

# Freedom to disagree with same-sex marriage under threat in schools

## *Consultation on Independent School Standards guidance*

The Independent School Standards apply to independent schools. But changes to them will influence Ofsted's Common Inspection Framework for inspecting all schools. Independent schools have the most freedom from state regulation. So if the guidance is allowed to stand, publicly-funded schools are likely to soon be under the same requirement.

The key paragraph of the guidance, paragraph 20, states:

"The standard will not be met if, for example, the PSHE curriculum:

...

c. suggests that same-sex marriages or civil partnerships should not be recognised as being lawful unions under civil law;"

Under this wording, schools could be held to breach the standards if their PSHE curriculum suggests that same-sex marriage should not be lawful.

The guidance later goes on to say, in paragraph 39:

"Even if the school's curriculum documents are acceptable in relation to the fundamental British values, it is possible for teachers to convey in their teaching that either the values are wrong, or that they do not apply to the community served by the school. Evidence of such teaching would lead to this standard not being met. In order to assess compliance with the standard inspectors will check pupils' understanding, in an age-appropriate way, of the concepts listed."

This means a school could fail if a teacher suggests that English law should reflect the Christian definition of marriage. There will be an enormous chilling effect on free speech in schools. Teachers may well feel obliged to shut down any debate in the classroom, so pupils' ability to express their view will also be affected.

Ofsted inspects a minority of independent schools itself, but is answerable for the standards being enforced in them all. The draft guidance would give Ofsted a powerful tool to impose a politically-correct agenda. It increases the likelihood of inspectors asking intrusive questions about pupils' beliefs. There is more on Ofsted's track record on page 3 below.

Other examples given in paragraph 20 that will lead to breaching the standards include if the curriculum "encourages pupils to see those of particular races or

religions as being inferior in any way". So disagreeing with same-sex marriage is put alongside racism.

## CHURCH SCHOOLS

The guidance says that: "A school can teach that its particular faith has teachings relevant to these matters, and explain to pupils what those teachings are" (paragraph 21).

But this is worthless if suggesting that same-sex marriage should not be lawful is prohibited. The two statements can only be consistent if there is an assumption that teachings of a faith are not to be lived out. A Christian school teaching the biblical position on marriage is likely to "suggest" that same-sex marriage is morally wrong and shouldn't be lawful. It is an obvious implication of biblical teaching. The only way a Christian school might attempt to comply with the guidance is by saying that biblical teaching has no relevance to national laws. This is tyrannical.

## THE NEW GUIDANCE CONTRADICTS PREVIOUS ASSURANCES ON FREE SPEECH

When the Marriage (Same Sex Couples) Act was going through Parliament in 2013, many assurances were given by Government ministers about free speech and the freedom to disagree with the change:

*"A belief that marriage should be between a man and a woman is undoubtedly worthy of respect in a democratic society."*<sup>1</sup>

Baroness Stowell of Beeston, then Government spokesman on equalities in the House of Lords

*"The belief that marriage should be of one man with one woman is, of course, mainstream, legitimate and lawful... Whatever one's view about the marriage of same-sex couples, it is legitimate and the Government will protect the right to express it."*<sup>2</sup>

The Rt Hon Maria Miller MP, then Secretary of State for Culture, Media and Sport

“...no teacher is under any duty to promote or endorse a particular view of marriage, and neither would they be as a result of any revised guidance in the future. The wording of section 403(1A) is clear. The Secretary of State issues guidance to ensure that pupils ‘learn’—it is worth paying attention to that word— ‘the nature of marriage and its importance for family life and the bringing up of children.”

Hugh Robertson MP, then Minister of State.<sup>3</sup>

“...teaching in this area should always be balanced and sensitive to pupils’ backgrounds, which for many will be reflected in the school’s ethos. Guidance contrary to that ethos would not meet those criteria. If Members want further reassurance, I draw their attention to Lord Pannick [QC], who I think is universally recognised to be an expert in this area. He said that it is ‘inconceivable’ that a teacher could be lawfully disciplined for explaining to a child of an appropriate age that the law allows for same-sex marriage but that many religions— or indeed the teacher—do not believe in it.”

Hugh Robertson MP, then Minister of State.<sup>4</sup>

“...it is perfectly clear that there will be no requirement on any teacher to promote a view or doctrine with which they feel any discomfort... There is a key difference between denying a fact and a law of the land—if the Bill passes, equal marriage will be a fact and a law of the land—and requiring someone to promote it. It is on that distinction that the liberty of conscience of teachers—and, indeed, of anyone in public service—rests.”

The Rt Hon Michael Gove MP, then Secretary of State for Education.<sup>5</sup>

Department for Education guidance on the Equality Act defends the freedom of schools with a religious character to teach in accordance with their faith:

“Some schools with a religious character have concerns that they may be prevented from teaching in line with their religious ethos... It is not the intention of the Equality Act to undermine their position as long as they continue to uphold their responsibilities in these areas. If their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationships Education (SRE) and Religious Education (RE), then schools should not be acting unlawfully.”<sup>6</sup>

It also refers to teachers being free to express personal views:

“Where individual teachers are concerned, having a view about something does not amount to

discrimination. So it should not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context (for example when responding to questions from pupils, or in an RE or Personal, Social, Health and Economic education (PSHE) lesson).”<sup>7</sup>

Guidance from the Equality and Human Rights Commission has also emphasised freedom of speech:

“No school, or individual teacher, is under a duty to support, promote or endorse marriage of same sex couples... Any views expressed about marriage of same sex couples, by governors, teachers, other school staff, parents and pupils, may reflect the religious ethos of the school...”

Individuals are free to express positive or negative views about marriage of same sex couples, depending on the form of words used and the particular context in which they are used. This applies to all forms of communication in public and in the workplace.”<sup>8</sup>

The new draft guidance profoundly undermines these assurances.

## HOW THE GOVERNMENT MIGHT DEFEND ITS WORDING

The Department for Education may argue that the sentence in the guidance does not stop disagreement with same-sex marriage, just a denial that same-sex marriage exists.

The guidance reads “suggests that same-sex marriages or civil partnerships should not be recognised as being lawful unions under civil law” (emphasis added). The Government might say that “being” means that supporting repeal of same-sex marriage does not breach the standard – calling for the repeal of something implicitly recognises that it does currently exist.

But the Institute believes that if words have their plain meaning the most natural understanding of this sentence is the one we have set out above. This is how schools and inspectors will understand it, and what advocates of same-sex marriage will tell schools it means.

If the Government intends something different, it must tighten this concerning wording.

<sup>1</sup> House of Lords Hansard, 17 June 2013, col. 75

<sup>2</sup> House of Commons Hansard, 16 July 2013, col. 1027

<sup>3</sup> House of Commons Public Bill Committee, Hansard, 28 February 2013, col. 311

<sup>4</sup> House of Commons Hansard, 20 May 2013, col. 963

<sup>5</sup> House of Commons Public Bill Committee, Hansard, 12 February 2013, col. 6

<sup>6</sup> *The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities*, Department for Education, May 2014, paras 3.29-3.30

<sup>7</sup> *Ibid*, para. 3.32

<sup>8</sup> *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for the Provision of School Education*, Equality and Human Rights Commission, pages 2, 3 and 6

# Ofsted's 'British values' inspections

There has been a litany of controversial 'British values' inspections by Ofsted since September 2014. Sold to the public as a solution to extremism, instead the inspections have proved to be a tool for promoting political correctness.

From the start, there were alarming reports of inspectors riding roughshod over deeply-held religious beliefs. There is little to prevent the personal views of inspectors shaping hostile reports of schools with a religious ethos. Young children in Christian and Jewish schools have been asked direct questions about sexuality and 'gender identity'.

## GRINDON HALL CHRISTIAN SCHOOL

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At Grindon Hall Christian School in Sunderland, primary school children said they were asked if they knew of any boys or girls who thought they were in the wrong body, and if they knew what gays and lesbians did. Six-year-olds were asked if they knew anything about Diwali or if they were familiar with the Torah, and others were asked if they knew anyone with two mums or two dads.<sup>1</sup>

Following the inspection in November 2014, the school was rated 'Inadequate', with the draft Ofsted report stating:

*"The Christian ethos of the school permeates much of the school's provision. This has restricted the development of a broad and balanced approach to the curriculum."<sup>2</sup>*

Ofsted failed to investigate the conduct of its inspectors, and the Department for Education forced the school to be transferred to a secular trust.

## TRINITY CHRISTIAN SCHOOL

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In October 2014 an Ofsted inspector told Trinity Christian School, a fee-paying independent school in Reading, that it needed to show it "actively promoted other faiths" in the curriculum. The school was told that it should do this by asking representatives of other faiths (e.g. imams) to lead assemblies and lessons.<sup>3</sup>

This was finally resolved a year later, but the school had been prevented from expanding in the interim.

## THE DURHAM FREE SCHOOL

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Ofsted launched its hostile inspection of The Durham Free School in November 2014. One eleven-year-old said she was asked if she was a lesbian and whether she thought she was in the wrong body. Another said an inspector asked if she was comfortable in her own body or whether she wanted to change sex. A twelve-year-old boy said he was asked if he was gay and if he had lost his virginity. This took place when he was on his own with an inspector in a room with the door shut.

These allegations were contained in written statements made by the students.<sup>4</sup> Ofsted was made aware of them but did not speak to the teachers, pupils or their parents to investigate.<sup>5</sup>

Ofsted's report on the school criticised it in almost every possible area, despite previous monitoring visits being overwhelmingly positive.<sup>6</sup> Following the Government's withdrawal of funding, the school was forced to close in March 2015.

## JEWISH SCHOOLS

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Inspectors investigating 'British values' at Orthodox Jewish schools in September 2014 asked secondary school girls intrusive questions such as 'Have you got a boyfriend?' and 'Do you know two men can marry?' At one Orthodox Jewish primary school, girls aged nine were asked if they understood how babies were made and whether they knew any gay people.<sup>7</sup>

One of the schools – Beis Yaakov High School Academy – was placed into special measures and rebuked by Ofsted for failing to promote 'British values'.<sup>8</sup>

Last year, Vishnitz Girls School – a private, strictly Orthodox Jewish primary school in Hackney – was found to breach multiple Independent School Standards because it did not teach three to ten-year-olds about gender reassignment and sexual orientation.<sup>9</sup>

And earlier this year inspectors conducted a hostile inspection of Yesodey Hatorah Senior Girls School in Stamford Hill. Inspectors were described as having "a fixed agenda" of speaking to the girls about sex. The pupils felt as though they were being attacked, and their parents were left furious at their beliefs being undermined.<sup>10</sup>

## OTHER EXAMPLES

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Understandably some schools harshly treated by Ofsted prefer to remain anonymous.

It is alleged that teachers at one Christian school were systematically questioned about their personal views on same-sex marriage.

A 2015 Ofsted report on an independent Christian school stated:

*“Pupils do not experience a balance of differing views on certain matters including the ‘protected characteristics’ (for example, relating to: age, disability, gender, marriage and civil partnerships, religion or belief, sexual orientation) of the Equality Act 2010. This all means that they are insufficiently prepared for life in modern Britain. This also means that leaders have not effectively promoted all forms of equality”.*

A third Christian school was rated ‘Inadequate’ on the basis of only 35 minutes of lesson observation.

<sup>1</sup> *The Sunderland Echo*, 14 January 2015

<sup>2</sup> *ITV News online*, 20 January 2015, see <http://www.itv.com/news/tyne-tees/2015-01-20/christian-school-in-sunderland-placed-in-special-measures-following-inadequate-rating-by-inspectors/> as at 22 May 2018

<sup>3</sup> *The Telegraph online*, 25 October 2014, see <http://www.telegraph.co.uk/news/religion/11187655/Trojan-Horse-rules-stopping-us-being-a-Christian-school-governors-warn.html> as at 22 May 2018

<sup>4</sup> *Daily Mail*, 24 January 2015; *The Northern Echo*, 4 February 2015, see <http://www.thenorthernecho.co.uk/NEWS/11769593/print/> as at 22 May 2018; Breitbart news, 27 February 2015, see <http://www.breitbart.com/london/2015/02/27/christian-school-where-ofsted-branded-pupils-bigots-will-close-education-secretary-confirms/> as at 22 May 2018

<sup>5</sup> *The Daily Telegraph*, 5 May 2015

<sup>6</sup> *The Durham Free School*, Ofsted report, 26–27 November 2014

<sup>7</sup> *Jewish News*, 14 October 2014, see <http://jewishnews.timesofisrael.com/ofsted-bullying/> as at 22 May 2018

<sup>8</sup> *The Guardian*, 30 October 2014

<sup>9</sup> *Daily Mail*, 14 July 2017

<sup>10</sup> ‘Why is Ofsted doing the secularists’ bidding?’ *UnHerd.com*, 22 March 2018, see <https://unherd.com/2018/03/ofsted-secularists-bidding/> as at 22 May 2018