Supreme Court judgment

Summary and practical advice

The Supreme Court has clarified that "sex" in the Equality Act 2010 means biological sex, male or female. Policies should use this definition. Any policy which relies on some other definition is likely to result in unlawful conduct.

This briefing from the human rights charity Sex Matters provides a summary of the judgment and practical advice for organisations to think about when reviewing their policies and practices in light of this clarification of the law.

What was the decision about?

On 16th April 2025 the UK Supreme Court handed down a judgment in the case of *For Women Scotland Ltd v The Scottish Ministers*[1] which determined the correct interpretation of the protected characteristic of sex in the Equality Act 2010. It concluded (at paragraph 264):

> **"the words 'sex', 'woman' and 'man… mean (and were always intended to mean) biological sex, biological woman and biological man."** *[emphasis added, here and throughout]*

The court ruled that the Scottish Government was acting unlawfully in treating men who identify as women and who have a gender recognition certificate as women for the purpose of a government policy aimed at improving inclusion of women in public life.

The court uses "biological sex" to mean the sex of a person at birth (paragraph 7). The underlying meaning of biological sex in law has been settled since the case of *Corbett v Corbett* in 1971 where the High Court held that it is observed at birth and relates to the biology of sexual reproduction.

The Equality Act has wide-ranging **practical, everyday consequences** for many individuals and organisations. The judgment said (at paragraph 175):

> "The concept of sex is of **foundational importance** in the EA 2010."

This was an important judgment that brings clarity to the law and will make it easier for:

- employers, service providers and others to **understand their responsibilities and avoid breaking the law**

[1] *For Women Scotland Ltd (Appellant) v The Scottish Ministers (Respondent) [2025] UKSC 16*.

- employees, workers, service users and members of the public to **understand their rights and avoid acting unreasonably**.

The Equality Act (EA 2010) defines unlawful acts in relation to individuals and groups that share **protected characteristics** which put them at risk of suffering discrimination and harassment. These characteristics are age, sex, race, disability, religion or belief, sexual orientation, pregnancy and maternity, gender reassignment and marriage or civil partnership.

The Supreme Court reached its conclusion by focusing on the Equality Act's purpose; both to protect women against the discrimination they may experience because of being born female, and the *different* life experience and discrimination that may be faced by people who identify as transgender.

The protections in the EA 2010 recognise that people who share a particular protected characteristic often have **common experiences or needs, whether arising from differences in their body characteristics or the way society treats people who share a characteristic**. These shared experiences or needs give rise to particular disadvantages if they are not met, and differentiate that group from other groups. Men and women are two such groups.

The duties imposed by the EA 2010 require that duty bearers:

- **do not directly discriminate against people based on their protected characteristics**, apart from where there is an express exception
- **avoid unlawful indirect discrimination** by anticipating where particular rules, policies or practices might affect those who share a protected characteristic and have distinct needs or interests in consequence
- **take reasonable steps to prevent harassment**, which is defined as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them
- **ensure that if they take "positive action"** they are able to target it at members of a disadvantaged group sharing a particular characteristic.

Public authorities subject to the **public sector equality duty** (PSED) must also analyse how their policies impact on differently-affected groups in order to advance equal treatment.

The court said:

> "Clarity and consistency about how to identify the relevant groups that share protected characteristics are **essential to the practical operation of the EA 2010**."
>
> "It must be possible for sex to be interpreted in a way that is **predictable, workable and capable of being consistently understood** and applied in practice by this wide range of duty-bearers."

Sex discrimination

Sex discrimination is when you are treated differently because of your sex, in relevant situations covered by the Equality Act 2010[2]. The treatment could be a one-off action or could be caused by a rule or policy. It doesn't have to be intentional to be unlawful.

There are some circumstances when being treated differently due to sex is lawful[3]. These include **separate-sex or single-sex spaces or services** for women (or men) as a group – for example changing rooms, toilets and washrooms (provided for privacy and dignity), homeless hostels, segregated swimming areas (which might be essential for religious reasons or desirable for the protection of women's safety, or the autonomy or privacy and dignity of the two sexes), and medical or counselling services provided only to women (or men) such as cervical-cancer screening for women or prostate-cancer screening for men, or counselling for women only as victims of rape or domestic violence.

The court concluded (at paragraph 210) that both the proper functioning of the core provisions of the Equality Act, and the exceptions which allow for single-sex sports, associations, services, communal accommodation and higher education institutes, **depend on a biological interpretation of sex**.

The court noted that this framework of sex-discrimination protections and exceptions was first brought in by the Sex Discrimination Act 1975 and said that there is no reason to suppose that Parliament intended to introduce a change when it replaced this with the Equality Act. **That is, sex means what it has always meant: the ordinary everyday meaning of being male or female.**

The judgment says (at paragraph 171):

> "The definition of sex in the EA 2010 makes clear that the concept of sex **is binary, a person is either a woman or a man.** Persons who share that protected characteristic for the purposes of the group-based rights and protections are persons of the same sex and **provisions that refer to protection for women necessarily exclude men**. Although the word "biological" does not appear in this definition, **the ordinary meaning of those plain and unambiguous words corresponds with the biological characteristics that make an individual a man or a woman**."

The Supreme Court rejected as incoherent an approach that would include "trans women" (that is, biological men who identify as transgender) under the protected characteristic of being a woman, and "trans men" (that is, biological women who identify as transgender) under the protected characteristic of being a man. It said (at paragraph 172):

> "We can identify no good reason why the legislature should have intended that sex-based rights and protections under the EA 2010 **should apply to these complex, heterogenous groupings, rather than to the distinct group of (biological) women and**

[2] Equality and Human Rights Commission (2020). *Your rights under the Equality Act 2010*.
[3] Equality and Human Rights Commission (2020). 'Sex discrimination', *Your rights under the Equality Act 2010*.

> **girls (or men and boys) with their shared biology leading to shared disadvantage and discrimination faced by them as a distinct group**."

It also rejected (at paragraph 175) the idea that the words sex and woman **might have different meanings in different parts of the act** as this would offend against the principle of legal certainty and the need for a meaning which is constant and predictable.

It found that gender-recognition certificates (GRCs) are irrelevant to the Equality Act and to most everyday situations, and are confidential documents.

While the question before the court related specifically to the status of transgender people who have GRCs (around 8,000 people), the reasoning that biological sex matters also applies in ruling out gender **self-identification** as a feature of the Equality Act. At paragraph 203 it said:

> "Since it is in practice impossible for organisations to distinguish between people with the protected characteristic of gender reassignment who do and do not have a GRC, **many organisations feel pressured into accepting de facto self-identification** for the purposes of identifying whom to treat as a woman or girl when seeking to apply the group-based rights and protections of the EA 2010 in relation to the protected characteristic of sex."

The judgment notes (at paragraph 200) that a **"full process of medical transition" has no effect on the person's sex as a matter of law**.

Gender-reassignment discrimination

Gender reassignment is when you are treated differently because you have the protected characteristic of gender reassignment in one of the situations covered by the Equality Act. The treatment could be a one-off action or as a result of a rule or policy. It does not have to be intentional to be unlawful.

The Supreme Court noted that **"gender reassignment" is a different and separate protected characteristic from sex**. The Equality Act refers to it as relating to "a transsexual person". It is defined at section 7 of the act as the attribute of proposing to undergo, undergoing or having undergone a process (or part of a process) of changing physiological or other attributes of sex for the purpose of reassignment the person's sex.

The protection does not depend on having a GRC, or on having a diagnosis, or any medical treatment or surgery. The judgment says (at paragraph 200):

> "But the fact that section 7 refers to a process for reassigning sex **does not lead to the conclusion that such a process results in a change in the protected characteristic of sex** under the EA 2010. Section 7 does not say this..."
>
> "The critical process on which the section 7 characteristic depends involves a change in physiological or other attributes of what must necessarily be biological sex; but

> **there is nothing to suggest that undergoing such a process changes a person's sex as a matter of law. It does not."**

At paragraph 202 it notes that:

> "Neither possession of a GRC nor the protected characteristic of gender reassignment require any physiological change or even any change in outward appearance."
>
> "Moreover, in either case, the individual's biological sex **may continue to be readily perceivable and may form the basis of unlawful discrimination**."

The judgment notes (at paragraph 201):

> "**Nobody suggests that a person with a protected characteristic of gender reassignment is entitled on that basis alone to be treated as if their sex has changed for any legal purposes**."

This confirms the earlier judgment in the earlier case won by For Women Scotland in 2022 (FWS1).[4]

Discrimination claims and comparators

The core purpose of the Equality Act is for individuals to be protected from discrimination and harassment and to be able to bring claims because of a protected characteristic.

The Supreme Court noted that they don't have to have that characteristic to bring a claim. It is well-established that direct discrimination because of a protected characteristic encompasses not only cases where the complainant affected by has the characteristic in question, but also where the discriminator *perceives* them to, or in some other way *associates* the complainant with the protected characteristic. All that is required is that the protected characteristic is a ground for the treatment in question.

No change is needed in the definition of sex to bring transgender individuals (with or without a GRC) under the protection of the act if they face unlawful sex discrimination either in their actual sex or their target sex.

Comparators are a key tool in considering discrimination claims. The purpose of a comparator is to test a claimant's claim that the protected characteristic they rely on was the reason, or at least a reason, for the way they were treated.

In a sex discrimination claim the comparator is a person of the opposite sex who is otherwise the same or not in materially different circumstances.

- The comparator for a man is a woman.
- The comparator for someone perceived to be a man is someone perceived to be a woman.

[4] *For Women Scotland v The Lord Advocate & Scottish Ministers [2022] CSIH 4*.

- The comparator for someone associated with being a man is someone associated with being a woman.
- The comparator for a woman is a man.
- The comparator for someone perceived to be a woman is someone perceived to be a man.
- The comparator for someone associated with being a woman is someone associated with being a man.

At paragraph 251 the Supreme Court gives the example of:

> "a trans woman who applies for a job as a sales representative and the sales manager thinks that she is a biological woman because of her appearance and does not offer her the job even though she performed best at interview and gives the job instead to a biological man. She would have a claim for direct discrimination because of her perceived sex and her comparator would be someone who is not perceived to be a woman. The fact that she is not a biological woman should make no difference to her claim."

Similarly the indirect discrimination provisions of the EA 2010 apply both in relation to a disadvantage which relates to a person's actual sex and where they face a disadvantage that relates to the opposite sex, insofar as they are also put at that same disadvantage.

A transgender person also has a **separate protection** against discrimination and disadvantage related to being in the group sharing the characteristic of gender reassignment.

In a gender-reassignment claim, the comparator of a transexual person is a person who is not transexual but who is similar in other material respects.

The single-sex and separate-sex service provisions

A key question considered by the Supreme Court was how the two protected characteristics relate to the law around provision of single-sex and separate-sex services (which are found in Schedule 3 part 7 of the act), where the prohibitions against discrimination are disapplied. The judgment concludes (at paragraph 218):

> "Read fairly and in context, **the provisions relating to single-sex services can only be interpreted by reference to biological sex**."

It explains (at paragraph 213):

> "**It is likely to be difficult (if not impossible) to establish the conditions necessary for [lawful] separate services for each sex when each group includes persons of both biological sexes**."

Examples of how meeting the "gateway conditions" to provide such a service depend on a recognition of the separate needs of the two sexes included:

- A homeless shelter could have separate hostels for men and women provided this pursued a legitimate aim, which might be the safety and security of women users or their privacy and dignity (and the same for male users).
- A cervical-cancer screening service is only needed by female people.
- A situation where a person of one sex might reasonably object to the presence of or physical contact with a person of the opposite sex – examples include a female-only changing room or on a women-only hospital ward or in a rape-counselling group.
- A female massage therapist offering massages in her clients' homes might reasonably object to providing this service to a man.

The judgment makes similar points in relation to the **provisions concerning communal sleeping accommodation (and associated sanitary facilities)**, which relate to bodily privacy and expectation of separation between the sexes.

Once the gateway conditions are met for a woman's service (at paragraph 221), the Supreme Court explains that:

> "provided it is proportionate, the female only nature of the service would engage paragraph 27 [of Schedule 3] and **would permit the exclusion of all males including males living in the female gender regardless of GRC status**."

There is nothing in the judgment that suggests that the question of what is "proportionate" is a question to be negotiated on a case-by-case basis with individuals; rather it relates to whether the rule is lawful.

The judgment describes how service providers offering a single-sex service **are also exempt from the prohibition against gender-reassignment discrimination** (as long as their conduct is proportionate). For example, a "trans man" (a woman living in the male gender) can be lawfully excluded from a female-only service, without this amounting to gender-reassignment discrimination.

> "This might be considered proportionate where reasonable objection is taken to their presence, for example, because the gender reassignment process has given them a masculine appearance or attributes to which reasonable objection might be taken in the context of the women-only service being provided."

Single-sex charities and associations

The judgment notes that Schedule 16 paragraph 1 EA 2010 allows for an association to restrict membership to persons who share a protected characteristic (which would otherwise be unlawful discrimination in contravention of section 101(1)(b)). Single-sex charities are allowed by the

exception in s.193 to restrict the provision of benefits to persons who share a protected characteristic in pursuance of a charitable instrument.

It finds that:

> "Schedule 16 and section 193(1) plainly intend that single-sex associations and charities should be permitted to exist along with other single-characteristic associations."

Examples include a mutual-support association for women who are victims of male sexual violence, a lesbian social association and a breastfeeding support charity.

> "To require such associations or charities to reconceive of their objects as targeting a group that does not correspond with their original aims, and to allow trans people with a GRC (of the opposite biological sex) to join would significantly undermine the right to associate on the basis of biological sex (or sexual orientation)."

Sport

Section 195 of the EA 2010 also includes provisions which exempt organisers of competitive activities from sex and gender-reassignment discrimination in relation to "gender-affected activities".

The Supreme Court said that this provision is **"plainly predicated on biological sex"**, and may be unworkable with any other interpretation. The gateway condition depends on a determination of whether the activity is one where physical strength, stamina or physique of average persons of one sex would put them at a disadvantage when compared to average persons of the other sex.

The Supreme Court notes that a provision in the act also enables the exclusion of members of the same sex (for example biological females who have taken testosterone to give them more masculine attributes from a women's sporting competition). At paragraph 236:

> "their exclusion would amount to gender reassignment discrimination, not sex discrimination, but would be permitted by section 195(2)."

The public-sector equality duty and positive action measures

All organisations subject to the PSED must have due regard for how their rules, policies and practices affect specific groups with different protected characteristics.

The Supreme Court notes that organisations and bodies that are subject to the PSED are required to collect data in order to fulfil this duty.

It warns against categorising people and collecting data based on asserted or certified gender identity (that is, having a GRC) instead of sex, saying that a heterogenous group containing biological women, some biological males (trans women) and excluding some biological females

(trans men) is a confusing group to envisage and "may have little in common". At paragraph 239:

> "Any data collection exercise will be distorted by the heterogenous nature of such a group. Moreover, the distinct discrimination and disadvantage faced by women as a group (or trans people) would simply not be capable of being addressed by the PSED because the group being considered would not be a group that, because of the shared protected characteristic of sex, has experienced discrimination or disadvantage flowing from shared biology, societal norms or prejudice. Whereas the interests of biological women (or men) can be rationally considered and addressed, and likewise, the interests of trans people (who are vulnerable and often disadvantaged for different reasons), we do not understand how the interests of this heterogenous group can begin to be considered and addressed."

A similar problem arises in relation to the positive-action provisions addressing particular needs, disadvantages or under-representation of persons who share a protected characteristic.

In relation to the question of representation on boards (positive action to avoid "manels" – all-male panels – and to seek equal representation of women), at paragraphs 241–242:

> "If the purpose of the positive action measure is to increase representation on public boards of women (with their shared experience of disadvantage based on sex and overcoming such disadvantage), a certificated sex approach changes the group to be represented. It means that those entitled to be considered for this scheme include biological males who have GRCs but it excludes biological females who have GRCs. **This is an irrational approach**."

> "Moreover, the different needs of and disadvantages faced by transsexual people (whether or not they have a GRC) can – and in the case of the PSED must – be considered separately without conflating these distinct protected characteristics. **To do otherwise is detrimental to both groups**."

Belief discrimination

The Supreme Court endorsed the judgment of the Employment Appeal Tribunal in *Forstater v CGD Europe and others [2021] UKEAT* as "comprehensive and impressive".

In this case the claimant's belief was summarised as:

> "She considers there are two sexes, male and female, there is no spectrum in sex and there are no circumstances whatsoever in which a person can change from one sex to another, or to being of neither sex. She would generally seek to be polite to trans persons and would usually seek to respect their choice of pronoun but would not feel bound to; mainly if a trans person who was not assigned female at birth was in a "woman's space", but also more generally. If a person has a Gender Recognition Certificate this would not alter the Claimant's position. The Claimant made it clear

> that her view is that the words man and woman describe a person's sex and are immutable. A person is either one or the other, there is nothing in between and it is impossible to change from one sex to the other."[5]

This belief (termed "gender critical" in recent years) was found in that case to be "worthy of respect in a democratic society" and covered by the protected characteristic of religion or belief. Choudhury P held (at paragraph 32 of that judgment):

> "Not only is it worthy of respect, but it is also one that is consistent with the common law under which sex is regarded as binary and fixed at birth for the purposes of all legal provisions which make a distinction between men and women…The coming into force of section 9 of the GRA, under which a person with a gender recognition certificate ('GRC') 'becomes for all purposes' the acquired gender, does not, as the Tribunal appears to have found, require the claimant to disregard what she considers to be a material reality, namely that sex is immutable."

This is confirmed by the Supreme Court's judgment.

Going further, we can say that the Supreme Court's clarification of the meaning given to sex in the Equality Act corresponds with what has been termed the "gender critical" belief that sex is a material reality that is binary, immutable, and socially and legally important when seeking to understand and address disadvantages.

Those who speak about sex and gender with the "gender critical" view recognise, in common with the Supreme Court, that women and "trans women" do not have the same needs or disadvantages. Thus, when they express this politely, respectfully and in an appropriate situation they cannot possibly be manifesting a belief in a way that can considered "inappropriate" (and thus potentially a reason for it to be lawfully restricted – see *Higgs v Farmor's School [2025] EWCA Civ 109*). They are simply articulating one of the foundational terms of the Equality Act, which has now been correctly interpreted.

Treating a straightforward expression of the law, whether by a Supreme Court justice or by an ordinary person protected by that law as "offensive" is irrational, and if such a complaint is taken seriously it is likely to lead to unlawful conduct and a breach of that person's human rights.

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[5] *Forstater v CGD Europe and others [2021] UKEAT/0105/20/JOJ*.

What does all this mean in practice?

This section does not draw directly from the judgment, but rather makes some inferences and recommendations about what organisations should do to reset their practice given that there has been widespread misunderstanding and misrepresentation of one of the protected characteristics in the act.

1. **Recognise that organisational policies which are not based on the definition of sex clarified by the Supreme Court are likely to result in unlawful conduct.** Most employees should not be expected to routinely make difficult decisions which require a knowledge of the law. The organisation's policies should be simple and clear to guide employees away from the risk of unlawful conduct. They need to be based on the protected characteristics to do this.
2. **Recognise that the goal of "inclusion" in line with the act means including, supporting and encouraging people as employees, service users, students regardless of protected characteristics, not including people within categories to which they do not belong** when considering measures to address the needs and disadvantages of people who share a particular characteristic.
3. **Use clear language in policy statements, training and data collection.** Do not create confusion and unclear expectations about rules and policies, for instance by conflating sex with the idea of gender identity. While staff may use different words about themselves (such as man or woman not relating to their sex, or other terms such as queer, non-binary, transmasc, transfemme or gender-fluid), these are personal descriptors and do not relate to protected characteristics. All staff (and particularly those in decision-making roles) need to understand the terms and concepts used in organisational policies, which should align with the Equality Act:
    - Sex means biological sex.
    - Having the protected characteristic of gender reassignment does not change a person's sex.
    - Homosexuals are men or women with a sexual orientation towards the same sex.
    - Heterosexuals are men or women with a sexual orientation towards the opposite sex.
    - Bisexuals are men or women with a sexual orientation towards either sex.
    - Lesbians are women with a sexual orientation towards other women (they share two protected characteristics).
    - Gay men are men with a sexual orientation towards other men (they share two protected characteristics).

4. **Recognise that these categories relate to groups with particular needs and vulnerabilities.** This is core to avoiding unlawful discrimination and promoting equal treatment. This may be disappointing to people who had thought the law was based on gender identity. It will need to be explained sensitively but firmly when organisations are bringing their policies into line with the law.

5. **Do not make statements that the organisation disagrees with the Equality Act (including the Supreme Court judgment)** or that disparage or celebrate people with particular protected characteristics (including protected beliefs). Do not allow staff networks to make such statements on the intranet or mass emails or suchlike. This could lead to mass harassment claims. Making statements that favour or prioritise particular groups (such as statements of allyship or solidarity in favour of one group at the expense of another) will lead to an **unbalanced approach and risk of unlawful harassment and discrimination**.

6. **Ensure that where you have sex-based rules they are clear and justified.** Where you have policies that treat people differently because of a protected characteristic, identify the reason and the lawful exception you are relying on in the Equality Act. Communicate the rule clearly and apply it to the whole category of people who share the protected characteristic. Avoiding sex discrimination will also protect against gender-reassignment discrimination since you are not reinforcing gender stereotypes by expecting anyone to conform to traditionally masculine and feminine archetypes or judging them on this, but simply expecting them to do their jobs.

7. **Operate single-sex services on the basis of clear sex-based rules.** The judgment has put it beyond doubt that the Equality Act requires that where single-sex services are provided this is on the basis of biological sex. If you provide a single-sex or separate-sex service (as a whole or part of your service), or manage a relevant sport, association or charity, you should make clear that it is for people of that sex only. This means that the rules exclude males (transwomen) from the women's category and females (transmen) from the men's. It is not appropriate to employ a person in a job where being of the opposite sex is an occupational requirement (for example, a "trans woman" as a female rape-crisis counsellor for women).

8. **Explain these rules clearly and respectfully to everyone, including transgender people.** They are likely to be disappointed, which is understandable, but your responsibility is to treat everyone fairly in line with the law.

9. **Apply normal standards of workplace and professional conduct to everyone equally.** A transgender employee should be able to expect normal professional courtesy from colleagues and appropriate behaviour from customers, clients, patients, students and so on (that is, no bullying or harassment). But they cannot expect their employer to shield them from the reality that other people are likely to perceive their sex and are often entitled to know it (for instance in interactions involving a health or care professional or being searched by a police officer). Transgender individuals should be expected to comply with rules and policies that are lawful.

10. **Consider if any of your policies may result in indirect discrimination both in relation to sex and gender reassignment.** Policies that relate to the two sexes, to recording sex, to bodily privacy

or to duties of candour, openness and consent may be experienced as detriments by transgender employees. You should consider whether these effects can be reasonably avoided or mitigated (for example by providing a unisex alternative) or whether the policy can be justified as a proportionate means to a legitimate aim.

11. **Do not consider mitigating potential indirect discrimination by allowing a transgender individual to use opposite-sex facilities.** This undermines the legitimate aim of providing separate-sex facilities for privacy and dignity and is likely to result in harassment and discrimination against others. Making a single-user unisex facility (such as toilet, changing room or shower) available is often practical.

12. **Do not remove single-sex spaces altogether and make them "gender neutral".** This is not justified, and could be direct or indirect discrimination related to sex as well as a breach of workplace health and safety regulations (and in England, Building Code T). If you do not currently operate on the basis of separate-sex arrangements in situations where they are preferred for privacy and dignity, consider the risk of an indirect discrimination claim. It is good practice to subject any change to single-sex facilities to an equality impact assessment and to consider the particular impact on women and girls of replacing separate-sex facilities with mixed-sex ones.

13. **Treat everyone with respect and ensure you have a robust policy against harassment in relation to all protected characteristics.** Harassment involves "unwanted conduct which is related to a relevant characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity". Whether unwanted conduct has the purpose or effect described above will depend on the perception of the person, the context and **whether it is reasonable for the conduct to have that effect**.

    Sex can be a relevant factor when considering whether conduct constitutes harassment and what it is unreasonable to feel offended or humiliated by. For example two women changing in what is understood to be a female changing room does not create an environment that could constitute harassment. But a man coming in and observing them or undressing with them would. A woman asking another woman if she has a tampon in the women's toilets is not harassment. A man going into the women's toilets and seeking to engage women in conversation about their periods would be. Other people's reasonable expectation of privacy and personal autonomy not to engage in gender-affirming role play should be impressed upon transgender colleagues to avoid them committing harassment by assuming it is appropriate to use opposite-sex facilities. **It is not.**

    Staff should treat each other and service users politely and respectfully. If staff taunt or ask intrusive questions of their trans-identifying colleague by reference to their sex (or related matters such as anatomy) this could be unwanted conduct that amounts to harassment. However, respectfully making simple statements that reflect that someone is a man or woman using ordinary language in the normal course of professional conduct would not. Such

language is needed for communicating rules and boundaries. **It is not reasonable to be offended by such statements.**

Transgender colleagues should also be warned against oversharing by talking about their intimate anatomy or seeking to insert themselves in conversations inappropriately (for example a man who identifies as a woman wanting to talk to female colleagues about menstruation).

14. **Set clear expectations and do not entertain unreasonable complaints.** Recognising and referring to a person's sex is not "transphobic". An employee who has unreasonable expectations of keeping their sex secret, or of policing the thoughts and conduct of other people who recognise their sex, or of accessing opposite-sex spaces or the intimate areas of other people's bodies without their informed consent, is unlikely to be suited to the world of work. Do not entertain complaints about "transphobia" that relate to ordinary expressions of material reality of the two sexes or of sex-based rules and the rights and protections in the Equality Act. Any policies about preferred pronouns will be subject to the same prohibitions against indirect discrimination and will need to be justified.

15. **Do not tolerate the advocacy of non-compliance with the Equality Act.** While people have different beliefs about sex, gender and identity, refusing to undertake legal responsibilities or to recognise obligations in relation to non-discrimination is not an appropriate expression of belief at work, and is a legitimate ground for disciplinary action.

16. **Note that the Equality Act makes specific provisions recognising that a tendency to physical or sexual abuse of other persons, exhibitionism and voyeurism are behaviours which do not need to be tolerated at work**. It is well-recognised in the medical literature that for some people (predominantly male), transgender identification can be linked to a paraphilia or sexual fetish such as autogynephilia, exhibitionism or interest in non-consensual sexual activity. **Normal standards of workplace propriety, professionalism and safeguarding are a reasonable expectation and are not overridden by any protected characteristic.**

17. **When you record an employee's sex do so accurately.** Employers are covered by data-protection law (the Data Protection Act and UK GDPR). As an employer you should ensure that your processing of personal data on employees' sex is lawful. This means the data must be accurate and recorded clearly in a field marked as sex. Collecting and using this data for a legitimate purpose (which does not include unlawful discrimination) does not breach ECHR Article 8 on the right to private life.

18. **Recognise that keeping a person's sex private at work is rarely practical and is not a reasonable expectation**. This is both because of data-protection law and because it is not realistic for someone to expect to be able to keep their sex secret in any face-to-face workplace, or in relation to sex-based rules and facilities. Nor is it reasonable to expect other employees to maintain secrecy about this information, which is usually readily perceivable.

19. **Do not collect information on whether individuals hold a GRC. It is not relevant to the Equality Act**, and unlikely to be relevant for the purposes of employment. Employers and service

providers should generally not ask for or collect this information, and they should dispose of it securely if they recognise they are holding it but have not identified a lawful purpose to retain it.

20. **Do not take advice from organisations which do not accept the Supreme Court's ruling.** While you may engage with them to understand their concerns, organisations should be wary of entering into "allyship" relationships or processes that constitute a perpetual negotiation and escalator in relation to a single protected characteristic. This includes "reverse mentoring", external awards schemes and ratings, and appointment of internal champions. TheEquality Act is carefully balanced. Failing to recognise conflicts of rights, or going beyond the act in relation to some protected characteristics, could lead to encroaching on other people's rights.

Managing the culture shift

Organisations will need to review all existing policies and training to consider if they result discrimination or harassment in relation to sex, belief, gender reassignment or sexual orientation.

These changes represent a significant culture shift for organisations that have previously adopted guidance such as that promoted by Stonewall and Advance HE, which have misinterpreted the Equality Act.

Amnesty International intervened in the FWS case to argue against the biological basis of sex in the Equality Act. It made the argument that "A blanket policy of barring trans women from single sex services [intended for women] is not a proportionate means to achieve a legitimate aim."

It argued that the construction of sex put forward by FWS failed "to recognise that a trans woman with a GRC is in a significantly different situation to a cisgender man and therefore, [ECHR] Article 14 [which protects against discrimination in relation to the realisation of human rights] requires that she be treated differently from him i.e. not be excluded from a single sex service or from sport on the same basis (and for the same reasons) as a cisgender man (unless the failure to do so can be proportionately justified)."[6]

These arguments were dismissed by the Supreme Court.

You do not need to continue to negotiate with individuals and groups advancing this argument. It has been found to be wrong in law.

Continuing to take advice from organisations opposed to the clear recognition of the protected characteristic of sex now confirmed in the Supreme Court judgment is likely to lead organisations to engage in unlawful conduct.

Organisations should be wary of taking advice from organisations that promote this position, including internal LGBT+ networks and law firms which have declared allyship policies, signed up to schemes such as Stonewall Diversity Champions, or refused to accept the Supreme Court's judgment.

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[6] Amnesty International (2024). *Amnesty International UK third-party intervention in the Supreme Court appeal of the case of For Women Scotland*.

Recommendations

- **We recommend that the process of reviewing policies in light of the Supreme Court judgment is led by an organisation's general counsel and takes a structured approach.**
- **Any engagement with advocacy organisations should start with asking them if they accept these principles, which are based on the Equality Act.**
- **Organisations should not enter into open-ended negotiations or pledge allyship with lobbying organisations, LGBT or other networks, or transgender individuals or consultancies.**
- **Engagement should rather be structured as asking for inputs into identifying existing policies, criteria or practices (PCPs) that might result in indirect discrimination, and considering proposals for less discriminatory options.**
- **Transparency in this process will help. This includes explicitly using the Equality Act as the framework, and using clear, unambiguous language.**
- **There will be disappointment and there may be emotive statements and irrational demands. Do not try to avoid this response by adopting policies which are not clear and which promise one thing to one group and another thing to another (such as "single-sex spaces" that are "inclusive of trans people").**
- **The Equality Impact Assessment framework provides a structured means for considering impacts related to all protected characteristics. Policies should not be seen as "belonging" to a particular group.**

Getting advice

Organisations should be clear about whether they are engaging with third-party organisations as expert or lived-experience informants and campaigners in order to help them understand a particular point of view or experience of a particular section of the population, or whether they are engaging with them as specialist advisors on Equality Act compliance and organisational policy-setting.

This should be part of any agreed terms of reference, memorandum of understanding or contract.

Do not take advice from organisations which do not accept the Supreme Court's ruling.

The Equality and Human Rights Commission and other related regulators such as the Health and Safety Executive, Charity Commission and the Information Commissioner's Office should put out clear, simple guidance, and cascade this down through sector bodies and professional regulators.

About Sex Matters

Sex Matters is a charity whose objects are to promote human rights where they relate to biological sex to advance education about sex and the law and to promote the sound administration of the law in relation to sex and equality in the law. It aims to promote clarity on sex in law and policy, including promoting understanding of, compliance with and enforcement of the protections under the Equality Act 2010.

Sex Matters successfully intervened in the For Women Scotland case in support of the appellant.[7] The Supreme Court gave particular thanks to our barrister Ben Cooper KC for his written and oral submissions on behalf of Sex Matters (at paragraph 35 of the judgment):

> "which gave focus and structure to the argument that 'sex', 'man' and 'woman' should be given a biological meaning, and who was able effectively to address the questions posed by members of the court in the hour he had to make his submission."

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[7] Sex Matters (2024). *Written intervention to the Supreme Court on the definition of sex*.