

Supreme Court judgement on the interpretation of the Equality Act with regards to sex and gender

Possible changes to services and facilities – PPAB view before
Community Engagement

Policy and Projects Advisory Board – 22 July

Purpose

- To consider the implications and possible changes to Council services and facilities arising from the Supreme Court judgement on the interpretation of the Equality Act with regards to sex and gender
- To provide recommendations to the Portfolio Holder for Policy, Performance and Sustainability and Cabinet

BACKGROUND

Equality Act 2010

- Public authorities must have due regard to the need to:
 - put an **end to unlawful behaviour** that is banned by the Equality Act 2010, including discrimination, harassment and victimisation
 - **advance equal opportunities** between people who have a protected characteristic and those who do not
 - **foster good relations** between people who have a protected characteristic and those who do not
- Discrimination can be:
 - Direct: having, perceived to have, or connected to a person with a protected characteristic
 - Indirect: A person with a protected characteristic being disadvantaged due to a policy that applies equally to everyone.
- Harassment is when someone makes you feel humiliated, offended or degraded for reasons related to your protected characteristic
- Protected characteristics:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation
- Sex discrimination is lawful when:
 - Objective justification, e.g. to provide women-only service to victims of domestic violence
 - Occupational requirement, e.g. to facilitate single-sex services
 - Positive action, e.g. to counteract under-representation or disadvantage

Supreme Court judgement on the meaning of “man”, “woman” and “sex” in the Equality Act 2010

16 April – Supreme Court judgement in [For Women Scotland Ltd v The Scottish Ministers](#) :

- The terms “man”, “woman” and “sex” in the Equality Act 2010 refer to biological sex.
- This interpretation does not remove protection from trans people, with or without a Gender Recognition Certificate (GRC).
- Trans people are protected from discrimination on the ground of gender reassignment.
- Trans people able to invoke the provisions on direct discrimination and harassment, and indirect discrimination on the basis of sex.
- In the light of case law interpreting the relevant provisions, a trans woman can claim sex discrimination because she is perceived to be a woman.

EHRC update on practical implications of the UK Supreme Court judgement (1)

25 April - Equality and Human Rights Commission released [an interim update on the practical implications of the judgement](#):

- 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). Therefore:
 - A trans woman is a biological man
 - A trans man is a biological woman

[Statutory and non-statutory guidance consultation](#) closed on 30 June. Final guidance expected to be published this summer.

EHRC update on practical implications of the UK Supreme Court judgement (2)

Services

- Single-sex services are not compulsory.
- Services can be single-sex if it is a [proportionate means of achieving a legitimate aim.](#)
- Mixed-sex only services can be indirect sex discrimination against women.

Facilities

- It is compulsory to provide sufficient single-sex toilet, changing, and washing facilities where needed.
- Trans people should not be permitted to use single-sex facilities of their acquired gender. In some circumstances, the law allows them to be permitted to use single-sex facilities of their biological sex.
- Trans people should not be put in a position where there are no facilities for them to use – **mixed-sex facilities should be provided, in addition to single-sex facilities**

Gender identity in the Borough

Gender identity	Census 2021 (number)	Census 2021 (percentage)
Gender identity the same as sex registered at birth	75,955	93.92%
Gender identity different from sex registered at birth but no specific identity given	289	0.36%
Trans woman	118	0.15%
Trans man	119	0.15%
Non-binary	49	0.06%
All other gender identities	33	0.04%
Not answered	4,307	5.33%
Total	80,870	
Total - gender identity different from sex registered at birth	608	0.76%

POSSIBLE CHANGES TO SERVICES AND FACILITIES – PPAB VIEW BEFORE COMMUNITY ENGAGEMENT

Considerations

1. The implications and possible changes to services and facilities that may be required to comply with the law.
2. How we might respect the legal judgement, support the rights of trans people, and promote inclusion

Note: The Council should wait until after the guidance has been issued before making any decisions or changes to working practice or policy.

Single-sex services

Questions

- How might this ruling effect how we design or deliver single-sex services?
 - What assumptions do we make about gender and sex in our day-to-day work?
 - Are there areas where we've relied on self-identification rather than legal sex? What might need to change?

Activity

- Collate list of single-sex services
- Check compliance of temporary accommodation suppliers
- Understand when it is appropriate and proportionate to ask about someone's birth sex
- Consider changes to women's only swimming and exercise classes, sports activities, and sports competitions
- Consider how we approach women's history month
- Consider how we approach the use of birth certificates as an identification document

Single-sex facilities

Questions

- What changes to facilities might we need to make to comply with this ruling?

Activity - General

- Proportionate and reasonable provision of single sex and mixed sex public toilets and changing rooms
- How we support employees as facility users and providers

Activity – Aldershot Pools and Lido

- Single sex changing rooms and toilets with no separate mixed sex facilities.
- Hard to change without significant construction work and substantial cost

Activity – Princes Hall

- Mixed sex toilet provision for customers is currently limited to just the one disabled toilet on the first floor – is this sufficient?
- No mixed sex toilets backstage – easy to convert one with new signage.

Activity – Other

- Alpine Snowsports – single sex toilets only
- All community centres have mixed sex toilets except Rectory Road Pavilion (used by Squirrels Pre-School).

Policies

Questions

- What does this legal clarification mean for our existing policies?
 - Which of our current policies might need to be reviewed in light of this ruling?
 - How do we balance the rights of different protected groups when they appear to be in tension?
 - What are the risks of misinterpreting or over-applying this ruling?

Activity

- More clarification and guidance needed to update policies
- Reiterate importance of equality impact assessments (template already updated)
- Consider general clarification of the use of the terms sex and gender across all policies.
- Review Dignity at Work Policy and Prevention of Sexual Harassment Policy/training
- Review use of sex and gender in Housing Allocation Policy
- Review how we calculate gender pay gap data
- Prioritise treating people as individuals rather than as members of a particular group with a protected characteristic
- Offer opportunities for all people to have their voices heard in safe spaces
- Risk that a balanced approach pleases no one and polarises public opinion
- Risk that we inadvertently discriminate against another protected characteristic

Support for trans people

Questions

- How can we ensure we continue to support trans people while complying with this legal interpretation?
 - How might this ruling be perceived by different communities we serve?
 - How can we ensure our communications are clear, respectful, and legally accurate?
 - What role should consultation with affected groups play in our response to this ruling?

Activity

- Targeted engagement and consultation is vitally important – how might we reach out to representative and interested groups
- Difficulty of engaging with small minority
- How might we hear and understand the needs of, and impact on, trans people
- Need to be careful not to consult on our compliance with the law – consult on how we approach changes, not on what changes we need to make
- Monitor adoption of practice across sector
- Offer opportunities for all people to have their voices heard in safe spaces
- Acknowledge and consider stereotypes, perceived and actual risks, assumptions,
- Clarity of communication is vital to avoid misunderstanding
- Consider how our partner organisations approach this issue and the impact on our residents and our services

ANYTHING ELSE WE SHOULD CONSIDER?