

Subject: The Council's compliance with the provisions of the Equality Act 2010 and the recent Supreme Court ruling

To CMT and service leads -

I have received the FOI below about the Council's compliance with the provisions of the Equality Act 2010, particularly in light of the recent Supreme Court ruling in *For Women Scotland v. Scottish Government* (UKSC16).

As you will be aware, the Supreme Court has ruled that the legal definition of woman, within the Equality Act, is based on biological sex. The Equality and Human Rights Commission (EHRC) interim guidance confirms that:

The Supreme Court ruled that in the Equality Act 2010 (the Act), 'sex' means biological sex.

This means that, under the Act:

- A 'woman' is a biological woman or girl (a person born female)
- A 'man' is a biological man or boy (a person born male)

If somebody identifies as trans, they do not change sex for the purposes of the Act, even if they have a Gender Recognition Certificate (GRC).

- A trans woman is a biological man
- A trans man is a biological woman

This judgment has implications for many organisations, including:

- workplaces
- services that are open to the public, such as hospitals, shops, restaurants, leisure facilities, refuges and counselling services
- sporting bodies
- schools
- associations (groups or clubs of more than 25 people which have rules of membership)

In **workplaces**, it is compulsory to provide sufficient single-sex toilets, as well as sufficient single-sex changing and washing facilities where these facilities are needed.

It is not compulsory for **services** that are open to the public to be provided on a single-sex basis or to have single-sex facilities such as toilets. These can be single-sex if it is a [proportionate means of achieving a legitimate aim](#) and they meet other conditions in the Act. However, it could be indirect sex discrimination against women if the only provision is mixed-sex.

In workplaces and services that are open to the public:

- trans women (biological men) should not be permitted to use the women's facilities and trans men (biological women) should not be permitted to use the men's facilities, as this will mean that they are no longer single-sex facilities and must be open to all users of the opposite sex
- in some circumstances the law also allows trans women (biological men) not to be permitted to use the men's facilities, and trans men (biological woman) not to be permitted to use the women's facilities
- however where facilities are available to both men and women, trans people should not be put in a position where there are no facilities for them to use
- where possible, mixed-sex toilet, washing or changing facilities in addition to sufficient single-sex facilities should be provided
- where toilet, washing or changing facilities are in lockable rooms (not cubicles) which are intended for the use of one person at a time, they can be used by either women or men

Membership of an **association** of 25 or more people can be limited to men only or women only and can be limited to people who each have two protected characteristics. It can be, for example, for gay men only or lesbian women only. A women-only or lesbian-only association should not admit trans women (biological men), and a men-only or gay men-only association should not admit trans men (biological women).

Obviously, the implications of this are much wider than just employment, so I would ask you to review your own service areas in light of the attached FOI and let me know if you have any information to feed into our response to this?

Thanks

HR

FOI Request:

Freedom of Information Request Regarding Compliance with the Equality Act 2010.

I am writing to inquire whether you are fully compliant with the provisions of the Equality Act 2010, particularly in light of the recent Supreme Court ruling in *For Women Scotland v. Scottish Government* (UKSC16). As you will be aware, the Supreme Court has ruled that the legal definition of woman, within the Equality Act, is based on biological sex. The Equality and Human Rights Commission (EHRC) interim guidance confirmed that if facilities are provided for women these facilities are reserved for biological women.

1. Previous or Current Service Delivery:

Please provide copies of any policies, guidelines, internal memos or external communications that set out the Council's approach to allowing males who identify as women (either with or without a GRC) to use spaces or services designated as for women. These services can either be commissioned or provided directly by the Council.

2. Policies:

Provide a list of all policies and practices that are under review to ensure they align with the Supreme Court's clarification of the Equality Act 2010 following the For Women Scotland ruling. If no policies are currently under review has there been a decision about when this work will be undertaken?

3. Equality Impact Assessments:

Provide a list and copies of all Equality Impact Assessments that are under review to ensure they are in line with the Equality Act 2010, particularly with regard to policies that affect women and sex-based rights.

4. Monitoring and Compliance:

What measures are in place to ensure that, going forward, women's rights are not compromised under any of the Council's policies once existing policies have been updated to reflect the ruling of the Supreme Court?