

Matt Hyde, Chief Executive
Dr Ann Limb, Chair of the Board
Tim Kidd, UK Chief Commissioner
Frances Craven, Chair of the Safeguarding Development Group
The Scout Association
Gilwell Park
Chingford
London E4 7QW

Dear Matt, Ann, Tim and Frances,

I am an Assistant Leader of a cub pack (St Albans) and am writing to you with serious concerns about the Scout Association's policies and guidance on gender identity which **do not align with TSA's own safeguarding procedures nor with its responsibilities under the Equality Act 2010.**

I support the Scout Association's committed to diversity and inclusion, and agree that as a mixed-sex organisation we should be open to all young people, welcoming gender non-conforming children and adult volunteers, and taking account of the needs of those with gender dysphoria, or who have undergone gender reassignment. However the current policies and guidance are inappropriate and dangerous. They open up safeguarding vulnerabilities which will put young people at risk, leave adults in scouting struggling with complex cases and undermine the trust of parents.

I have five specific concerns:

1. Guidance on supporting young people with gender identity issues tells leaders to **ignore normal safeguarding.**
2. Excessive privacy restrictions **prevent leaders having (or using) information about the children in their care that they need to keep all children safe.**
3. The Scout Association's equal opportunities policy confuses sex and gender and therefore the association **fails to protect sex-based rights** (particularly for women and girls). This also risks excluding people on the basis of religion.
4. The handling of people changing their identity may undermine **the appointments and vetting process in the way it handles people who change identities.**
5. **The guidance was developed in partnership with external organisations which are not suitably qualified.**

These concerns are outlined on the following pages.

As volunteers in scouting, whether leading sections, serving on appointments committees, or acting as trainers and advisors on inclusion or safeguarding, and as staff in HQ we are all doing our best to support young people with a wide diversity of needs. The number of

children who identify as transgender has risen rapidly over the last few years with a 4000% increase in the number of girls being seeking treatment for gender identity issues. However as the NHS highlights the majority of children with suspected gender dysphoria don't have the condition once they reach puberty and are able to live happily reconciled with their biological sex.¹ Thus we should not assume that children that have gender identity issues while in scouting are presenting their “true gender” as the policy says, and must be destined for a pathway of long-term social and medical transition.

I find the of the section on supporting adult volunteers who are transitioning, which says to keep “*the volunteers’ thoughts and feelings at the centre*” concerning. While volunteers thoughts and feelings are of course important, the first priority should be to promote and prioritise the safety and wellbeing of children and young people. We should not lower safeguarding and vetting designed to keep all children safe.

Volunteers, parents and young people are having to address complex issues as they arise, and we deserve guidance which is based on clear evidence and language and grounded in underlying safeguarding, equality and anti-bullying policies that are in line with the law. I hope that The Scout Association will urgently review its published guidance on gender identity, as well as its equal opportunities policy. I would recommend **Supporting gender diverse and trans-identified students in schools** produced by Transgender Trend www.transgendertrend.com as a useful resource (and an organisation to engage with)

I would welcome a meeting to discuss these concerns, and how the Scout Association has assessed and determined whether the policies and guidance related to gender identity are consistent with safeguarding and equal opportunities. I am happy for this letter and attached note to be shared with others on the Board of Trustees and staff concerned with safeguarding and equal opportunities at Scout HQ.

Thank you

Maya Forstater

¹ <https://www.nhs.uk/conditions/gender-dysphoria/treatment/>

Concerns about gender identity policy, safeguarding and sex discrimination

These concerns relate to the information, policies and guidance for leaders set out in the following documents:

- [Gender Identity: Introduction](#)
- [Gender identity: Supporting young people](#)
- [Gender identity: Supporting adult volunteers](#)

1. **Guidance on supporting young people with gender identity issues tells leaders to ignore normal safeguarding**

Young people who are questioning their gender identity, who have gender dysphoria or who have declared themselves transgender are a particularly vulnerable group. **Yet the guidance gives directions which contradict normal safeguarding practice.**

It is difficult to distinguish signs of abuse from the signs of children experiencing gender identity disorder. A child that is withdrawn, suddenly behaves differently, is anxious, depressed, aggressive, takes risks, becomes obsessive, self-harms or hates their body or their genitals is a cause for concern. The question of whether a child has gender dysphoria, or other reason for concern is not a diagnosis that a scout leader can make. If it is gender dysphoria the NHS recommends that young people and their families have psychological support to cope with the emotional distress of the condition, without rushing into more drastic treatments. In practice, young people may be self-medicating with drugs bought online or undertaking breast binding which can lead to fractured ribs, puncturing a lung or serious back issues. Young people may be responding to emotional abuse from peers and others online telling children who feel that they don't fit in (perhaps because they are on the autistic spectrum or are homosexual) that the problem is that their body is wrong and they should get it 'fixed'. We know that groomers seek to isolate children from their families and communities while offering advice, understanding and attention and encouraging the child to share secrets. Children questioning their gender are particularly vulnerable to this, as they engage in online communities seeking support and information, sharing confidences about sensitive aspects of their body and their gender identity with people online.

Thus, a child that discloses to an adult in scouting that they feel they were 'born in the wrong body' may well raise safeguarding concerns, either in relation to abuse, or because they are self-medicating without medical supervision, or they may raise broader mental health concerns. Yet the guidance on **Gender Identity: supporting young people** gives direction to leaders in scouting to effectively **disregard normal safeguarding practice.**

Normal safeguarding procedures	Gender identity: supporting you people
<p>Explain that you cannot keep what the young person tells you a secret.</p> <p>All suspicions of abuse, no matter how insignificant they may seem should be reported to the DC or GSL</p>	<p>“Reassure of complete confidentiality”</p>
<p>Make no judgment about what you have heard</p>	<p>“It is important to treat the young person as a member of their true gender”</p>
<p>Tell your Group Scout Leader or District Commissioner immediately</p>	<p>“Refer on to organisations like Mermaids if needed”</p>
<p>It is your duty to report if you observe unexplained injury, or changes in behaviour, which cause you concern.</p>	<p>“Young people who are developing breasts may strap down their chest, to make it less obvious. This is called ‘binding’ and it is important to respect the young person’s decision to do this.”</p>
<p>NSPCC: “Parents should be wary of ...poor communication and lack of parental involvement, leaving you feeling uneasy”</p> <p>POR: Reasonable adjustment “should involve working in partnership with parents/carers, to identify needs and support strategies”</p>	<p>“Be led by the young person, and, where supportive, the parents/carers.”</p>

This guidance is alarming as it creates a carve-out from safeguarding where scout leaders that hear or observe something which raises their concern are directed *not* to discuss it with fellow leaders, *not* to report it to their GSL or DC, and *not* to work in partnership with parents.

As adults in scouting we should not be being told to ignore normal safeguarding practice in relation to this most vulnerable group of children. Safeguarding principles direct us to refer concerns to child protection experts. Individual scout leaders cannot diagnose gender dysphoria, decide whether parents response is ‘supportive’ or determine which outside agencies are appropriate to refer to. As Transgender Trend highlights in relation to schools *“No child or group of children should ever be placed outside the school’s safeguarding system. Decisions about maintaining confidentiality should always be made in consultation with relative pastoral/safeguarding staff. For an adult to deal with these situations alone could be professionally dangerous.”*²

² <https://www.transgendertrend.com/wp-content/uploads/2018/02/Transgender-Trend-Resource-Pack-for-Schools.pdf>

2. Excessive privacy restrictions prevent leaders having information they need to keep all children safe

Young people that have been diagnosed with gender dysphoria may decide together with doctors and their parents or carers to undertake social or medical transition. The Scout Association should make reasonable adjustments to ensure that young people with this condition are supported, and not excluded from scouting activities, and as the policy highlights all children should be protected from bullying. However these children remain both legally and physically the same *sex* that they were before.

The guidelines suggest that children that have socially transitioned should:

- Be able to keep their sex absolutely private, and only have it revealed to specific individuals with their consent.
- Have all records changed to reflect their new name and gender
- Be treated in every respect “as a member of their true gender”

This implies that if a child transitions in cubs information about their actual biological and legal sex could be withheld from scout leaders when they move up. Even if it is obvious that a child that is socially treated as a girl is in fact male (and is undergoing male puberty) the guidelines mean that these scout leaders will not be able to discuss that information, confirm it or include it in their risk assessments.

This level of privacy is not required by law, as these children have not legally transitioned. Nor is it wise, as risks of pregnancy, loss of privacy and peer-on-peer sexual harassment in mixed sex relationships between young people are not changed.

Enforcing this level of privacy would make it impossible for Scout Leaders to undertake the kind of sensitive risk assessment and planning needed, particularly for nights away. The guidelines say “Sleeping arrangements should be carefully planned, assessing the needs and ages of young people, and any risks”. But at the same time they create conditions where leaders are not allowed to know, or to acknowledge that they know the sex, and the medical and the particular needs of the children in their care.

This impacts on their ability to keep all children safe and included and maintaining the trust of parents, for example:

- I. Leaders would not be able to plan together, and with the child and parents about appropriate sleeping and washing arrangements.
- II. A male child identifying as female could be sharing a tent with girls, with the parents of the girls being told it is an all-girls tent.
- III. Girls might feel pressurised to share a tent, showers etc.. with a male, even though they feel uncomfortable. They may feel unable to articulate this as they are told they cannot discuss it.
- IV. A scout leader might be aware of peer-on-peer abuse/sexual harassment involving a child whose sex is not the same as its social gender (either as victim or perpetrator), or pregnancy risk but cannot discuss this information.
- V. As the guidelines state “people who are transgender are more likely to experience mental health issues or have low self esteem”, but scout leaders may be prohibited from knowing or discussing this information about the child they have responsibility for on a trip away.

The guidance on camp to “consider having one named Leader who is aware of the young person’s biological sex and any treatment/medication they are on, who could provide support if medical treatment is needed. Ask the young person who they wish the leader to be;

regardless of the leader's gender" also seems like a bad (and unworkable) idea for several reasons:

- I. **Safeguarding:** it suggests favourites and secrets.
- II. **Practical safety:** an individual scout leader can be called away or involved in a first aid incident or activity – all responsible adults ought to be able to know the sex of the children they are responsible for, and be able to easily access information about any medication they are on and other medical issues.
- III. **Responsibility:** If absolute privacy is enforced (and demanded by a child and/or parents), it is not clear who would be in a position "consider having one named leader" or to "ask the young person who they wish the leader to be" as the guidelines can lead to a situation where *nobody* may know (or may be able to acknowledge that they know).

All of this I think suggests that it is inappropriate, and unsafe to have guidelines and procedures which prevent scout leaders being able to know and recognise the sex of all the children in their care, as well as any medical conditions that they have and medication that they are taking. This is information that the parents have, and it is the parents that enrol and consent to their children participating in scouts. Disclosing this information seems like a reasonable condition of participation. The current recommended approach of absolute privacy given to a child (to the point of potentially excluding the parents) and allowing children to essential 'self identify' their sex would in practice undermine the ability of leaders to keep all scouts safe. It also makes it impossible to implement the rest of the guidance. This doesn't seem to have been thought through.

3. The Scout Association's equal opportunities policy confuses sex and gender and opens up scouting to discriminating against women and girls, as well as on the basis of religion.

The Scout Association's equal opportunities policy is not in compliance with the Equality Act 2010 (EqA), This seems to reflect a fundamental misunderstanding of the concepts of sex and gender. The Equality Act names nine protected characteristics including **sex** and **gender reassignment**. Sex is defined in law by s.212(1) EqA to mean that a woman is as a female of any age, while a man is a male of any age. Male and female in this context relate to biological sex classifications. Also relevant is s.9(1) GRA, which allows a biological male to be legally considered female on acquisition of a GRC. There are therefore two ways to be a man or woman in law: biologically by birth or legally by acquisition of a GRC.³ Children and adults have a right to non-discrimination based on their *sex*. Gender reassignment is a protected characteristic but it does not mean that a person's sex can be disregarded.

The Scout Association equal opportunities policy does not include a commitment to non-discrimination based on sex. It instead includes a commitment in relation to "gender (including gender reassignment)"

It seems likely that 'gender' was initially used in earlier versions of the policy as a polite euphemism for 'sex' (Similarly on the "Scouting for All" page on "gender" it says that "Girls have been members of The Scout Association for over 40 years, with all Sections becoming co-educational in 2007.... We believe the best way to promote gender equality and understanding is to have Sections that are mixed, and open to young people of all genders"). My own Compass record reads Gender: Female, but I was not asked about my innermost feelings of gender identity. Rather I think the information that is collected here, and in the Scout census relates to people's legal and biological sex (as it is in the case of the

³ <http://www.legalfeminist.org.uk/2018/09/27/38/>

government's national census), but this is mislabelled as 'gender'. If the Scout Association wishes to collect information about people's gender identity (or lack of it) that would be a different question.

This confusion of gender with sex leads to several problems:

- I. When children and adults 'change their gender' it is recommended that their Compass records are changed to reflect this. But what is actually recorded in Compass is sex. And this can only be changed as a legal fiction via a GRC.
- II. The guidance talks about young people and adult volunteers using facilities "of their true gender", but in practice existing facilities are separated by sex not gender identity.
- III. Other children and adults can have legitimate wish not to share intimate facilities with individuals of the opposite sex. This can be because of religion, previous assault and anxiety, or simply because they value privacy from people of the opposite sex when changing etc.. Girls and women who cannot be guaranteed access to single-sex facilities may leave scouts (or not join) or not feel confident about attending camp.

The guidance on supporting adult volunteers (and on appointment and vetting) says "people who are transgender have a right to be treated as their acquired gender, regardless of what (if any) medical or legal steps they have taken." **This is not true.** Gender reassignment is a protected characteristic under the Equality Act 2010, which means that organisations have to make reasonable adjustments to enable people with this characteristic to participate. A boy or man undergoing gender reassignment should not be discriminated against *compared to any other male*. Similarly a girl or woman undergoing gender reassignment should not be discriminated *compared to any other female*.⁴ This means that they should not be denied access to same-sex facilities (i.e. boys who identify as a 'transgirl' should be allowed in to the boys toilets, showers and tents and protected from any harassment there). A further reasonable adjustment would be to make sure that there are unisex/accessible facilities available for children and adults that do not feel comfortable in same-sex facilities. The law does not require or give the right for people without a gender recognition certificate (and this includes all children) to be access spaces designated for the opposite sex.

Telling young people or adults that they have rights that they do not in fact have does them no favours, and puts the Scout Association at strong risk of illegally discriminating against others because volunteers are acting on misinformation (such as not realising that sex is a protected characteristic).

The guidance on both young people and adult volunteers includes a section on "**How do I respond to any volunteers in my District/County who are not inclusive of transgender Members?**" It says "volunteers should be reminded of their commitment to our Equal Opportunities Policy and their line manager should support them to change their practise. However in practice this equal opportunities policy is not in line with the law, as it ignores that sex is a protected characteristic and does not change with gender reassignment. Volunteers (and children and parents) that do not want to share intimate spaces with individuals of the opposite sex (for religious or any other reason) do not need re-education, but have a right to non-discrimination which Scouts should respect. This should not be a barrier to including gender non-conforming individuals in scouting, as the needs of both groups can be accommodated if we are clear and honest that gender identity does not change a person's sex.

⁴ See remarks of HHJ Jeremy Richardson QC in R (Green) v Secretary of State for Justice [2013] <https://womansplaceuk.org/julian-norman-in-house-of-lords/>

4. It is not clear whether the appointments and vetting process is robust enough when dealing with people that change their identity

The policies dealing with adult volunteers who are transgender seems to over-emphasise the privacy of people who may or may not have legally changed sex, at the risk of under-emphasising protection for children and for other volunteers.

The section on appointment and vetting highlights the sensitive disclosure process for DBS, whereby an individual can obtain a DBS through confidentially disclosing previous names and addresses directly to the DBS service.⁵

It seems to suggest that transgender adult volunteers could be appointed to scouting without revealing their previous names to anyone in scouting, and therefore not undergoing a full personal enquiry check with information held at Headquarters. The page says “*they do not have to list their previous names*”. If this is true it opens up the possibility that someone who has been barred from scouting previously for reasons which are not be picked up by the DBS service could be allowed back into scouting under a different name. And vice-versa: if concerns come up about historic abuse by an adult previously in scouting operating with one name, would that name still be on the system, and would it be able to identify if the individual is still in scouting but using a different name?

Under supporting adult volunteers the guidance says “It is important to update all communication and records as soon as possible, to the correct pronouns and name. **You do not need to ask for proof for their records to be altered** (e.g. to show their Gender Recognition Certificate)”. Most people undergoing who identify as transgender do not obtain a Gender Recognition Certificate (they also do not undergo surgery). Their legal sex is not changed. Compass records do not contain ‘pronouns’ they contain a record of a person legal sex (mislabelled as gender). Thus this guidance is asking scout packs to change someone’s recorded *sex* on the basis of a *self declaration of gender*.

As outlined in the previous point the guidance says “People who are transgender have a right to be treated as their acquired gender, regardless of what (if any) medical or legal steps they have taken”. **This is not true**. This right only applies to people with a gender recognition certificate.

In practice demanding and expecting that transgender people be allowed to use facilities designated for the opposite sex is likely to lead to discriminating against other people with protected characteristics of sex or religion. Thus it should be made clear at appointment that an individual who insists that their legal sex be kept secret from others in the association and/or that insists that they must be allowed to use facilities designated for the opposite sex would not be able to meet the appointment criteria of being able to operate within the Association's Equal Opportunities Policy and legal requirements on equal opportunities. A person may feel strongly that “transwomen are women”, but they are not able to enforce this belief on others.

5. Governance and due diligence: how were these policies developed?

As I have outlined these guidance documents are not in line with safeguarding practice, or with legislation, nor are they internally consistent. The webpages state that they were

⁵ <https://members.scouts.org.uk/supportresources/4601/appointment-and-vetting-processes?cat=377,378&moduleID=10>

developed in partnership with two outside organisations. It is not clear what internal due diligence was undertaken and how they were judged to be in line with safeguarding practices.

Mermaids is a well-known organisation that was set up by a group of parents, based on their own experience of their children undergoing medical treatment for gender dysphoria. While it is certainly legitimate to consult with parent's groups (and I would also recommend Transgender Trend), Mermaids are not medical experts or experts in child protection.

The Gender Trust is harder to find any information on. Their website www.gendertrust.org.uk lists no address, no names of staff or trustees. Looking up their details with the Charity Commission reveals that they have not submitted annual accounts for several years. Searching further on the internet for information I find the name Michelle Bridgman often associated with this charity. She is a consultant who provides counselling & psychotherapy for adults, adolescents and children questioning or in conflict with their gender identity. **"I may be one of the few therapists to truly understand what you are going through"** says her website <https://genderidentity.co.uk>. It is hard to know why the Scouts Association felt this was an appropriate organisation to advise on this issue, and to allow their recommendations to be used to strip out safeguarding procedures.

I would like to know:

- I. **Has the Scout Association assessed whether the policies and guidance related to gender identity are consistent with safeguarding?**
- II. **Was a risk assessment done** about ringfencing guidance on gender identity outside of normal safeguarding procedures? What hazards were identified and what precautions put in place? Has this been documented?
- III. **Was an equality impact assessment done** on these policies for making and toilet facilities mixed sex, and on not being able to give parents clear information about whether girls are in mixed sex tents or not – to assess their impact in terms of potential discrimination in terms of sex and religion on girls and women who would not feel comfortable sharing with a member of the opposite sex?
- IV. **What due diligence was done on the organisations that were invited to develop these policies with the Scout Association**, and that children and parents are being directed to? (i.e. Mermaids and the Gender Trust) Have you assessed the adequacy of their safeguarding before referring children and parents on to them?

I hope that The Scout Association will urgently review its published guidance on gender identity, as well as its equal opportunities policy to ensure that they are in line with safeguarding and the Equal Opportunity Act. This is an issue which many organisations need to address. Scouting has been admirable in its embrace of inclusivity for LGBT adults and young people. It should lead the way in showing how this can be combined with robust safeguarding for gender questioning young people and equality and protection for girls and women.