

From: [Maya Forstater](#)
To: [Kishwer Falkner](#)
Cc:
Subject: Re: Request for a meeting
Date: 06 September 2024 10:59:19
Attachments: [Schools-model-policy-on-sex-based-rules.pdf](#)

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Dear Kishwer,

We are looking forward to seeing you this afternoon.

I am attaching our model policy for schools which we launched this week

<https://sex-matters.org/posts/updates/a-model-policy-that-protects-all-childrens-wellbeing/>

With best wishes

Maya

Maya Forstater

Chief Executive Officer

sex-matters.org

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Sex Matters is a human-rights charity
We campaign for clarity about sex in laws, policies and language

On Fri, 19 Apr 2024 at 15:36, Maya Forstater

wrote:

Dear Kishwer,

We last met in January 2023. Much has happened since then (including Sex Matters becoming registered as a human rights charity!).

We would like to request another meeting. We would like to discuss the issue of safeguarding due diligence which we have raised in our recent letters, the school's guidance, key cases we are supporting and intervening in, what we are seeing externally in terms of misunderstanding of the Equality Act, and work we are doing on the Data Protection and Digital Information Bill (on Digital Verification Services, and the potential for sex verification).

Please can you/your office confirm receipt of this email? (last time we were blocked by

the firewall!)

With best wishes

Maya Forstater
Executive Director

sex-matters.org

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Sex Matters is a human-rights charity
campaigning for clarity about sex in laws,
policies and language

Briefing: Sex Matters meeting

Authors:

- Policy
- Legal

Meeting with	Sex Matters: <ul style="list-style-type: none"> • Maya Forstater, Chief Executive Officer and co-founder • Director of Advocacy • Director of Campaigns
Date and location of the meeting	Friday 6 September 1-2pm In-person, London office Room 4, FORA, Tintagel House, 92 Albert Embankment SE1 7TY
EHRC attendance	<ul style="list-style-type: none"> • Baroness Kishwer Falkner, EHRC Chairwoman • EHRC Commissioner • EHRC Commissioner • EHRC Commissioner • EHRC CEO • Senior Legal Principal
Purpose of the meeting	To discuss Sex Matters' views and EHRC policy and legal engagement in key areas relating to sex/gender.

2. Objectives and Purpose of the meeting

- 2.1 A meeting was requested by Sex Matters on 19 April 2024.
- 2.2 They wish to discuss a range of issues relating to sex and gender, including the Department for Education guidance for schools and colleges on gender-questioning children, cases they are supporting and intervening in, evidence of misunderstanding of the Equality Act, and their work on the potential for digital sex verification (in the Digital Information Bill).
- 2.3 The initial meeting was delayed due to the General Election. When confirming the meeting, Sex Matters wrote to us again on 26 July (dated 22 July) outlining their position on the Equality Act. This is included at **Annex 5**.
- 2.4 There have been several developments in these areas since the initial meeting request, which are reflected in the proposed agenda.
- 2.5 The purpose of the meeting is to listen to concerns and evidence from Sex Matters and to share the work that we are doing.

3. Proposed agenda

- 3.1 We recommend being in listening mode for the meeting. The proposed agenda sets out topics of discussion that Sex Matters have raised with us so we expect that they will want to discuss and explain their own updates.
- 3.2 Below is a proposed agenda that we recommend proposing at the beginning of the meeting:
 - 1. Welcome and introductions
 - 2. The EHRC's guidance on discriminatory job adverts
 - 3. DfE guidance for schools
 - 4. For Women Scotland Supreme Court appeal
 - 5. Conversion practices legislation
 - 6. Single sex services and spaces
 - 7. Digital verification
 - 8. Any Other Business

4. Welcome and introductions

- 4.1 Following a welcome and introductions, we suggest proposing the above agenda and noting that we expect the discussions arising from it to cover the range of issues Sex Matters want to talk to us about, including their letter to us dated 22 July (at **Annex 5**).

From:
To: [Kishwer Falkner](#);
Cc: [Chair and CEO](#)
Subject: Sex Matters: Model policy re sex-based rules and record-keeping model policy in schools
Date: 06 September 2024 11:12:26
Attachments: [image001.png](#)
[image002.png](#)
[Schools-model-policy-on-sex-based-rules.pdf](#)
Importance: High

Good morning all,
In advance of today's meeting, please see attached the "[Schools sex-based rules and record-keeping model policy](#)" launched by Sex Matters this week.
Kind regards,

Private Office
Equality and Human Rights Commission

Third Floor, Windsor House,
42-50 Victoria Street,
London, SW1H 0TL

equalityhumanrights.com

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e-newsletter



Maya Forstater

Sex Matters

By email only

From: Marcial Boo, Chief Executive

Our ref: 2094Forstater

Wednesday 13 September 2023

Dear Ms Forstater,

Thank you for your email of 8 August in which you raise concerns about the EHRC's technical guidance for schools on the Equality Act, and the lack of guidance for schools on dealing with gender questioning pupils.

You raise important and complex areas of equality law. For example, as you suggest, it may not be directly discriminatory for a school not to refer to a child by their preferred gender (where it differs from their legal sex). However, schools must carefully consider how they justify and consistently apply their policies on this matter to avoid any risk of indirect discrimination.

As you know, our technical guidance for schools, which covers a broad range of Equality Act issues schools need to consider, was published in 2014. We recognise that since that time, several areas of policy and law, including in particular considerations around sex and gender such as those you raise, have evolved. We are currently undertaking a rapid review of this guidance, and intend to publish a revised version, correcting the inaccuracies which have been highlighted to us, within the coming weeks.

However, I would like to clarify that we will not be publishing our own guidance for schools specifically on issues of sex and gender in addition to the guidance

being prepared by the Department for Education, on which we are feeding in our advice on equality and human rights law. Duplication of this work risks creating confusion for schools, who we know are calling for clear information on these matters. We have been urging DfE to expedite their new guidance and expect them to consult on it shortly.

Yours sincerely,

Chief Executive
Equality and Human Rights Commission |

Arndale House, The Arndale Centre
Manchester, M4 3AQ

equalityhumanrights.com

Rt Hon Kemi Badenoch MP
Secretary of State for Women and
Equalities

By email only

From: Baroness Kishwer Falkner,
Chairwoman

Our ref: 2109Badenoch

Tuesday 17 October 2023

Dear Secretary of State,

Banning harmful conversion practices

The Equality and Human Rights Commission has long been supportive of the principle of banning harmful conversion practices. In January 2022 we [responded broadly in favour](#) of the UK Government's proposals to intervene to end these practices. As you will be aware, however, this is a complex and sensitive area with the potential to have wide-ranging impacts. Any legislation should be carefully considered to ensure it uses clear terminology and definitions, and is proportionate and evidence-based.

That is why we recommended that a draft Bill should be published for pre-legislative scrutiny by both Houses, and I was pleased to see the Government's public commitment in January 2023 to bring such draft legislation forward.

The Commission's position remains that legislation to ban harmful conversion practices is needed, and that thorough and detailed scrutiny remains imperative to ensure that any ban is fully effective in protecting people with the protected characteristics of sexual orientation and gender reassignment from harm while avoiding any unintended consequences. As such I hope to see this legislation in

the forthcoming King's Speech. We of course remain happy to engage and provide advice if required on the equality and human rights implications of any proposals.

Yours sincerely,



Baroness Kishwer Falkner

Chairwoman

Equality and Human Rights Commission

From: Maya Forstater
Sent: Wednesday, April 17, 2024 7:08 PM
To: regulatory.request@equalityhumanrights.com; Kishwer Falkner

Subject: GIRL GUIDES

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Dear EHRC

I am writing to you from Sex Matters, a human rights charity that campaigns for clarity on sex in law and policy.

A case has been raised to us which we would like to bring to your attention. It concerns Girl Guides.

I am enclosing a note on Girl Guides' policies, complaint, and our previous correspondence with EHRC (also correspondence with Fair Play for Women).

Maya Forstater
Executive Director

March 21 2024

Kishwer Falkner
Chair, Equality and Human Rights Commission
50 Victoria Street
London SW1H 0TL

cc: Kemi Badenoch, Gillian Keegan, Laura Farris

Dear Kishwer Falkner

We are writing concerning the EHRC's published response to the DfE consultation on its draft guidance for schools on gender-questioning children.

We think the EHRC's analysis is misdirected about the application of the Equality Act. It emphasises the risk of indirect discrimination, but ignores the direct discrimination involved in exempting or excluding children from rules and policies designed to safeguard them because they have a protected characteristic.

This tendency has been identified as "adultification", a type of bias which skews the perception of certain children, leading to professionals viewing them as more "grown up", or "adult".

The EHRC response suggests that DfE should tell schools to undertake "case-by-case" assessment instead of enforcing clear sex-based rules, and that schools should be told to agree to referring to boys as girls ("she") and girls as boys ("he"). This is not required by the Equality Act or the Human Rights Act, and it undermines safeguarding for the pupil in question and for others. We have published our analysis, and it is attached.

We raised the issue of safeguarding with you in a letter sent on 17th November 2023. We noted then, and are raising again now, that it is a critical gap that the EHRC's governance manual does not mention safeguarding or include a process for due diligence concerning recommendations and guidance in this regard. The EHRC should have a published safeguarding policy, and a process, with board-level oversight for assessing the safeguarding implications of its guidance and recommendations.

Yours sincerely

Maya Forstater
Executive Director

Director of Advocacy

Director of Campaigns

Sex Matters is a human-rights organisation campaigning for clarity about sex in law, policy and language | sex-matters.org | info@sex-matters.org

Maya Forstater, Executive Director,

Sex Matters

By email only

From: Baroness Kishwer Falkner,
Chairwoman

Our ref: 20240405

5 April 2024

Dear Ms. Forstater,

Thank you for your letter of 22 March 2024, regarding the Equality and Human Rights Commission's response to the Department for Education's consultation on its draft guidance for schools on gender-questioning children.

Matters of sex and gender remain a subject of significant public debate, a topic on which many groups and individuals hold strong views and an area in which there is still limited jurisprudence. As such there remains some disagreement about the law, and particularly the operation of the Equality Act 2010.

We welcome your considered analysis of the Department for Education's guidance as you see it, and were glad to see that we agree on several points. On the points where we disagree, we stand by our analysis of equality and human rights law in our published response.

Your letter raises specific concerns about safeguarding. We are well aware of the importance of this. As such we make reference to Section 175 of Education Act 2002 in our consultation response. We also carefully considered how our

response interacts with legal and policy considerations regarding safeguarding, such as those set out in materials and guidance from the Department for Education and National Police Chiefs' Council. While I recognise that there are a range of views about how safeguarding responsibilities interact with schools' approach to gender-questioning children, nothing in our response contradicts these materials. Furthermore, while we consider the safeguarding implications of our work where it is relevant to do so, our expertise and our remit lies in the equality and human rights framework, and that is where we have focused our response.

I understand that the Department for Education has received a significant number of responses to its consultation, including from you and many educational experts who will provide valuable expertise in safeguarding matters. We look forward to seeing the final published guidance, and will consider whether any further involvement from the EHRC on this matter is necessary or appropriate in due course.

Yours sincerely,



Baroness Kishwer Falkner

Chairwoman

Equality and Human Rights Commission

Arndale House, The Arndale Centre
Manchester, M4 3AQ

equalityhumanrights.com

Baroness Kishwer Falkner
Chair Equality and Human Rights Commission
Third floor
Windsor House
50 Victoria Street
London
SW1H 0TL

22 Jul 2024

Dear Kishwer,

Congratulations on the EHRC's confirmation as a "A" Status NHRI by GANHRI. We hope that you and the EHRC will be able to get on with your important work without further attacks.

We are pleased to see that the EHRC's new draft strategy includes sex discrimination, harassment and victimisation in the workplace, risk to freedom of expression by prohibiting the expression of certain views and legal clarity in relation to sex and gender and matters of religion or belief.

You may have seen that we wrote a response to the updated guidance on discriminatory advertisements <https://sex-matters.org/posts/updates/ehrc-issues-guidance-on-adverts/>.

As you know, we do not think that the EHRC has taken the correct legal position on the question of whether the Equality Act provides protection against discrimination on the basis of the ordinary, everyday, common law definition of sex. The updated guidance illustrates the problem with the "sex means paperwork" approach.

We will be arguing in the For Women Scotland case, if given permission to intervene, that if the principal purposes of the EqA10 are considered clearly:

- a) It is not necessary for "sex" in the EqA10 to be read as modified by s9(1) GRA, s9(1) in order to meet the purposes of the statute to protect against discrimination, harassment and victimisation
- b) adopting the interpretation that Section 9(1) applies undermines the purposes, coherence and effectiveness of the EqA especially as regards action to protect against sex

Sex Matters is a human-rights charity. sex-matters.org | info@sex-matters.org
We campaign for clarity about sex in law, policy and language.

Trustees: Michael Biggs, Rebecca Bull, Julia Casimo, Naomi Cunningham, Emma Hilton. CEO: Maya Forstater

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Registered office: 63/66 Hatton Garden, Fifth Floor Suite 23, London, EC1N 8LE

discrimination and advance the interests of women and girls.

As you said in your letter to the Minister of Women and Equalities last year, “human rights law may require the statutory recognition of biological sex.” If human-rights law requires a coherent scheme for protection against sex discrimination we argue that the deeming provision of s9(1) of the GRA should be disregarded for the purpose of the Equality Act.

We agree that the law is confusing, and that the courts in the FWS case have so far taken the opposite view. We welcomed your call for the law to be clarified in your letter. The previous government started but did not complete this work before the election, and we understand that this government currently does not intend to continue with it. **This places the responsibility for providing clarity back with the EHRC.**

Whatever the correct interpretation of the law, in practice the presence or absence of a GRC cannot make a difference to people’s human rights or how they are treated in everyday life. The information that someone has a GRC is generally private (and protected by Section 22 of the GRA against disclosure). What will be known is their sex (which is directly perceived in almost all in-person interactions) and whether they view themselves as a man or a woman (such as whether their title is Mr or Ms and how they dress). Where these two features are at odds, the person is likely to have (or be perceived to have) the protected characteristic of “gender reassignment”.

The central focus of our analysis of how the protected characteristic of sex interacts with the GRA is not the exceptions, but the core anti-discrimination provisions in the EqA, which address the mischief that women (and men) face discrimination because of their sex (as perceived and understood by others, and as an objective characteristic).

The principal purposes of the Equality Act 2010 are:

- **to prevent direct discrimination** by a range of public and private employers, service providers and others
- **to prevent indirect discrimination** arising from group disadvantages based on shared characteristics.
- **to protect and advance the interests of particular groups** based on shared characteristics, in particular via the public sector equality duty (PSED) (EqA10, s149) and provision for positive action (EqA10, s158).

Those rights and protections are based on the recognition that people with shared characteristics have common experiences or interests which give rise to particular needs or disadvantages, and which differ from those of other groups. The protected characteristic of sex is closely tied to the concepts of “same-sex” and “opposite-sex”, and to the recognition that in some situations the involvement of a person of the opposite sex can be inappropriate and unwanted.

A man is the opposite sex to a woman (he can impregnate; she can gestate). Identifying as transgender does not change this. Being a “transwoman” is not something a woman can experience. Men who identify as transgender and who may wear stereotypically female clothing, adopt a female name, take female hormones or have cosmetic surgery do not have commonality of experience with women, but with other men and with each other (they have the protected

characteristics of being male and of gender reassignment).

Conversely, women who identify as transgender (who may refer to themselves as “transgender men”) and who may wear stereotypically male clothing, adopt a male name, take male hormones or have cosmetic surgery have a commonality of experience with other women (such as pregnancy, the need for contraception, being vulnerable to sexual harassment from heterosexual men) and with each other on the basis of gender reassignment.

Women and men who identify as transgender can still face discrimination and harassment because of their sex, because other people continue to be able to recognise their sex. The fact that someone holds a GRC will not affect that reality.

It seems obvious (and simple) that the purpose of the Equality Act is to provide protection against discrimination based on sex (including perceived sex), and that it has a scheme of exceptions to allow different or separate provision for the two sexes where needed.

Thus in any place where it is not lawful to discriminate against a person based on their sex, it would not be lawful to discriminate against a person with a transgender identity based on their (perceived or actual) sex either. And in any place where it is lawful to discriminate on the basis of both perceived and actual sex, these rules can lawfully apply to transgender people too.

A reading of the Equality Act that applies s9(1) GRA is not required to achieve the purposes of the statute in regards to discrimination against individuals based on the sex they present as (including transsexuals/transgender people with or without a GRC) as this is addressed by the well-established principles of perceived or associative discrimination. However, applying s9(1) GRA undermines the clarity of analysis in relation to provisions that relate to shared characteristics, such as indirect discrimination and positive action, and the concepts of same-sex and opposite-sex.

The result of a s9(1) GRA reading is that, instead of actual women being considered as a distinct class with objective shared characteristics and distinct needs and experiences to those of the opposite sex, the class of “women” includes people whose bodies are male and whose life experience was shaped by being male.

A public authority would not be required to consider how policies impact on male and female people differently as biological classes, but only how they impact on legal “sex” classes that include both members of the relevant biological sex and members of the opposite (biological) sex with a GRC (while excluding members of the relevant biological sex with a GRC). This produces unjust, absurd and anomalous results. A vivid example of how this operates in practice is provided by the EIA completed in relation to E Wing at HMP Downview, which houses trans-identifying men in a women’s prison.¹ The EIA says simply in relation to the PC of sex: “E Wing is for high risk transgender women only. The unit is aimed at keeping all women, both non-trans and transgender, safe.” It then goes on to discuss the possibility of a need for equivalent provision for

1

<https://fairplayforwomen.com/wp-content/uploads/2020/10/Equality-Analysis-Document-E-Wing-Version-16.0-for-publication.pdf>

trans-identifying women. There is no discussion of the impacts on female prisoners of the presence of trans-identifying men, because the two groups are lumped together as “women” under the same protected characteristic.

The EHRC’s approach of saying that these anomalous and unjust results can be fixed by the use of a series of further exceptions is like the addition of “epicycles” in the Ptolemaic model of the cosmos, which envisages the earth at the centre, requiring complex corrections for observations which do not match the counterfactual premise.

The approach of two-stage exceptions is overly complex and does not work in practice (as our research with the women’s sector has demonstrated).²

In order to defend themselves using exceptions specific to “gender reassignment” while considering that some people have (imperceptibly) changed sex, duty-bearers need to show justification for their policies. This involves considering the interests and needs of the different groups affected. But the “sex is paperwork” approach to the protected characteristics means a public authority would not be able to consider the needs of biological women and biological males with a GRC as two different groups, but only as a single group who share the protected characteristic of sex.

This approach leaves the EHRC forever trying to explain a model of the Equality Act which does not align with reality, and which is over complex and ultimately unworkable.

The recent guidance on discriminatory adverts reflects and illustrates this problem, and goes further, saying: “Occupational requirements under Schedule 9 **must** relate to having a particular protected characteristic as defined in the Equality Act 2010.”

This suggests that an advertisement for a specialist job (such as peer counselling) that requires a woman, mother, or lesbian **must** relate to the “legal definition” of woman, even though this does not correspond with the meaningful definition of woman, mother or lesbian.

For example, an elderly woman who advertises for a female live-in carer may have no idea of these esoteric legal concepts. She simply advertises for a woman and expects women to apply. When someone who is clearly male arrives for an interview she is frightened, confused and shocked and turns the applicant away. The EHRC guidance says that her action may be defended as lawful using schedule 9, but if the job applicant has a GRC then it is only lawful if the woman has specified that it is an occupational requirement “not to be a transgender person”.

The woman in this scenario does not know whether the job applicant has a GRC (and it would make no difference to her). Indeed she may not know what a GRC is, and may never have contemplated that a man in women’s clothing might consider himself to be a woman and might unexpectedly and inappropriately turn up for the job interview. (Furthermore if the man-with-a-certificate “is a woman” as the EHRC contends, it could be open to him to make a claim for harassment on the basis of gender reassignment given her reaction).³

² <https://sex-matters.org/posts/publications/womens-services-a-sector-silenced>

³ See for example the case of V v Sheffield Teaching Hospitals
<https://sex-matters.org/posts/the-workplace/if-you-cant-say-sex-how-can-you-say-sexual-harassment/>

This whole schema imposes on this woman a set of unexpected and incomprehensible categories which do not relate to reality. If you insert between the woman and man-with-a-certificate a bureaucracy of agencies, public, private and voluntary service providers and public funding, we have seen what happens. The woman's ordinary use of language becomes stigmatised and forbidden, her consent and dignity are ignored, and the institutions become confused, afraid and hostile towards her and all those who do not think that a man can be a woman.

The obscure two-step occupational requirement the EHRC proposes cannot be used in practice because the objective justification depends on the material reality of sexed bodies, but the legal categories, and the words to describe the two sexes have been dislocated from reality and ordinary understanding.

The way to avoid harassment in situations of intimate contact or space-sharing where members of one sex have been told they can expect to encounter only members of the same sex is to make this expectation clear to members of the opposite sex. This means saying a clear "no" to members of the opposite sex even if they have gender dysphoria, a transgender identity, a GRC or a very passionate wish to be affirmed and included as being the opposite sex. It is frightening to say no to angry men who have become used to getting their own way, but it is crucial that the EHRC does this to protect the often low-wage, female workers and service users – including those with other relevant protected characteristics such as disability and religion or belief – who will otherwise be required to deal with these demands. **Unless the EHRC says "no" in categorical language that everyone can understand, service providers and employers will not feel confident to do so, and the problems you identify in your letter and in the strategy will continue.**

We are very concerned that the EHRC is due to revise the Statutory Codes of Practice, and in doing so may continue with the confusing and unworkable Ptolemaic "epicycles" approach (relying on two-step exceptions as set out in the recent guidance on advertising) rather than a simple and coherent "heliocentric" reading of the Equality Act which recognises that in fact the earth – the provisions in the Act about sex discrimination – relate to facts of sex discrimination, not to the legal fiction that some people have changed sex.

We hope we can reschedule our meeting that was cancelled before the election to discuss these concerns.

Yours sincerely

Maya Forstater
CEO

Director of Advocacy

Director of Campaigns

Meeting notes: EHRC and Sex Matters

Date	6 September 2024
Time	13:00 – 14:00
Location	Tintagel House
EHRC attendees	<ul style="list-style-type: none">• Baroness Kishwer Falkner (online)• Commissioner• Commissioner• John Kirkpatrick, CE• Legal• notetaker
External attendees	<ul style="list-style-type: none">• Maya Forstater, Chief Executive Officer and co-founder• Director of Advocacy• Director of Campaigns
Purpose of the meeting	<ul style="list-style-type: none">• To discuss Sex Matters' views and EHRC policy and legal engagement in key areas relating to sex/gender.

Key points

- Sex Matters intend on contributing to the EHRC's strategic plan consultation. John advised that the most effective way to do so is through the online questionnaire. EHRC will be analysing responses and following up with submitters where appropriate.
- Sex Matters updated on their work, including:
 - A lobby day for Parliament on 11 September
 - That they are now a registered charity
- EHRC provided various updates and responded to queries from Sex Matters:
 - EHRC is not expecting a draft bill on conversion practices until about Christmas next year. EHRC has advised that a joint Committee of both houses to hear expert evidence would be appropriate.
 - EHRC will be seeking leave to intervene in the For Women Scotland case.
 - EHRC is keeping a watching brief on the judicial review from the Free Speech Union regarding the halt on implementation of the Free Speech Act.
- Code of Practice for services, public functions, and associations:

- EHRC explained that consultation on an updated draft Code will occur shortly. It will set out EHRC's interpretation of what the law currently is. Although EHRC will aim for the publication to be as accessible as possible, its application will always be fact sensitive. The updated Code will not speak to what we think the law should be.
- Sex Matters observed the importance of making any guidance as simple as possible so it can be used easily by employers and employees.
- Both EHRC and Sex Matters discussed the need for convening groups/individuals with differing views on gender issues in order to seek constructive solutions. Sex Matters pointed to an example in World Rugby where experts from across a range of opinions and disciplines worked together to address evidence and develop guidelines.

Summary of actions:

- EHRC welcomed Sex Matters offer to send through examples of where convening groups/organisations on gender issues has worked well.

From: [Maya Forstater](#)
To: [Kishwer Falkner](#);
Cc:
Subject: Follow up to our meeting
Date: 09 September 2024 20:23:14
Attachments: [Consultation draft Code of Practice for Services, Public Functions and Associations.pdf](#)

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Dear Kishwer

Thank you for taking the time to meet us. As discussed, here are a few pieces of evidence that we think may be useful.

1) The original draft Code of Practice for Service Providers and Associations which went out for consultation in 2010 (attached). We think this was a much better approach than that which ended up being published. It is closely aligned to the legislation. On the single sex services exceptions in Schedule 3 it said

“The prohibition on gender reassignment discrimination does not apply in relation to the provision of separate- and single-sex services, provided that the treatment is a proportionate means of achieving a legitimate aim.”

And

“The service provider will be expected to consider the needs and wishes of the transsexual person as well as those of the women or men using separate or single-sex services.”

We will shortly be publishing on our website an analysis on what changed from the draft to the post-consultation final version and we'll send that to you. We feel that the 2010 draft was good. The problems arose in these changes, which came from rather one-sided input to the consultation.

It is notable how much the statutory guidance on this topic changed from the original version which was based on the legislation, and which was consulted on, to the final version. A [freedom of Information request](#) revealed that there is a document from this time called "Press for Change" which is an annotated version of the draft Code of Practice. The content of this document has not been disclosed by the EHRC. You will know that Press for Change was the leading transgender lobby group at that time.

2) Polling which shows public opinion is for tolerance and non-discrimination of transgender people, but also strongly for single-sex provision especially in sport, even when that means excluding trans-identifying males. Our pre-election polling shows that there is no public appetite for self-ID. A separate poll shows that more than a third of the population are confused about whether a “trans woman” is a female-born person identifying as a man or vice versa. This is one reason we encourage clear language. Without that it's not possible to discuss the policy issues, or for service providers and employers to communicate clearly to people

what policies have been adopted and what they mean.

- Our polling - [June 2024](#) and [May 2023](#)
- MBM polling on the confusion around language - [August 2023](#)

3) Relevant legal cases discussed

In 2022 we wrote analysis of [relevant cases in relation to single-sex services](#)

In addition we would draw your attention to:

[Earl Shilton v Mrs Miller \[EAT 2023\]](#) - it was sex discrimination to provide inadequate toilets to a woman at work - inadequate signage meant the woman was at risk of a man entering the toilet, or of seeing a man using the urinal.

“The men’s toilets consisted of a single cubicle and a trough urinal. There was a sign that should be placed on the door when the toilet was being used by a woman, but it did not always stay in place. The only facility suitable for women was the single cubicle. It could only be accessed by passing the urinal. There was no lock on the main entrance door to the men’s toilets. There was a risk of a man entering the facility regardless of the sign on the door, which meant that a woman might see a man using the urinal without knowing he was there having used the lavatory in the cubicle, or on entering the men’s toilet.”

[Ms V Abbas v ISS Facility Ltd \[ET 2023\]](#) - it was sex discrimination to provide inadequate toilets to a woman at work. Only men’s toilets and a unisex toilet were provided. Ms Abbas was told she could use either.

“In practice, the claimant was encouraged to use the accessible toilet and that is what she chose to do. She had a number of concerns about the toilet. First, whilst it was lockable from the inside, the lock was loose and it could be opened from the outside with a coin. Secondly, there was no sign on the toilet to suggest that it was also a designated toilet for women and, thirdly, men routinely used the toilet. Before using the toilet, the claimant typically had to clean it before sitting down.”

Reflecting on these cases we think that it would be sex discrimination for an employer or service provider to tell women that a facility is female only (for example by putting up a sign with the words female or woman or with the standard pictogram) and then tell male employees and service users that they can use the same facilities.

This is the issue with the question we discussed about whether it is a “fact-specific” question whether it is a proportionate means to a legitimate aim to exclude all male adults from a space that is designated female-only.

The case of [Adams v Edinburgh Rape Crisis Centre \[ET 2024\]](#) illustrates the issue. The tribunal concluded (at para 237- 238) concerning the question of whether it

was reasonable or possible for a person working for a rape crisis centre to keep their sex private:

“Similarly, the Tribunal’s view is that whilst some individuals may be sensitive about having what the respondent’s witnesses termed a person’s “gender history” revealed, this is not something which flows axiomatically from the existence of a right to privacy. The cases of *G v UK* and *YY v Turkey* were about much more basic concerns.

“There would clearly be circumstances where the right to private life includes a right to confidentiality of one’s gender history but it is not something which occurs in every case. In the vast majority of cases there will be absolutely no controversy whatever in asking someone their biological sex or sex at birth. There would also be no controversy whatsoever in asking someone their gender identity. It will usually be fairly obvious. Given that it is not an absolute right one requires to look at the context in this case.

The context in this case was that AB works at a Rape Crisis Centre. As noted above it is one of the few organisations which is exempt from the terms of the Equalities [sic] Act in terms of Schedule 9. When AB was employed it was a genuine occupational requirement that she be a woman. In the view of the Tribunal there is absolutely no breach of her right to privacy in those circumstances of telling a service user that she was assigned female at birth and now identifies as non binary. The Tribunal heard no evidence from AB and there was no evidence before us that there was any particular sensitivity around this matter. The evidence simply appeared to be that based on their strong adherence to gender identity theory all of the respondent’s witnesses believed that this was something which could not be done. In the view of the Tribunal this is not something which the law recognises in the case of someone who works for a Rape Crisis Centre.”

There are two upcoming cases on changing rooms in the the NHS including the cases of the nurses in Doncaster ([being supported by Christian Concern](#)) and the [nurse in Fife](#) (her hearing is in February and she is represented by [Margaret Gribbon](#) - we are in touch).

4) [A report on the issues in sport compiled by](#) [in her previous role at Fair Play For Women](#). Recently the problems at Olympic women’s boxing and then the women’s sprints at the Paralympics have been in the spotlight, but this report illustrates the scale and range of issues in the UK at all levels and across many sports. It’s not just about sport but also about privacy in single-sex changing rooms and toilets around sports facilities, gyms and leisure centres, and about the silencing and intimidation associated with trying to raise concerns about the loss of provision that is genuinely single-sex. No one is arguing against single-sex sport or other provision but when they insist on “trans inclusion”, meaning trans-identifying males in the women’s provision, then it becomes mixed-sex. This is where clearer guidance is needed.

We support you in your mission to ensure the human rights of all are fully

considered and properly balanced to maximise the opportunities for everyone to live well.

If there is ever anything we can do to help let us know. With best wishes Maya

Maya Forstater

Chief Executive Officer

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