

Stonewall correspondence to disclose

From: [...]
Sent: 01 October 2020 16:27
To: [...]
Cc: [...]
Subject: RE: Ofsted & Stonewall: Inspecting teaching of the Protected Characteristics catch up

Hi [...]

Thank you for taking the time to chat with us last Wednesday – it's much appreciated. As mentioned in the meeting, it would be great to clarify the points in the attached (particularly to make sure we're conveying the guidance accurately in our work with schools) – thank you very much.

Regarding an introductory meeting between our new CEO Nancy Kelley and Amanda, given the even greater pressures than usual on Amanda's time at the moment (!), we'll hold fire for the time being, but will come back to you after half term to reach out for an introductory catch-up.

Thank you very much, and please do let me know if you have any questions.
Best wishes,

[...]

Director of Education and Youth

[Attachment – questions for clarification]

LGBT in Primary

In light of the publication of the [guidance](#) on *Inspecting teaching of the protected characteristics in schools*, please could you clarify:

- In which instances, if any, can a primary school decide, throughout all areas of their provision (i.e. in all year groups, and including but not limited to RSHE), not to make pupils aware of the existence of all of the protected characteristics (specifically, sexual orientation and gender reassignment), without being graded as 'requires improvement' or 'inadequate' for this reason on any of the relevant judgements (or the overall effectiveness grade)?
 - Specifically, in which instances could a non-association independent primary school decide, throughout all areas of their provision, not to make pupils aware of the existence of some of the protected characteristics, without being graded as 'requires improvement' or 'inadequate' on any of the relevant judgements (or the overall effectiveness grade), and/or without being judged to have failed to have met the ISS?
- Conversely, in which instances could a primary school's overall effectiveness be graded as 'outstanding' if they decide, throughout all areas of their provision, not to make pupils aware of the existence of some of the protected characteristics?

Our specific concern is that primary schools may interpret Ofsted's recently published guidance to mean that they only need to demonstrate that they have consulted parents as part of their compliance with the DfE's RSHE statutory guidance, to justify deciding, throughout all areas of their provision (including but not limited to RSHE), not to make pupils aware of the existence of all protected characteristics by the end of their time at primary school.

Further to this, we would be grateful if you could share any other requirements of the DfE's RSHE statutory guidance, in addition to the requirement to consult with parents and carers, that would be taken into consideration by Ofsted when making this assessment.

Inspections guidance

The [guidance](#) on *Inspectors talking to pupils on inspection* states:

"some school leaders do not wish inspectors to ask pupils certain questions, for example, about lesbian, gay, bisexual and transgender (LGBT) issues. If a school requests that inspectors do not speak to pupils about a topic that the school reasonably believes is sensitive for its pupils, inspectors will not ask pupils questions about it"

We are concerned that when referring to 'sensitive' content, this guidance only refers to LGBT matters – which could inadvertently problematise LGBT inclusion in schools. We are also concerned that the term 'reasonably believes' may be too broad to be fairly and consistently interpreted by inspectors.

We are also concerned that exempting inspectors from speaking to pupils about certain protected characteristics could undermine their ability to effectively assess a primary school's compliance with the Equality Act 2010 (specifically – for state-funded schools, the Public Sector Equality Duty; and for all schools, the need not to discriminate on the basis of sexual orientation and gender reassignment).

For example, we know that some students who are bullied (for whatever reason) do not disclose this to teachers, so it is difficult to envisage how inspectors could make assessments on whether homophobic, biphobic and transphobic bullying is prevalent in schools, without being able to speak to pupils about all protected characteristics.

Let us know if you're able to provide any more information on other material that might be deemed sensitive in this context, and on how inspectors will be supported to make a consistent and fair assessment of what constitutes a 'reasonable belief'.

It would also be useful to know how inspectors will be supported to effectively assess compliance with the Equality Act 2010 on the basis of all protected characteristics, in instances where a primary school 'reasonably believes' sexual orientation and gender reassignment to be 'sensitive' topics that should not be discussed with pupils.

Thank you very much.

From: [...]

Sent: 07 October 2020 15:15

To: [...]

Cc: [...]

Subject: RE: Ofsted & Stonewall: Inspecting teaching of the Protected Characteristics catch up

Hi [...]

Thanks for your email and apologies for the delay in getting back to you. We have address some of your concerns below. I hope that helps to set out and clarify our position but please do let us know if you have any further questions.

Best wishes,

[...]

Inspecting teaching of the protected characteristics in schools

First, on the questions about judgements made on inspections of primary schools. From the start of the summer term 2021, the leadership and management judgement and compliance with the ISS will be impacted if a primary school does not teach about LGBT relationships, except where they can demonstrate that they have done so while still fulfilling the requirements of the statutory RSHE guidance.

If a school does not promote pupils' understanding of all the protected characteristics effectively, this may result in a 'requires improvement' judgement for personal development, particularly if inspectors identify one or more other weaknesses in the school's promotion of pupils' personal development.

Under Ofsted's education inspection framework, to be judged good for overall effectiveness, all other key judgements are likely to be good or outstanding. In exceptional circumstances, one of the key judgement areas may require improvement, as long as there is convincing evidence that the school is improving this area sustainably and securely towards good.

Similarly, to be judged outstanding for overall effectiveness, all other key judgements are likely to be outstanding. In exceptional circumstances, one of the key judgements may be good, as long as there is convincing evidence that the school is improving this area sustainably and securely towards outstanding. Typically, this will mean meeting each and every one of the good criteria but falling short on the outstanding for that key judgement.

We note your concern about primary schools, which do not teach about LGBT relationships, interpreting the guidance to mean that they only need to consult with parents in order to fulfil the requirements of the DfE's RSHE statutory guidance. However, please be assured that this is only one example. Inspectors have received training on the statutory guidance, and they will take into account non-compliance with any of the requirements set out in the guidance when reaching their judgements.

Inspectors talking to pupils on inspection

Although we are clear that inspectors will not ask pupils questions about LGBT relationships on inspections of primary schools that do not teach about these types of relationships, inspectors will still talk to pupils about, for example, how safe they feel, along with questions around bullying,

behaviour, self-esteem and wellbeing, and understanding that difference is a positive. It will be more challenging to assess compliance with the relevant requirements of the Equality Act 2010 in these schools, but it is possible and will be done. Inspectors will always be alert to the risk of homophobic or transphobic bullying.

On the point about inspectors forming a 'reasonable belief', please be assured that inspectors receive extensive training in gathering and triangulating evidence and forming a robust evidence base from which to reach secure judgements. This, in addition to the published guidance, means that we fully support inspectors to exercise their professional expertise on matters such as these.

We used LGBT relationships as an example, as this tends to be a sensitive topic that commonly arises and about which we are keen to ensure our inspectors take a consistent approach. Another example of a sensitive subject, where inspectors will need to exercise care and discretion, is gender equality, in particular around girls being given equal educational opportunities. We generally focus on one example in published guidance, so as not to give the impression of having provided an exhaustive list of examples.

[end]