



The EHRC states: “We are committed to developing guidance that provides legal clarity and practical support for organisations following the Supreme Court judgment.” This is a laudable aim and badly needed. Unfortunately, the draft Code of Practice published for consultation achieves the opposite. Instead of giving clear, concise instructions that any person managing, say, a small netball club or rape crisis centre might be able to understand and implement, the draft guidance is full of double negatives and equivocation (“are unlikely to be unlawful”; “unlikely to warrant”, “likely to be disadvantaged”) that will perplex and dismay any ordinary person seeking reliable help.

It would have been extremely helpful to suggest, for instance, that service providers hang a sign at the front desk stating: “Anyone who states their age or sex incorrectly will be liable to exclusion.”

Front desk staff need simple guidance. For this and other reasons, the draft Code of Practice is not fit for purpose. We summarise our other key concerns below:

- Language. The Supreme Court ruling states: “A person who is a biological man, i.e. who was at birth of the male sex, but who has the protected characteristic of gender reassignment is described as a ‘trans woman’. Similarly, a person who is a biological woman, i.e. who was at birth of the female sex, but who has the protected characteristic of gender reassignment is described as a ‘trans man’.” The draft Code of Conduct follows the Court in using these terms.
- However, the Court also established that “man” means a biological man, “woman” means a biological woman, and “sex” means “biological sex”. The point of the guidance is to help ordinary people to apply the law correctly. It should choose simple language that people can understand. The words “trans woman” and “trans man” confuse the public, as polls have shown. 21% of the public think a “trans woman” is someone born female and another 19% are unsure. (See <https://murrayblackburnmackenzie.org/2023/08/07/clarity-matters-how-placating-lobbyists-obscures-public-understanding-of-sex-and-gender/>). They understandably think a “trans woman” is a kind of woman. If the EHRC insists on adhering to these terms, it should provide a Glossary and clearly direct readers to it at the beginning. But in our view, it is better to avoid confusing terms altogether and to refer instead to a “man with the protected characteristic of gender reassignment”. Statutory guidance is the last place in which one should find confusing language.
- Another example: “LGBTQ+ people” conflates people who have the protected characteristic of sexual orientation (LGB) with those who have the protected

characteristic of gender reassignment (T) as well as other indeterminate groups (Q+). This is incoherent and unhelpful.

- The document displays a glaring bias. It highlights the needs of people with the protected characteristic of gender reassignment and ignores those of people with the protected characteristic of sexual orientation. This is demonstrated by the 85 mentions of the word “trans”, with only 5 for the word “gay”, 2 for “lesbian” and 1 for “bisexual”. This is incomprehensible, given the importance of the arguments adduced by the Lesbian Interveners, as reflected at length in the Supreme Court ruling. Astonishingly, there is no guidance on gay or lesbian associations or spaces at all. Despite its mandate to balance rights, the EHRC has not given due consideration to the protected characteristic of sexual orientation – either in its multiple examples or elsewhere. The EHRC cannot seriously claim it has endeavoured to balance rights while adopting such a skewed approach.
- The rights of lesbians, gays and bisexuals have been gradually eroded since 2015 and this erosion is reflected in the lack of attention given to those rights in this draft guidance. We find this shameful and of serious concern. We had hoped that the Supreme Court ruling would have an immediate and positive impact on the lives of gays, lesbians and bisexuals but the EHRC appears not to have given any thought to LGB rights or lives.
- Our organisation, LGB Alliance, first intervened in 2022/23 in support of LGB sex-based rights, in the For Women Scotland Judicial Review of the revised statutory guidance produced by the Scottish Ministers under Section 7 of the Gender Representation on Public Boards (Scotland) Act 2018. We then went on to intervene in the same case at the Supreme Court as part of the "Lesbian Interveners" (LGB Alliance, the Lesbian Project and the Scottish Lesbians). The judges saw the grave implications for lesbians of prioritising gender over sex, particularly when it comes to men with Gender Recognition Certificates, who, according to Ruth Crawford KC, Counsel for the Scottish Government, "become lesbians". She argued that if a heterosexual man obtained a Gender Recognition Certificate (GRC) and thereby legally became a woman, this would technically make him a "same-sex attracted woman", i.e. a lesbian. We believe that this counter-intuitive statement shocked the judges, as it was so clearly ridiculous, and that it had a direct impact on their ruling. Indeed, all who watched the proceedings saw that the judges were “visibly perplexed” at the notion that a man with a GRC could legally call himself a lesbian and join lesbian-only spaces. As the ruling observes at para. 204: “People are not sexually oriented towards those in possession of a certificate”.

- Lesbian rights matter. Gay men's rights matter. The EHRC must remedy its reprehensible neglect of the rights of people with same-sex sexual orientation.

**Recommendation:**

LGB Alliance urges the EHRC to use the recent guide issued by LGB Alliance Cymru to inform the Code of Practice: <https://lgballiancecymru.wales/wp-content/uploads/2025/06/The-Legal-Defence-of-Lesbian-Spaces-Short-Organisers-Guide-17-6-2025.pdf>