school estate with regard to toilet provision until the Scottish government has completed its review of the relevant regulations.' (from Amendment 2 of Motion 25, which was also passed with 39 votes in favour)

The guidance issued to schools was required in order to ensure that the Council is acting lawfully.

Given that the guidance, assuming the news story is correct, doesn't seem to comply with the motions of the May 2025 Council meeting, who signed off on this guidance and why? Who in the council has the authority to contravene the democratic decisions of the elected representatives?

The Council cannot act unlawfully, which would be *ultra vires*. The Council Solicitor (the Service Director of Legal and Assurance) must take appropriate action where the Council is at risk of acting unlawfully. In this instance, the Council Solicitor and Head of Legal Services issued the guidance to schools, having first advised the Council's Corporate Leadership Team.

What was the legal advice obtained that led to this guidance? Can you provide the text?

The guidance that you are requesting forms part of confidential communications between solicitors and the council officers that have requested the advice and is protected in terms of legal professional privilege

Who provided this legal advice? Was an external firm consulted? Can you provide the names of the legal professionals/firms that were consulted?

The advice was provided by the Council's internal Legal Services team, Harper MacLeod LLP, Dan Byrne KC and Jamie McGowan (advocate).

I am alarmed that the Council thought it would be appropriate to issue guidance and change policy in schools without waiting for updated legal guidance from the appropriate bodies, whether the Scottish/UK government or the EHRC. Does the Council as a matter of course respond to Court judgements with immediate changes in policy without waiting for updated statutory guidance from either the government or other relevant public bodies?

The guidance was not a change in policy – it was issued to schools in order to ensure that the Council was acting lawfully.